

## NOTICE OF MEETING

---

The Port Commission ("Commission") of the Port of Corpus Christi Authority ("PCCA") will hold a Regular Session Meeting on Tuesday, June 16, 2015, at 9:00 AM, at the Congressman Solomon P. Ortiz International Center, 402 Harbor Drive, Corpus Christi, Texas.

*Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Sherry DuBois at 885-6174 at least 48 hours in advance so that appropriate arrangements can be made.*

*Si usted se dirige a la junta y cree que su inglés es limitado, habrá un intérprete inglés español en la reunión de la junta para ayudarle.*

*Members of the audience will be provided an opportunity to address the Port Commission. Please speak into the microphone located at the podium and state your name and address. Your presentation will be limited to three minutes.*

*PUBLIC NOTICE is given that the Commission may go into executive session at any time during the meeting to discuss matters listed on the agenda when authorized to do so by the provisions of Section 418.183 or Chapter 551 of the Texas Government Code. In the event the Commission elects to go into executive session regarding any agenda item, the presiding officer will publicly announce the section or sections of the Texas Government Code authorizing the executive session.*

The agenda for the meeting is as follows:

1. Call meeting to order; Safety Briefing; Pledge of Allegiance; Invocation; and receive conflict of interest affidavits.
2. Approve the minutes of the May 19, 2015 and June 5, 2015 Commission meeting.
3. Receive comments from the public. *(Each speaker will be limited to three minutes)*
4. Receive Windstorm Insurance Reform presentation from Commissioner Charles Zahn.
5. Receive committee reports from the following Commission committees:
  - a. Security
  - b. Audit
6. Receive staff reports on the following matters:
  - a. Water
  - b. Channel Improvement Project
  - c. Bulk Terminal
7. Receive Legislative updates and reports from BG Yarbrough & Associates and Berlanga Business Consultants.
8. Authorize the Disposition of PCCA's Salvage and Surplus Property.
9. Approve revisions to PCCA's Investment Report.

10. Adopt a resolution to approve a Design Agreement with the Department of the Army to perform an Economic Update for the Corpus Christi Ship Channel – Channel Improvement Project.
11. Adopt a resolution to approve a Memorandum of Agreement with the Galveston District of the Corps of Engineers for maintenance dredging of non-federal slips and channels.
12. Adopt a resolution to approve an agreement with Department of the Army for disposal of material in confined dredged material disposal facilities and authorize payment of the associated fees.
13. Approve Public Oil Dock No. 14 Dock Use Agreement with Gravity Midstream Corpus Christi, LLC.
14. Consent to the location and terms of a power line easement to be granted by Mossi & Ghisolfi Logistics Co. (“M&G”) to AEP Texas Central Company on property PCCA is buying from M&G, and authorize the Executive Director to execute the consent and all other documents necessary to close the purchase of the property. The Commission may go into executive session pursuant to §551.071 of the Texas Government Code to receive legal advice from PCCA's counsel regarding this matter before taking any action in open session.
15. Consent Agenda. The Port Commissioners have been furnished with supporting documentation and staff's recommendation for each of the following items. All Consent Agenda items will be approved, in accordance with the respective staff recommendations, by one vote without being discussed separately unless a Port Commissioner requests otherwise:
  - A. Approve contracts with Microsoft and Novacoast for replacement of e-mail, office and network systems.
  - B. Approve an Easement and Right-of-Way Agreement granting AEP Texas Central Company the right to serve Superior Weighting Products, LLC leased premises at the Rincon Industrial Park.
  - C. Approve a Professional Services Contract for Engineering Services with Burns & McDonnell – Transportation, Inc. for engineering services associated with the Tule Lake Bridge Foundation Removal project.
  - D. Award contract to Trelleborg Marine Systems USA, Inc., the lowest and best bidder based on bids received on May 29, 2015, for the purchase of dock fenders.
  - E. Award contract to Corpus Christi Freightliner, the lowest and best bidder based on bids received on May 29, 2015, for the purchase of a crane truck.
  - F. Award contract to SATX CCTV, LLC, the lowest and best bidder based on bids received on May 29, 2015, for the purchase of camera system under Security Grant 14 – Security Equipment Maintenance and Upkeep Project.

- G.** Approve a Service Order with Govind Development, LLC, under its Professional Services Master Agreement, for engineering services associated with improvements to fire protection systems at Oil Docks 4, 7, and 11.
  - H.** Approve a Service Order with HDR Engineering, Inc., under its Professional Services Master Agreement, for engineering services for settlement investigation at Cargo Dock 2.
  - I.** Approve a Service Order with LNV, Inc, under its Professional Services Master Agreement, for engineering services associated with landscape enhancements.
  - J.** Approve a Service Order with Golder Associates Inc., under its Professional Services Master Agreement, for environmental services associated with a pipeline removal/relocation project at the PCCA's La Quinta property.
  - K.** Approve a Professional Engineering Services Contract with Alan Plummer Associates, Inc. for engineering services associated with the design of storm water system improvements at the maintenance facility.
- 16.** Receive report from the Executive Director on upcoming community events, PCCA events and activities of the following PCCA departments during the preceding month: business development, community relations, government affairs, operations, engineering services, accounting, and human resources.
  - 17.** Receive comments from Port Commissioners on any of the agenda items for this meeting, the PCCA's activities during the preceding month, upcoming PCCA events, and suggestions for future agenda items.
  - 18.** The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate purchasing property in San Patricio County for the development of the La Quinta Terminal. The Commission may take action on this purchase in open session.
  - 19.** The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate purchasing property on the north side of the Inner Harbor from Mossi & Ghisolfi Logistics Co.. The Commission may take action on this purchase and matters related thereto in open session.
  - 20.** The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to receive legal advice from PCCA's counsel regarding compliance with the Open Meetings Act.
  - 21.** Discuss and take action on PCCA's contract for Unarmed Security Guard Services, including, without limitation, termination of the current contract, approval of a short-term contract, and authorizing staff to request sealed bids for a new contract. The Commission will go into executive session pursuant to §551.071 of the Texas Government Code, to receive legal advice from PCCA's counsel regarding these matters before taking any action in open session.

**22. Adjourn.**

**AGENDA ITEM NO. 1**

**NO ATTACHMENT**

**OFFICIAL MINUTES OF PORT COMMISSION MEETING  
May 19, 2015**

The Port Commissioners of the Port of Corpus Christi Authority convened at the Solomon P. Ortiz International Center, 402 Harbor Drive, Corpus Christi, Texas, on Tuesday, May 19, 2015, at 9:00 a.m., for the regular monthly meeting of the Port Commission.

**Present:** Ms. Judy Hawley  
Mr. Charles Zahn  
Ms. Barbara Canales  
Mr. David P. Engel  
Mr. Richard Valls  
Mr. Richard L. Bowers  
Mr. Wayne Squires

**Present:** Mr. John P. LaRue  
Mr. Tony Alejandro  
Ms. Patricia Cardenas  
Mr. Dennis DeVries  
Mr. David Krams  
Mr. Ruben Medina  
Ms. Sandra Terrell-Davis  
Ms. Nelda Olivo  
Mr. John Pasch  
Mr. Tom Mylett  
Mr. Darrin Aldrich  
Mr. Eric Battersby  
Ms. Audre Debler  
Ms. Lynn Angerstein  
Mr. Bland Chamberlain  
Ms. Sherry DuBois  
Mr. Brett Flint  
Mr. Tyler Fuhrken  
Ms. Sarah Garza  
Mr. Dan Koesema  
Ms. Angela Leyva  
Ms. Sonya Lopez  
Mr. Dave Michaelsen  
Mr. Jacob Morales  
Mr. Bert Perez  
Mr. Bennie Benavides  
Ms. Teresa Betzold  
Ms. Liz Cantu  
Ms. Peggy Mettlen  
Mr. Matt Garcia  
Ms. Vicky Garza

Mr. Jesse Samu

**Others Present:**

Mr. Leo J. Welder, Jr.  
Mr. Dane Bruun

**Others Present:**

Capt. Louis Adams  
Aransas/CC Pilots  
Ms. Nina Naranjo  
San Patricio County EDC  
Mr. Terry Arnold  
Consultant  
Ms. Carol Scott  
Kailo Communications  
Mr. Steve Synowitz  
Mr. Xavier Valverde  
G&H Towing  
Mr. David Cave  
CITGO  
Mr. Chris Ramirez  
Caller-Times  
Mr. Robert Rocha  
Mr. Frank Solansky  
CC Fire Dept.  
Mr. Don Rodman  
The Rodman Co.  
Mayor Pete Perkins  
City of Ingleside  
Ms. Danielle Hale  
Nueces County OEM  
Mr. Jason Burnell  
RTFC  
Mr. Bob Paulison  
Port Industries  
Ms. Michelle Unda  
NuStar  
Ms. Donna Stovall  
Mr. Tom Moore  
Consultant

**I.**

Chair Hawley called the meeting to order and asked for conflict of interest affidavits. None were submitted.

**II.**

On motion made by Mr. Valls and seconded by Mr. Squires, the Commission approved the minutes of April 21, 2015 Commission meeting in the form presented to the meeting.

**III.**

The Chair asked for comments from the public. There were none.

**IV.**

On motion made by Mr. Valls and seconded by Mr. Engel, the Commission adopted the following resolution:

**RESOLUTION  
Honoring  
Floyd D. Simpson  
Police Chief  
Corpus Christi Police Department**

WHEREAS, Floyd D. Simpson was selected as Chief of the Corpus Christi Police Department in February 2012, and was officially sworn in as the 22<sup>nd</sup> Corpus Christi Police Department Chief of Police on March 12, 2012; and

WHEREAS, Chief Simpson served the citizens and community of Corpus Christi, and the Coastal Bend with honor and dignity until his death on May 3, 2015; and

WHEREAS, Chief Simpson was born in Chicago, Illinois, attained a Bachelor of Science Degree from Western Illinois University, and earned his Master's Degree in Business Administration from Amber University; and

WHEREAS, in 1986, Chief Simpson became a Texas Peace Officer with the Dallas Police Department where he rose through the ranks to become a Dallas Police Department Assistant Chief of Police in 2008; and

WHEREAS, Chief Simpson served the Dallas community for 25 years before retiring to become Chief of the Corpus Christi Police Department; and

WHEREAS, through the example of leadership, involvement, and transparency that Chief Simpson demonstrated on a daily basis to his Department and to our community, Chief Simpson added to the quality of life for so many in our community. His enthusiasm, approachability, and concern for the citizens of our community led to a unification and partnership of our community with the Police Department. His leadership and involvement in many area charitable organizations, especially the Special Olympics, was such that he had a positive impact on the lives of many; and



WHEREAS, Chief Simpson's life was characterized by his ever-present smile, his deep compassion for people, regardless of who they were or where they came from, and by the respect and dignity he offered to everyone in his presence.

WHEREAS, Chief Simpson was a valued partner of the Port of Corpus Christi Authority and an involved partner with the Port of Corpus Christi Police Department;

NOW THEREFORE BE IT RESOLVED, by the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, that the Port Commission and Staff wish to acknowledge their deep appreciation of Chief Floyd D. Simpson as an individual of highest character, greatest integrity, and a man firm in his faith of God. Chief Simpson was a loyal friend of the Port of Corpus Christi Authority, who will be deeply missed, yet always remembered. The Port Commission and Staff extend our deepest condolences, sympathy, and prayers for Chief Simpson's family, his wife, Tanya, his four children, and to all those individuals he led as Police Chief of the Corpus Christi Police Department.

BE IT FURTHER RESOLVED, that this Resolution be made a part of the permanent minutes of this Port Commission and that a copy of this Resolution be furnished to Mrs. Tanya Simpson, to the City of Corpus Christi, and to the Corpus Christi Police Department.

**V.**

The Commission received a Windstorm Insurance Reform update from Mr. Zahn.

**VI.**

The Commission received status reports from the following committee chairs:

- A.** Security
- B.** Audit

**VII.**

The Commission received status reports on the following matters from Mr. LaRue:

- A.** Water
- B.** Channel Improvement Project
- C.** Bulk Terminal
- D.** Legislative Update

The Commission asked staff to give a status report on the Dredge Placement Areas at the June 16, 2015 Commission meeting.

**VIII.**

The Commission received a hurricane preparedness briefing from PCCA staff.

**IX.**

The Commission received a progress report on PCCA's fire response planning. Mr. Valls asked staff to create a committee consisting of responders, led by Tony Alejandro, to assess the capabilities of the PCCA's fire barge and to establish a protocol for marine fires.

**X.**

On motion made by Mr. Engel and seconded by Mr. Squires, the Commission approved the 1st Quarter Financial Report for 2015, in the form presented to the meeting.

**XI.**

On motion made by Mr. Engel and seconded by Mr. Squires, the Commission approved the 1st Quarter Investment Report for 2015, in the form presented to the meeting.

**XII.**

On motion made by Mr. Engel and seconded by Mr. Zahn, the Commission approved PCCA's 2015 Investment Policy, in the form presented to the meeting.

**XIII.**

On motion made by Mr. Engel and seconded by Mr. Zahn, the Commission approved PCCA Cash Reserve Policy, in the form presented to the meeting.

**XIV.**

On motion made by Mr. Valls and seconded by Ms. Canales, the Commission ratified, in the form presented to the meeting, the Consent to Assignments for the following four (4) easements from Corpus Christi Liquefaction, LLC (CCL) and Cheniere Corpus Christi Pipeline, L.P. to Société Générale for and in connection with the financing of CCL's LNG Project: (1) Access Road and Drainage Easement dated December 9, 2014; 2) Utility Easement Agreement dated February 23, 2015; 3) First Amended and Restated Leased Property Access Agreement dated December 9, 2014; and 4) Pipeline Easement dated November 13, 2012.

**XV.**

Staff reported to the Commission that PCCA had received six responses to the Notice to Bidders for construction of Phase II of the Nueces River Rail Yard project ("NRRY"). The Phase II contract bid documents were structured with a Base Bid for work primarily associated with construction of the rail yard, but also included components to provide embankment and ground surcharge as the foundation for a service road and additional rail tracks between the NRRY and the Bulk Terminal. In addition to the Base Bid, the bid documents included the following Additive Bid Items:

- Additive Bid Item 1 – for construction of the service road on the Base Bid embankment between the NRRY and the Bulk Terminal;
- Additive Bid Item 2 – for construction of the rail track (Track A) on the Base Bid embankment between the NRRY and the Bulk Terminal;
- Additive Bid Item 3 – Unit cost per cubic yard (CY) to replace soft soil with firm embankment, as required if such conditions are encountered during the contract; and
- Additive Bid Item 4 – Unit cost per square yard (SY) to furnish and place geogrid, as needed in areas where the soft soils are encountered.

On motion made by Mr. Valls and seconded by Mr. Bowers, the Commission awarded a contract to W.T. Byler Company in the amount of \$24,208,830.10 for construction of the NRRY and granted the Director of Engineering Services a 2% contingency allowance for change orders under the contract. The contract awarded includes the base bid (\$21,390,306.95) and additive bid items 1 (\$757,115.05) and 2 (\$2,061,408.10), plus additive bid items 3 (\$22/CY) and 4 (\$2.75/SY) with a total contract allowance of \$200,000 for additive bid items 3 and 4. The staff pointed out that under the grant for this project construction costs up to \$22,000,000 would be cost-shared at 78.6% State and 21.4% PCCA.

**XVI.**

On motion made by Mr. Zahn and seconded by Ms. Canales, the Commission approved a contract with AG/CM, Inc. for a not-to-exceed amount of \$683,100 to provide construction inspection, documentation, and management services at a rate of \$19,800 per month for three months, and for an additional twenty-one-month period at the rate of \$29,700 per month. Staff pointed out that the costs of the AG/CM services associated with the NRRY-Phase II are reimbursable at a rate of 78.6% by TxDOT through the \$22 million TxDOT Mobility Fund Grant.

**XVII.**

On motion made by Mr. Valls and seconded by Mr. Squires, the Commission approved, in the form presented to the meeting, –an Amendment to Rail Access Easement Agreement and License between PCCA and M&G Resins USA, LLC (“M&G”) to finalize the size and description of the easement area.

On motion made by Mr. Valls and seconded by Mr. Bowers, the Commission approved, in the form presented to the meeting, –the First Amendment to the 58.47-acre Lease Agreement between PCCA and M&G dated June 28, 2013, to add .994 acres on the east side of the original leased premises for improved truck access.

On motion made by Mr. Zahn and seconded by Mr. Squires, the Commission approved, in the form presented to the meeting, –a Surface Site Lease and Option Agreement between PCCA and M&G for property along the north side of the Viola Channel under which PCCA will lease 2.525 acres and have the option to purchase 8.216 acres.

**XVIII.**

Items A, C and G were removed from the Consent Agenda to be acted upon separately. Then, on motion made by Mr. Zahn and seconded by Ms. Canales items B, D, E, and F on the Consent Agenda were approved by one vote, in accordance with the respective staff recommendations furnished to the Commission at the meeting. These items were as follows:

- B.** Authorize the replacement of Exhibits and reduce fee for Pipeline Easement Agreement with Oxy Ingleside Oil Pipeline, LLC for pipeline crossing PCCA property at and near the Nueces River Rail Yard and the Viola Channel.
- D.** Approve a Professional Services Purchase Order with AG/CM, Inc. to provide inspection services associated with NuStar's pipeline construction project.
- E.** Award contract to J.M. Davidson, Inc., the lowest and best bidder based on bids received on May 1, 2015, for the Maintenance Painting at Bulk Terminal project.
- F.** Award contract to Cohu, In., the lowest and best bidder based on bids received on April 28, 2015, for the Security Grant 13 - Security Equipment Upkeep project.

With regard to Item **A**: On motion made by Mr. Valls and seconded by Mr. Zahn, the Commission approved, in accordance with the staff recommendations furnished to the Commission at the meeting, an increase in the contingency under and a Change Order to PCCA's construction contract with CAS Companies, LP for its installation of a storm water sluice gate.

With regard to Item **C**: On motion made by Mr. Valls and seconded by Ms. Canales, the Commission approved, in the form presented to the meeting, a Cooperation and Reimbursement Agreement with NuStar Logistics, LP, for inspection services related to the installation of a pipeline crossing the Tule Lake Channel and traversing the north side of the Inner Harbor.

With regard to Item **G**: On motion made by Mr. Valls and seconded by Mr. Engel, the Commission approved, in accordance with the staff recommendations furnished to the Commission at the meeting, a Service Order with Lockwood, Andrews and Newnam, Inc. for engineering services associated with the design of Storm Water Quality Improvements at the Bulk Terminal.

**XIX.**

The Executive Director reported on the following during his report: Update on NASCO; TEDA; Bond issue; Strategic Plan; ESCO; visit to M&G headquarters in Italy; and Port storage areas. Congratulated PCCA Bulk Terminal staff for job well-done; and Dane Bruun of Welder-Leshin for receiving Outstanding Young Lawyer award.

**XX.**

Chair Hawley asked for comments from Commissioners.

*At 11:52 a.m. Chair Hawley announced that the Commission would go into executive session pursuant to §551.072, §551.074 and §551.087 of the Texas Government Code to deliberate agenda items 21, 22, 23, 24, 25, 26 and 28.*

*At 1:52 p.m. the Commission reconvened into open session.*

**XXI.**

This item was for executive session only: To deliberate offering financial or other incentives to business prospects that PCCA seeks to have locate on property on the north side of Viola Channel in the Inner Harbor and with which PCCA is conducting economic development negotiations.

**XXII.**

This item was for executive session only: To deliberate offering financial or other incentives to business prospects PCCA seeks to have locate on property on the north side of the Tule Lake Channel in the Inner Harbor and with which PCCA is conducting economic development negotiations.

**XXIII.**

This item was for executive session only: To deliberate purchasing of property near the south side of the Inner Harbor.

**XXIV.**

This item was for executive session only: To deliberate purchasing of property near downtown Corpus Christi.

**XXV.**

This item was for discussion in executive session and possible action in open session: To deliberate purchasing property in San Patricio County for the development of the La Quinta Terminal. No action was taken on this item in open session.

**XXVI.**

The item was for executive session only: To deliberate purchasing property on the south side of the Inner Harbor.

**XXVII.**

On motion made by Mr. Squires and seconded by Mr. Zahn, the Commission approved a Service Order with WKMC Architects, under its Professional Services Master Agreement, for additional coordinating architect services associated with the proposed PCCA office facility.

**XXVIII.**

The Commission had before it the draft of an employment contract setting forth the terms and conditions under which PCCA would employ Sean Strawbridge as its Chief Operating Officer. On motion made by Mr. Bowers and seconded by Ms. Canales, the Commission approved the employment of Sean Strawbridge as PCCA's Chief Operating Officer on substantially the same terms and conditions as set forth in the draft employment contract presented at the meeting, and authorized and directed the Executive Director and counsel to finalize the terms of the contract for execution by the Chair and Mr. Strawbridge.

**XXIX.**

There being no further business, the meeting adjourned at 2:00 p.m.

**OFFICIAL MINUTES OF PORT COMMISSION MEETING  
JUNE 5, 2015**

The Port Commissioners of the Port of Corpus Christi Authority convened at the Ruben Bonilla Center for Global Trade, located at 222 Power Street, Corpus Christi, Texas, on Friday, June 5, 2015, at 2:30 p.m., for a special called meeting of the Port Commission.

**Present:** Ms. Judy Hawley  
Mr. Charles Zahn  
Mr. Richard Valls  
Mr. Richard Bowers  
Mr. Wayne Squires

**Absent:** Ms. Barbara Canales  
Mr. David Engel

**Present:** Mr. John P. LaRue  
Ms. Patricia Cardenas  
Ms. Rosie Collin  
Mr. Dennis DeVries  
Ms. Nelda Olivo  
Ms. Sandra Terrell-Davis  
Ms. Sherry DuBois  
Ms. Angela Leyva  
Ms. Peggy Mettlen

**Others Present:** Mr. Leo J. Welder, Jr.  
Mr. Dane Bruun

**Others Present:** Capt. Mike Kershaw  
Matt Woolbright  
Caller-Times

**I.**

Chair Hawley called the meeting to order and asked for conflict of interest affidavits. None were submitted.

**II.**

Chair Hawley asked for comments from the public. None were received.

*At 2:31 p.m. Chair Hawley announced that the Commission would go into executive session pursuant to §551.074 of the Texas Government Code to deliberate agenda item 3*

*At 3:08 p.m. the Commission reconvened into open session.*

### **III.**

On motion made by Mr. Zahn and seconded by Mr. Bowers, the Commission approved, in the form presented to the meeting, an employment agreement with Sean Strawbridge as the Chief Operating Officer of the Port of Corpus Christi Authority.

### **IV.**

There being no further business, the meeting adjourned at 3:10 p.m.



**AGENDA ITEM NO. 3**

**NO ATTACHMENT**

**AGENDA ITEM NO. 4**

**NO ATTACHMENT**

**AGENDA ITEM NO. 5**

**NO ATTACHMENT**

**AGENDA ITEM NO. 6**

**NO ATTACHMENT**

**AGENDA ITEM NO. 7**

**NO ATTACHMENT**

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 8***

**Authorize the Disposition of PCCA's Salvage and Surplus Property**

Over the past year, the Port has accumulated an assortment of shop and office equipment and furniture that is worn, broken, obsolete, or is no longer useful in our operations. As part of a previous Port clean-up project, we are now conducting an annual clean-out of salvage and surplus items in our storage warehouses to keep our Port facilities from storing useless items.

As per Section 62.122(b) of the Texas Water Code, the Commission has the authority to authorize the destruction or disposition of salvage or surplus property as worthless if the property is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended, and the expense to the district to attempt to sell the property would be more than the proceeds from the sale.

Most of the items included in this year's salvage and surplus project have minimal value and costs in Port staff time and administrative expenses to sell the property would be far beyond what the items are worth. Disposal items that have any scrap value will be sold and any revenue collected will go into the Port's general fund account. All remaining salvage and surplus items will be disposed of by either trade-in, destroyed or donated to a non-profit organization as allowed per Section 263, Subchapter D, of the Local Government Code.

No Port resources will be used for handling or delivering any donated items. Organizations interested in donation items will be responsible for transporting those items from Port property to their locations within an agreed timeframe.

All of the salvage and surplus items are located at Port storage warehouses located at 2301 N. Port Avenue.

Staff recommends Commission approval to proceed with disposition of surplus and salvage items as addressed above.

**LEAD CONTACT:** Sonya Lopez-Sosa; 361-885-6187; [sonya@pocca.com](mailto:sonya@pocca.com)

LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE B. COUNTY ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 263. SALE OR LEASE OF PROPERTY BY COUNTIES

SUBCHAPTER D. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY

Sec. 263.151. DEFINITIONS. In this subchapter:

(1) "Salvage property" means personal property, other than items routinely discarded as waste, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.

(2) "Surplus property" means personal property that:

(A) is not salvage property or items routinely discarded as waste;

(B) is not currently needed by its owner;

(C) is not required for the owner's foreseeable needs; and

(D) possesses some usefulness for the purpose for which it was intended.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 1, Sec. 61(b), eff. Aug. 28, 1989.

Sec. 263.152. DISPOSITION. (a) The commissioners court of a county may:

(1) periodically sell the county's surplus or salvage property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county or a political subdivision within the county that is selling the surplus or salvage property;

(2) offer the property as a trade-in for new property of the same general type if the commissioners court considers that action to be in the best interests of the county;

(3) order any of the property to be destroyed or otherwise disposed of as worthless if the commissioners court undertakes to sell that property under Subdivision (1) and is unable to do so because no bids are made;

(4) dispose of the property by donating it to a civic or charitable organization located in the county if the commissioners court determines that:

(A) undertaking to sell the property under Subdivision (1) would likely result in no bids or a bid price that is less than the county's expenses required for the bid process;

(B) the donation serves a public purpose; and

(C) the organization will provide the county with adequate consideration, such as relieving the county of transportation or disposal expenses related to the property;

(5) transfer gambling equipment in the possession of the county following its forfeiture to the state to the Texas Building and Procurement Commission for sale under Section 2175.904, Government Code; or

(6) order any vehicle retired under a program designed to encourage the use of low-emission vehicles to be crushed and recycled, if practicable, without a competitive bid or auction.

(a-1) The commissioners court shall remit money received from the Texas Building and Procurement Commission from the sale of gambling equipment under Section 2175.904(c), Government Code, less administrative expenses incurred by the county in connection with the transfer and sale of the equipment, to the local law enforcement agency that originally seized the equipment.

(b) If the property is earth-moving, material-handling, road maintenance, or construction equipment, the commissioners court may exercise a repurchase option in a contract in



WATER CODE

TITLE 4. GENERAL LAW DISTRICTS

CHAPTER 62. ARTICLE XVI, SECTION 59, NAVIGATION DISTRICTS

Sec. 62.122. DISPOSITION OF SALVAGE OR SURPLUS PERSONAL PROPERTY. (a) Except as provided by Subsection (b), the commission may periodically dispose of surplus or salvage personal property in the same manner as the commissioners court of a county under Subchapter D, Chapter 263, Local Government Code.

(b) The commission may authorize the destruction or disposition of salvage or surplus property as worthless if the property is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended, and the expense to the district to attempt to sell the property would be more than the proceeds from the sale.

Added by Acts 2007, 80th Leg., R.S., Ch. 1330 (S.B. 1531), Sec. 11, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 20, eff. June 17, 2011.



# INVESTMENT POLICY

(~~May~~-June 2015)

Port of Corpus Christi Authority of Nueces County Texas

---



# Investment Policy

## Table of Contents

	<u>Page</u>
I. Introduction .....	1
II. Purpose 1	
III. Scope.....	1
IV. Investment Objectives .....	1
V. Investment Strategy .....	2
VI. Responsibility and Controls .....	3
VII. Authorized Investments .....	6
VIII. Investment Parameters and Controls .....	6
IX. Financial Counter-Parties .....	8
X. Collateral 9	
XI. Reporting 10	
XII. Investment Policy Adoption .....	10
 <u>APPENDICES:</u>	
Glossary of Terms (Appendix A) .....	11
Investment Policy Certification Form (Appendix B) .....	18
Listing of Authorized Broker/Dealers and Financial Institutions (Appendix C).....	19



# Investment Policy

## I. INTRODUCTION

The goal of the Port of Corpus Christi Authority's (Authority) Investment Policy is the safety of all funds of the Authority, the availability of those funds for the payment of all necessary obligations of the Authority, and to provide for the investment of all funds, not immediately required, in securities earning a reasonable market yield.

## II. PURPOSE

This Policy provides the guidelines by which the Authority will provide protection for its principal and liquidity, while receiving the highest reasonable market yield in accordance with its objectives. This Policy complies with the provisions of the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, hereinafter referred to as the "Act", as amended. The Act is found online at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2256.htm>

The Investment Committee and Port Commission must approve any modifications to, and shall review and adopt this Policy, not less than annually.

Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of that person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.

## III. SCOPE

This Policy applies to the investment activities of all funds of the Authority, except those that are not managed by the Authority. This Policy will also apply to the funds of non-profit corporations established by Resolution of the Port Commission which act as instrumentalities of the Authority. The investment of bond proceeds and other bond funds (including debt service and reserve funds) shall be governed and controlled by this Policy, the respective bond resolutions and provisions of the IRS Code, including all regulations and rulings promulgated there-under applicable to the issuance of tax-exempt obligations. It is the policy of the Authority that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with the Act, Federal Laws and Regulations, requirements of bond documents for Authority bond issues, and this Policy.

This Policy shall be presented to anyone offering to sell the Authority an investment and those with management/advisory responsibility for any Authority funds to assure that the goals and guidelines are followed.

## IV. INVESTMENT OBJECTIVES

The Authority's overall objectives, in order of priority, shall be: safety of principal, liquidity, diversification, and yield.

### Safety

The primary objective of the Authority's investment activity is the preservation of capital. Each investment transaction shall be conducted in a manner to avoid capital losses, whether they are from security defaults, safekeeping, or erosion of market value. All investments will be of high quality securities with no perceived default risk.

---



---

## Investment Policy

---

**Liquidity**

The Authority's investment portfolio shall be structured to meet all expected obligations. This shall be achieved by matching investment maturities with forecasted cash flow liabilities and maintaining additional liquidity for unexpected liabilities. Liquidity shall also be protected by investing in high-credit quality securities with active secondary markets. Short-term investment pools, money market mutual funds and depository accounts may be used to provide daily liquidity or utilized as a competitive yield alternative to fixed maturity investments.

**Diversification**

The Authority's portfolio shall be diversified by market sector and maturity in order to avoid over concentration in any market sector or issuer. Diversification minimizes the risk to the overall investment portfolio of potential losses on individual securities and enhances overall safety. Investment maturities shall be staggered throughout the budget cycle to provide cash flow based on the anticipated needs of the Authority.

**Yield**

Attaining a competitive market yield within portfolio restrictions is the objective. The primary benchmarks for the Authority's portfolio shall be the six-month and one-year U.S. Treasury securities, designated for its comparability to the Authority's expected average cash flow pattern, and allowing for liquidity needs of the Authority. The investment program shall seek to augment returns above this threshold consistent with risk limitations identified herein and prudent investment policies. A secondary objective will be to obtain a yield equal to or in excess of the state's local government investment pool.

It must be recognized that portfolio yields always lag market rates during periods of changing interest rates because existing portfolio investments must mature before re-investment at new rates.

The Authority shall avoid any transactions that might impair public confidence in the Authority's ability to govern effectively. The Authority recognizes that in diversifying the portfolio, occasional measured unrealized losses due to market volatility are inevitable, and must be considered within the context of the overall Portfolio. The prudence of investment decisions shall be measured in context of the entire portfolio (2256.006(b)).

**V. INVESTMENT STRATEGY**

Regardless of market conditions, to fulfill the objectives of the Authority the investment strategy for operating funds has as its primary objective that anticipated cash flows are matched for adequate liquidity. A liquidity buffer, with funds invested no more than three months, will be maintained for unanticipated needs. A secondary objective is to create an investment portfolio that will experience minimal volatility during economic cycles.

Funds which are not anticipated for operational purposes will be invested to capture available market yield within policy parameters. The investment strategy for these funds is designed to generate revenue with a low degree of volatility and market risk. Market conditions and interest rate forecasts will largely determine the dynamic portfolio structure of these funds.

To accomplish this strategy the Authority will purchase high credit quality, short to medium-term investments with active secondary markets that complement each other and provide liquidity and diversification. The maximum dollar weighted average investment maturity (WAM) of the total portfolio shall be 365 days or less and calculated using the stated final maturity dates of each investment.

## Investment Policy



Effective cash management is recognized as essential to good fiscal management and to maximize investment interest as a viable and material revenue source. Cash management is defined as the process of managing monies to maximize cash availability and yields on all funds. It encompasses the processing from invoicing to collection and the flow of funds from receipt through expenditure. The Authority shall maintain an active cash management program that includes collection of accounts receivable on a timely basis, timely vendor payments in accordance with invoice terms, and prudent investment of its all funds.

The Authority has a proactive “buy and hold” portfolio strategy. Maturity dates are matched with anticipated cash flow requirements as necessary and investments are purchased with the intent to be held until maturity. However, securities may be sold before they mature if market conditions present an opportunity for the Authority to benefit overall from the trade. Securities may be sold for the following reasons:

- A security with declining credit may be sold early to minimize the risk of loss of principal;
- A security swap would improve the quality, yield or target duration in the portfolio and result in a positive horizon value of the swap;
- Liquidity needs of the portfolio require that the security be sold.

The Authority may commingle funds in one portfolio for investment purposes while addressing the unique characteristics of the funds represented in the portfolios. The overall portfolio will have a maximum weighted average maturity of 365 days to address the needs of all represented funds.

- a. **Operating Funds** must meet anticipated cash flow needs with adequate investment liquidity. This may be accomplished by purchasing high credit quality securities matched to known liabilities in a laddered structure. Based on a fiscal year, these funds would normally have a weighted average maturity of 6-9 months.
- b. **Funds Available for Investment** do not have immediate liquidity needs and therefore have as their primary objective the generation of incremental income through safe medium term investments. The funds are normally invested longer than one year to capture reasonable yield.

## VI. RESPONSIBILITY AND CONTROL

### A. Delegation of Authority

#### Investment Officers

In accordance with Section 2256.005(f) of the Act, the Port Commission will designate by resolution the Director of Finance and Chief Accountant of the Authority as the Investment Officers responsible for the investment of the Authority’s funds. The authority granted to the Investment Officers is effective until rescinded by the Port Commission or until termination of the person’s employment by the Authority. The Investment Officers shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the investment activities of Authority. No person may engage in an investment transaction except as provided under the terms of this Policy.

The Port Commission may contract with a SEC registered investment management firm to provide for the investment and management of funds under its control. The investment adviser(s) in the investment management firm are considered to be the Investment Officer(s) of the Authority. The initial contract made under authority of this subsection may not be for a term longer than two years

---



---

## Investment Policy



(2256.003(b)), and the Port Commission must approve any renewal or extension of such contract with any term. Authority granted to invest the Authority's funds is effective until rescinded by the Port Commission or until expiration of the contract with the Authority.

In the administration of the duties of an Investment Officer, the Investment Officer(s) shall exercise the judgment and care, under prevailing circumstances that a prudent person would exercise in the management of the person's own affairs, but the Port Commission of the Authority retains ultimate responsibility as fiduciaries of the assets of the Authority. Unless authorized by law or resolution of the Commission, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the Authority.

### **Investment Committee**

An Investment Committee, consisting of three Port Commission appointees shall meet at least quarterly with the Director of Finance and any other designated Investment Officers to review operational strategies and to monitor investment results. The Investment Committee shall include in its deliberation the following topics: economic outlook, portfolio diversification, maturity structure, risk, and performance of the portfolio(s) and other topics at the discretion of the Committee.

The Investment Committee will review quarterly reports and will, on no less than an annual basis, review and adopt the list of authorized broker/dealers and training providers. The Committee will annually review the Policy and recommend changes to the Commission.

### **Port Commission**

The Port Commission has the ultimate fiduciary responsible for the investment of Port Authority assets. It is required by the Act to:

- Designate Authority Investment Officers by resolution,
- Adopt the Investment Policy and Strategy at least annually,
- Review and adopt the broker/dealer list at least annually,
- Review quarterly investment reports, and
- Provide for training of investment officers.

### **Investment Advisers**

Any Investment Adviser contracted by the Authority is required to comply with this Policy in all transactions.

### **B. Training**

Investment Officers must obtain training in accordance with Section 2256.008 of the Act. The Investment Officers shall attend at least one ten-hour investment training session within twelve months of taking office or assuming duties and receive not less than ten hours of instruction relating to investment responsibilities every succeeding fiscal two years. The training provider must be an independent source. The following are organizations currently approved by the Authority's Investment Committee for providing this training:

Government Finance Officers Association  
 Government Finance Officers Association of Texas  
 Government Treasurers Organization of Texas  
 Association of Public Treasurers US&C

---



---

## Investment Policy

---



Texas Municipal League  
 University of North Texas, Center for Public Management  
 Patterson & Associates

If the Investment Officer desires to attend an investment-training seminar presented by another organization or on-line for training credit, the Investment Committee must approve such training.

### **C. Internal Control**

An internal control structure shall be established and maintained by the Director of Finance to protect the assets of the Authority from loss, theft or misuse. The structure should recognize that (1) the cost of control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management. Accordingly, the Authority shall establish a process for annual independent review by an external auditor to assure compliance with policies and procedures and the Act.

### **D. Prudence**

The standard of prudence to be used by the Investment Officers shall be the “Prudent Person Rule”, as set forth in Section 2256.006 of the Act and will be applied in the context of managing the overall portfolio:

“Investments shall be made with judgment and care under circumstances then prevailing – which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

Investment Officers acting in accordance with written procedures and this Policy and exercising due diligence do not have personal liability for an individual security’s credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

### **E. Ethics and Conflict of Interest**

Investment Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Investment Officers and employees shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Investment Officers shall refrain from undertaking personal investment transactions with the same individual with which business is conducted on behalf of the Authority.

Anyone involved in investing Authority funds shall file with the Authority and Texas Ethics Commission a statement disclosing any personal or business relationship and any material financial interest in a business organization that handles Authority investments.

Any Investment Officer who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Authority shall file a statement disclosing that relationship with the Port Commission and the Texas Ethics Commission.



# Investment Policy



## VII. AUTHORIZED INVESTMENTS

Assets of the Authority may be invested in only the following instruments as authorized and further defined by the Act.

1. Obligations of the US Government, its agencies and instrumentalities with a maximum stated maturity of ~~two~~three-years, excluding mortgage backed securities.
2. Fully insured or collateralized depository certificates of deposit issued by banks doing business in Texas collateralized in accordance with this Policy, under the terms of a written agreement, and with a maximum stated maturity of one year.
3. Fully collateralized repurchase agreements with a defined termination date secured in accordance with this Policy and placed with a primary securities dealer. All repurchase agreement transactions shall be governed by an executed Bond Market Association Master Repurchase Agreement. The maximum stated maturity shall be 90 days except for bond fund flex repurchase agreements, which will match expenditure plans on the bond funds.
4. AAA-rated, Local Government Investment Pools which strive to maintain a \$1 net asset value and as defined by the Act and specifically approved by resolution of the Port Commission.
5. A SEC registered Money Market Mutual Fund whose assets consist exclusively of obligations of the US Treasury, its agencies or instrumentalities and repurchase agreement backed by those securities and which strive to maintain a \$1 net asset value.
6. Fully insured and collateralized interest bearing accounts in banks doing business in Texas.
7. FDIC insured brokered certificates of deposit from a bank in any US state, delivered versus payment to the Authority's safekeeping agent, not to exceed one year to maturity. Before purchase, the Investment Officer/Adviser must verify the FDIC status of the bank on [www.fdic.gov](http://www.fdic.gov) to assure that the bank is FDIC insured.
8. General debt obligations of states, agencies, counties, cities and other subdivisions of any US state rated as to investment quality by a nationally recognized rating firm not less than AA or its equivalent with a stated maturity of ~~two~~three years. Bonds will be limited to a maximum of ~~\$5~~\$10 million per issuer and block size purchases are limited to ~~\$5~~\$10 million.

If additional types of securities are approved for investment by public funds by state statute, they will not be eligible for investment by the Authority until this Policy has been amended and the amended version adopted by the Port Commission. Should an investment type become unauthorized by the Act or this Policy, existing positions need not be liquidated without prudent consideration of the impact on the entire portfolio. The Investment Committee and Commission shall be notified of the change immediately.

## VIII. INVESTMENT PARAMETERS AND CONTROLS

### Diversification

The Authority recognizes that investment risks can result from issuer defaults, market price changes or various technical complications leading to temporary illiquidity. Risk is controlled through portfolio diversification, which shall be achieved by using the following general guidelines:



# Investment Policy

- Avoiding over-concentration in securities from a specific issuer or business sector;
- Limiting investment in securities that have potential credit risks;
- Laddering securities with varying maturities to match cash flow, and;
- Maintaining a liquid portion of the portfolio in readily available funds such as local government investment pools, money market funds, bank liquidity options, or overnight repurchase agreements to ensure the appropriate liquidity is maintained in order to meet ongoing obligations.

The following maximum limits, by instrument, are established for the Authority’s total portfolio:

U.S. Treasury Securities	100%
U.S. Agency Securities	100%
Depository Certificates of Deposit	80%
Repurchase Agreements	100%
Flex Agreements by bond fund	100%
Local Government Investment Pools	100%
Percent of pool ownership	10%
Money Market Mutual Funds	100%
Percent of fund ownership	10%
Interest Bearing Accounts	100%
Brokered Certificates of Deposit	10%
State and Local Debt Obligations	80%

### **Competitive Quotes or Offers**

All transactions will require competitive solicitation of bids or offers except for:

- Transactions with money market mutual funds and local government investment pools;
- Automatic overnight “sweep” transactions with the Authority’s Depository.

At least three bids or offers must be solicited for transactions involving individual securities and certificates of deposit. The Authority’s investment advisor is also required to solicit at least three bids or offers when transacting trades on the Authority’s behalf. In situations where other dealers do not offer the exact security being offered, offers on the closest comparable investment may be used to establish a fair market price for the security. Securities purchased at issue must be compared to other similar offering to determine competitive value.

### **Delivery vs. Payment**

All security transactions will be executed on a delivery versus payment basis. That is, Authority funds shall not be released until the security or collateral has been received by the custodian. Securities shall be held in the name of the Authority or pledged to the Authority. The Custodian’s records shall affirm the Authority’s ownership of the securities. The original copy of all safekeeping receipts shall be delivered to and maintained by the Authority.

### **Monitoring Credit Quality**

The Investment Officer or Investment Adviser shall monitor, on no less than a weekly basis, the credit rating on all authorized investments in the portfolio which require a rating based upon independent information from a nationally recognized rating agency. If any security falls below the minimum rating required by Policy, the Investment Officer or adviser shall notify the Investment Committee within one week of the loss of rating, conditions affecting the rating and possible loss of principal with liquidation options available.

---



---

# Investment Policy



## Monitoring FDIC Status

The Investment Officer or Investment Adviser shall monitor, on no less than a weekly basis, the status and ownership of all banks issuing brokered CDs owned by the Authority based upon information from the FDIC. If any bank has been acquired or merged with another bank in which brokered CDs are owned, the Investment Officer or Adviser shall immediately liquidate any brokered CD which places the Authority above the FDIC insurance level.

## IX. FINANCIAL COUNTER-PARTIES

### Broker/Dealers

The Investment Committee shall, at least annually, review and adopt a list of authorized broker/dealers and financial institutions authorized to engage in investment transactions with the Authority. Transactions may be executed only with broker/dealers on the authorized list. In order to be considered, those firms that desire to become qualified broker/dealers for investment transactions will be required to provide information regarding creditworthiness, experience and reputation.

Financial institutions offering only certificates of deposit need not be on the authorized list but must provide all the required Authority information before the transaction is made. Authorized firms may include primary dealers or regional broker/dealers and qualified depositories as established by Chapter 105 of the Local Government Code. A list of not less than three broker/dealers shall be maintained to assure a competitive process.

Financial institutions and broker/dealers who desire to transact business must supply the following documents to the Investment Officer or Investment Adviser (as applicable).

- Current year and annual audited financial statements;
- Financial Industry Regulatory Association (FINRA) certification and FINRA Central Depository Registration (CRD) number;
- Proof of Texas State Securities registration (broker/dealer).
- Certification of Policy review.
- Completion of a questionnaire detailing contact and experience.

No investment transactions (except CDs) may be entered into with the bank or a brokerage subsidiary of the central depository bank in order to fulfill all delivery versus payment (DVP) requirements for trade independence.

### Certification

A written copy of the current Investment Policy shall be presented to any firm offering to engage in an investment transaction with the Authority. Investments shall only be made with those business organizations (including money market mutual funds and local government investment pools), which have provided the Authority with a written instrument executed by a qualified representative of the firm, in a form acceptable to the Authority and the business organization substantially to the effect that the business organization has:

- Received and reviewed the Authority's Investment Policy, and;
- Implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Authority and the organization that are not authorized by the Authority's Investment Policy, except to the extent that this authorization is dependent on an analysis of the

---



---

## Investment Policy

---



makeup of the Authority's entire portfolio or requires an interpretation of subjective investment standards.

### **Depositories**

At least every five years the Authority will designate one banking institution through a competitive process as its central banking services provider. In selecting a depository, the services, cost of services, credit worthiness, earnings potential, and collateralization of each financial institutions shall be considered. This institution will be used for normal banking services including disbursements, deposits, and safekeeping of securities. Certificates of deposit may be purchased from this depository on a competitive basis.

Depository/collateral agreements executed in accordance with FIRREA will be established before funds are deposited.

Other banking institutions from which the Authority may purchase certificates of deposit will also be designated as depositories and must execute a written depository contract in accordance with the collateral provisions of this Policy as applicable.

### **Safekeeping of Authority Owned Securities**

All securities owned by the Authority (including repurchase collateral) will be settled **delivery versus payment** (DVP) into an Authority approved custodial arrangement. The custodian shall be a party independent from the trade.

### **Safekeeping of Securities Pledged to the Authority**

All securities pledged to the Authority by a financial institution will be custodied with an Authority approved custodian. The custodian shall be a party independent from the pledging bank.

## **X. COLLATERAL**

Consistent with requirements of the Public Funds Collateral Act (Texas Government Code, 2257), the Authority requires that all time and demand deposits of Authority funds shall be secured by pledged collateral with a market value equal to or greater than 102% of the principal plus accrued interest on deposit less an amount insured by FDIC.

All collateral shall be held in an independent third party institution outside the holding company of the depository and approved by the Authority. The custodian will provide evidence of proper collateralization in the form of original safekeeping receipts and provide monthly reports directly to the Authority listing the collateral held.

Substitution rights are granted but new collateral must be pledged before existing collateral is released to the depository by the custodian.

The depository shall be contractually liable for the monitoring and maintaining of collateral daily.

The Authority shall accept only the following as collateral:

- FDIC insurance coverage;
- Obligations of the United States of America, its agencies and instrumentalities including mortgage-backed securities which pass the bank test of the Federal Reserve.

---



---

## Investment Policy



If a depository offers pooled collateral under the purview of the State Comptroller, the Investment Officers will review the program and present their recommendation to the Investment Committee. Use will require approval by the Investment Committee.

### **Repurchase Agreements (Owned Collateral)**

Collateral under a repurchase agreement is owned by the Authority. It will be held by an independent third party safekeeping agent approved by the Authority under the terms of an executed Bond Market Association Master Repurchase Agreement. Collateral with a market value totaling 102% of the principal and accrued interest is required and the counter-party is responsible for the daily monitoring and maintaining of collateral and margins.

## **XI. REPORTING**

The Investment Officers/Adviser will prepare monthly and quarterly reports and provide quarterly reports to the Investment Committee and Port Commission, within a reasonable time after the end of each quarter.

The quarterly report shall contain at a minimum the following:

- Signatures of each Investment Officer(s);
- A summary statement prepared in compliance with generally accepted accounting principles that states the:
  - Beginning and ending market value for portfolio for the reporting period;
  - Addition and changes to the market value during the period;
  - Fully accrued interest and amortized earnings for the reporting period;
- Statement of book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset invested;
- Statement of the maturity date of each separately invested asset;
- Statement of the account or fund for which each individual investment was acquired;
- Statement of the overall weighted yield on the portfolio and the yield for the benchmark(s); and
- Statement of the compliance of the investment portfolio as it relates to:
  - The investment strategy in the Authority's Investment Policy; and
  - Relevant provisions of the Act.

Pricing for valuation purposes shall be obtained from independent sources.

The Authority's external, independent auditor will conduct an annual review of the quarterly reports in conjunction with the annual financial audit. The results of the audit will be reported to the Port Commission upon receipt. The audit will review compliance with management control on investments and adherence to this Investment Policy.

## **XII. INVESTMENT POLICY ADOPTION**

The Authority's Investment Policy shall be subject to revision to remain current with changing laws, regulations, market conditions, and needs of the Authority, and shall be reviewed annually by the Investment Committee. The Committee will recommend any changes or modifications to the Port Commission for review and adoption. The Authority's Investment Policy shall be adopted by resolution of the Port Commission and that resolution will include any changes made to the Policy.

**GLOSSARY OF TERMS**

**Accretion:** The straight line increase in value of an asset bought at a discount to its maturity price at par. The accretion represents earnings to the owner of the security.

**Accrued Interest:** The accumulated interest due on a note/bond at the coupon rate as of the last interest payment made by the issuer.

**Agency:** A debt security issued by a federal or federally sponsored agency. Some federal agencies are backed by the full faith and credit of the U.S. Government. Government Sponsored Enterprises (GSEs) are backed by each particular agency with a market perception that there is an implicit government guarantee. An example of a federal agency is the Government National Mortgage Association (GNMA). An example of a GSE is the Federal National Mortgage Association (FNMA).

**Amortization:** The straight line decrease in value of an asset bought at a premium to its maturity price at par. The amortization is an expense to the owner reducing earnings.

**Ask Price:** The price at which securities are offered for sale. The price the Authority pays to buy a security.

**Bank:** A financial institution or the Authority's banking services depository.

**Basis Point:** A unit of measurement used in the valuation of fixed-income securities equal to 1/100 of a percent of yield. e.g., "1/4" of 1 percent is equal to 25 basis points (0.25% or 0.0025).

**Bid:** The price at which an investor will sell a security.

**Book Value:** The value at which a security is carried on the inventory lists or other financial records of an investor. The book value is net of amortization or accretion. The book value may differ significantly from the security's current value in the market.

**Bond:** A security which has a principal amount and a coupon rate. The terms 'note' and 'bond' may be used interchangeably. "The Bond" is the longest Treasury being auctioned at any time.

**Broker:** A broker brings buyers and sellers together. He does not have a portfolio so takes no position in the trade. In the money market, brokers do not charge any fee or commission. All prices to the Authority are net of any commissions or fees taken by the broker/dealer.

**Callable Bond:** A debt security embedded with a call option giving the issuer the option to redeem before maturity under specified conditions. There may be multiple structures of the call.

**Call Price:** The price at which an issuer may redeem a bond prior to maturity.

**Call Risk:** The risk to a bondholder that a bond may be redeemed prior to maturity and funds re-invested at lower yields.

**Cash Settlement:** A transaction on which the trade and settlement of the security occur on the same day .

**Certificate of Deposit (CD):** A time deposit with a specific maturity evidenced by a certificate. In Texas, public funds CDs must be collateralized or insured. Negotiable CDs are not permitted in Texas.

**Collateralization:** The pledge of securities, insurance, property, or other deposits for the purpose of securing the repayment of a loan and/or security. In Texas bank collateral is controlled by the Public Funds Collateral Act (Texas Government Code Chapter 2257).

GLOSSARY OF TERMS

**Comprehensive Annual Financial Report (CAFR):** The official annual report for the Authority. It includes combined statements and basic financial statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provision, extensive introductory material, and a detailed statistical section.

**Coupon Rate:** The annual rate of interest received by an investor on fixed-income securities. Also known as the "interest rate."

**Credit Quality:** The measurement of the financial strength of a security issuer. This measurement helps an investor to understand an issuer's ability to make timely interest payments and repay the principal upon maturity. Generally, the higher the credit quality of an issuer, the lower the interest rate paid by the issuer because the risk of default is lower. Credit quality ratings are provided by nationally recognized rating agencies.

**Credit Risk:** The risk to an investor that an issuer will default in the payment of interest and/or principal on a security.

**Current Yield (Current Return):** A yield calculation determined by dividing the annual interest received on a security by the current market price of that security.

**Dealer:** A dealer, as opposed to a broker, has an inventory of securities and can act as a principal in all transactions, buying and selling for his own account. A dealer can also act as a broker.

**Debenture:** A bond secured only by the general credit of the issuer.

**Delivery versus Payment:** Delivery of securities with a simultaneous exchange of money effected by the custodian. Guarantees Authority control over cash and securities.

**Derivative Security:** Security created from, or whose value depends upon, a security or one or more underlying assets or indexes of asset values.

**Discount:** The dollar or point difference between the price of a security and its redemption value (at par). Net it represents the earnings on a "discount security".

**Discount Securities:** Non-interest bearing money market instruments with an initial maturity less than one year that are always issued at a discount price (below par) and redeemed at maturity for full face value, e.g., U.S. Treasury Bills or agency discount notes.

**Diversification:** A process of investing assets among a range of security types by sector, maturity, and quality rating.

**Duration:** A measure of the timing of the cash flows, such as the interest payments and the principal repayment, to be received from a given fixed-income security. This calculation is based on three variables: term to maturity, coupon rate, and yield to maturity. The duration of a security is a useful indicator of its price volatility for given changes in interest rates. More important on longer securities.

**Fair Market Value:** The amount at which a security could be sold in a current transaction between willing parties, other than in a forced or liquidation sale.

**Federal Funds (Fed Funds):** Rate at which Federal Reserve Banks may lend funds to each other overnight or on a longer basis. Fed funds are considered to be immediately available funds and a prime short-term measure of rates.

**Federal Funds Rate:** Effective interest rate charged by one banking institution lending federal funds to the other.

**GLOSSARY OF TERMS**

**Federal Credit Agencies:** Agencies of the federal government set up to supply credit to various classes of institutions and individuals, e.g. small business firms, farmers, farm cooperatives, and exporters.

**Federal Deposit Insurance Corporation (FDIC):** A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

**Federal Home Loan Banks (FHLB):** The institutions that regulate and lend to member banks. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-à-vis member commercial banks. The banks are owned by their regional banks

**Federal National Mortgage Association (FNMA or Fannie Mae):** Agency issuing both debentures and mortgage-backed securities. FNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (H.U.D). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest. FNMA is in conservatorship from 2009-2013.

**Federal Open Market Committee (FOMC):** Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member while the other Presidents serve on a rotating basis. The Committee periodically meets ten times each year to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money. Their guidelines are executed by the Federal Reserve New York.

**Federal Reserve System:** The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,900 commercial banks that are members of the system.

**Financial Industry Regulatory Authority (FINRA):** A self-regulatory organization (SRO) of brokers and dealers. Its regulatory mandate includes authority over firms that distribute mutual fund shares as well as other securities. ([www.FINRA.org](http://www.FINRA.org) allows access to research members via their CRD number).

**Government National Mortgage Association (GNMA or Ginnie Mae):** Securities guaranteed by GNMA and issued by mortgage bankers, commercial banks, and other institutions. Securities are full faith and credit of the U.S. Government. Ginnie Mae mortgage backed securities are backed by FHA, VA or FMHM mortgages. The term "pass-through" is often used to describe Ginnie Mae's. Ginnie issues no debentures or derivatives.

**Government Securities:** An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest credit quality of investment securities available in the securities market. See "Treasury Bills, Notes, and Bonds."

**Interest Rate:** See "Coupon Rate."

**Interest Rate Risk:** The risk associated with declines or rises in interest rates, which cause an investment in a fixed-income security to increase or decrease in value.

**Internal Controls:** A structure designed to provide reasonable assurance that the assets of the entity are protected from loss, theft, or misuse. Internal controls normally address the following:

- **Collusion** – Collusion is a situation where two or more employees are working in conjunction to defraud their employer.



GLOSSARY OF TERMS

- **Separation of responsibilities** – By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.
- **Safekeeping** –Placement of securities with an independent third party for custody.

**Investment Policy:** A concise and clear statement of the investment objectives and parameters approved by the governing body .

**Liquidity:** The ability to convert easily and rapidly into cash.

**Local Government Investment Pool (LGIP):** An investment by local governments in which their money is pooled as a method for managing local funds. Created under the Interlocal Cooperation Act.

**Mark-to-Market:** The process whereby a security is priced to identify its current (or fair) market value.

**Market Risk:** The risk that the value of a security will rise or decline as a result of changes in market conditions.

**Market Value:** Current price at which a security could be sold in the open market.

**Master Repurchase Agreement:** The master agreement defines the nature of the transaction, identifies the relationship between the parties, establishes ownership and custody of the collateral securities during the term of the investment, and provides remedies in the case of default by either party. The industry standard is the SIFMA Master Repurchase Agreement. A master agreement is required under Texas law.

**Maturity:** The date on which the final payment of a financial obligation is due. The final stated maturity is the date on which the issuer must retire a bond and pay the face value and interest due to the bondholder .

**Money market:** The market under one year in which short-term debt instruments (bills, discos, commercial paper, bankers' acceptances, etc.) are issued and traded.

**Money Market Mutual Fund (MMMF):** SEC registered securities structured as a fund in which owners own their pro rata share of the underlying investments. These funds invest solely in money market instruments. MMMF's are designed for liquidity and strive to maintain a \$1 net asset value.

**Mutual Fund:** An SEC registered security "investment company" that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments. Mutual funds are regulated by the Investment Company Act of 1940. Mutual funds are designed for yield enhancement.

**Net Asset Value:** The market value of one share of a MMMF or mutual fund. This value is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio.

**Offer:** An indicated price at which market participants are willing to sell a security or commodity. Also referred to as the "ask price." The price at which the Authority would buy a security.

**Open Market Operations:** Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

**Par:** Face value or principal value of a bond. A price of 100 (or \$1 for \$1).

GLOSSARY OF TERMS

**Portfolio:** Collection of securities owned by an investor.

**Premium:** The amount by which the price paid for a security exceeds the security's par value. The premium amount is amortized over the life of the owned security.

**Prime Rate:** A preferred interest rate charged by commercial banks to their most creditworthy customers. Many interest rates are keyed to this rate. Prime averages 2% over 6-month Treasury.

**Primary Dealer:** A group of government securities dealers that submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC) registered securities broker-dealers, banks and a few unregulated firms ([www.newyorkfed.org/markets/pridealers\\_current.html](http://www.newyorkfed.org/markets/pridealers_current.html)). Primaries provide liquidity to the Treasury.

**Principal:** The face value or par value of a debt instrument. Also the amount of capital invested in a given security.

**Prospectus:** A legal document that must be provided to any purchaser of a MMMF or mutual fund registered with the SEC. This can include information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements.

**Prudent Person Rule:** An investment standard outlining the fiduciary responsibilities of investors relating to investment practices.

**Qualified Public Depositories:** A Texas financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of the state, which has segregated for the benefit of the Commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

**Rate of Return:** The yield obtainable on a security based on its current market price. As opposed to yield this includes consideration of the current market value.

**Reinvestment Risk:** The risk that a fixed income investor will be unable to reinvest income proceeds from a security holding at the same yield currently generated by that holding.

**Repurchase Agreement (RP or REPO):** A simultaneous buy-sell agreement in which one party purchases securities at a specified price from a second party and a simultaneous agreement by the first party to resell the securities at a specified price to the second party on demand or at a specified date.

**Safekeeping:** Custody of assets (e.g. securities) by a financial institution. Always done by an independent party to perfect and control ownership.

**Secondary Market:** A market made for the purchase and sale of outstanding issues following the initial distribution.

**Securities & Exchange Commission:** Agency created by Congress to protect investors in securities transactions by administering securities legislation. The agency regulates securities, funds and investment advisers.

**Swap:** Selling one asset and purchasing a second security at the same time.

**Term Bond:** Bonds comprising a large part or all of a particular issue, which come due in a single maturity. The issuer usually agrees to make periodic payments into a sinking fund for mandatory redemption of term bonds before maturity.

**Total Return:** The sum of all investment income plus changes in the capital value of the portfolio. For mutual funds, return on an investment is composed of share price appreciation plus any realized dividends or capital gains. This is

GLOSSARY OF TERMS

calculated by taking the following components during a certain time period. (Price Appreciation)+(Dividends paid)+(Capital gains)=Total Return

**Treasury Bills:** A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. All bills are issued to mature in three months, six months or one year in minimum denominations of \$1,000.00. The yields on bills are monitored closely in the money markets for signs of interest rate trends.

**Treasury Bond:** Long-term U.S. Treasury securities having initial maturities of more than ten years. Used as key indicators for mortgage rates.

**Treasury Notes:** Intermediate term coupon bearing U.S. Treasury securities having initial maturities from over one to ten years.

**Volatility:** A degree of fluctuation in the price and valuation of securities.

**Volatility Risk Rating:** A rating system to clearly indicate the level of volatility and other non-credit risks associated with securities and certain bond funds. The ratings for bond funds range from those that have extremely low sensitivity to changing market conditions and offer the greatest stability of the return (“aaa” by S&P; “V-1” by Fitch) to those that are highly sensitive with currently identifiable market volatility risk (“ccc” by S&P, “V-10” by Fitch).

**Weighted Average Maturity (WAM):** The dollar weighted average maturity of all the securities that comprise a portfolio based on book value and days-remaining-maturity. Establishing a maximum WAM guards against over-extension.

**When Issued (WI):** A buy or sell transaction in which a security has been announced but not yet issued. All “when issued” transactions are settled when the actual security is issued.

**Yield:** The current rate of return on an investment security generally expressed as a percentage of the security’s current price.

**Yield-to-Call (YTC):** The rate of return an investor earns from a bond assuming the bond is redeemed on its call date.

**Yield Curve:** A graphic representation that depicts the relationship at a given point in time between yields and maturity on US Treasury securities. The "normal" yield curve is upward sloping i.e. a positive yield curve.

**Yield-to-Maturity:** The yield on a debt security held to maturity when both interest payments and the investor’s potential capital gain or loss are included in the calculation of return. It assumes that all coupon interest is reinvested at the same rate as the initial coupon therefore not as valid on long securities.

**INVESTMENT POLICY CERTIFICATION**

This certification is executed on behalf of the Port of Corpus Christ Authority of Nueces County, Texas (the Authority) and \_\_\_\_\_ (the Firm) pursuant to the Public Funds Investment Act, Chapter 2256, Government Code, Texas Codes Annotated (the "Act") in connection with investment transactions conducted between the Authority and the Firm.

The undersigned Authorized Representative of the Firm hereby certifies on behalf of the Firm that:

- 1. The Authorized Representative is duly authorized to execute this Certification on behalf of the Firm, and
- 2. The Authorized Representative has received and reviewed the Investment Policy furnished by the Authority, dated \_\_\_\_\_, and
- 3. The Firm has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Firm and the Authority that are not authorized by the Authority's Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Authority's entire portfolio or requires an interpretation of subjective investment standards.

**Authorized Representative**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Firm Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**LISTING OF AUTHORIZED BROKER/DEALERS**

**Bank of America Merrill Lynch**  
**Cantella & Company (King Capital)**  
**Cantor Fitzgerald**  
**Comerica**  
**Frost Capital Markets**  
**G.X. Clark Securities**  
**Loop Capital**  
**Mizuho Securities**  
**Morgan Keegan**  
**Morgan Stanley**  
**Mutual Securities**  
**RBC Dain Rauscher**  
**SAMCO Capital Markets**  
**Stifle Nicolaus**

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 10***

**Adopt a resolution to approve a Design Agreement with the Department of the Army to Perform an Economic Update for the Corpus Christi Ship Channel Channel Improvement Project**

In November 2007, Congress passed the Water Resources Development Act of 2007 authorizing the PCCA's Channel Improvement Project (Project) which included widening the Corpus Christi Ship Channel (CCSC) to 530' from Port Aransas to the Harbor Bridge; deepening all reaches of the CCSC (excluding the La Quinta Ship Channel) from -45' MLT to -52' MLT; adding 200'-wide barge shelves on both sides of the ship channel across Corpus Christi Bay; extending the La Quinta Ship Channel by 7,400' at a depth of -39' MLT; and constructing an offshore rock breakwater ecosystem restoration project near Ingleside-on-the-Bay. The construction of the breakwater project and the La Quinta Channel extension components of the Project were completed in 2012 and 2013, respectively.

In 2013, a federally required reevaluation was completed to update the Project costs, economics, and environmental information to ensure that the project components remained justified or still in the Federal Interest. The results of the reevaluation, published in the Limited Reevaluation Report in late 2012, concluded that the Project remained technically sound, environmentally acceptable, and economically justified. The U.S. Army Corps of Engineers (USACE) Director of Civil Works approved the reevaluation report and recommended to Congress to increase the authorized Project cost to \$344,610,000. Subsequently, the Project was reauthorized by Section 7003 (3) of the Water Resources Reform Development Act of 2014, Public Law 113-121. However, the Office of Management and Budget and Department of the Army determined that an additional Economic Update to the Limited Reevaluation Report is required to update and refine the analysis of benefits and costs before proceeding with the remaining elements of the authorized Project.

Staff negotiated a Design Agreement with the USACE to complete the Economic Update which is projected to cost \$417,000. The non-federal (PCCA) proportionate cost-share for this work is 50 percent or approximately \$208,500. PCCA funding for the update is recommended to come from approximately \$5,400,000 in unexpended construction general funds, being held in a Government account, provided by the PCCA for continued design and construction of the Project.

Staff recommends approval of the attached Design Agreement with the U.S. Department of the Army/USACE and authorization for the Executive Director to execute the same. Staff further recommends approval of initial funding to the USACE in an amount of up to \$208,500, using the remaining unexpended funds, to perform the Economic Update. In addition, staff requests authorization to provide additional funds in an amount of up to \$100,000 in case actual design costs exceed the Government's original estimate, for a total not-to-exceed amount of \$308,500.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com).

**RESOLUTION APPROVING A DESIGN AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY AND THE  
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
FOR DESIGN FOR THE CORPUS CHRISTI, TEXAS SHIP CHANNEL  
IMPROVEMENT PROJECT MAIN CHANNEL AND BARGE LANES**

WHEREAS, a Design Agreement between The Department of the Army and the Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”) for the Design for the Corpus Christi, Texas Ship Channel Improvement Project Main Channel and Barge Lanes (“Economic Update Agreement”) has been presented to PCCA’s Port Commission for approval; and

WHEREAS, PCCA is authorized by Section 60.152 of the Texas Water Code, as amended, to enter into the Economic Update Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, THAT:

Section 1. The Port Commission hereby finds and determines that it is necessary and advisable that PCCA enter into the Economic Update Agreement in substantially the form presented to this meeting.

Section 2. The Economic Update Agreement, in substantially the form presented to this meeting, is hereby approved, and the Executive Director is hereby authorized and directed, for and on behalf of PCCA, to execute the Economic Update Agreement.

Section 3. The Chairman, the Vice Chairman, the Secretary, and the Executive Director are each hereby severally authorized and directed to execute, attest, seal and deliver any and all additional certificates, documents or other papers and to do any and all things deemed necessary to carry out the intent and purposes of this Resolution.

Section 4. This Resolution is hereby adopted by the Port Commission on June 16, 2015.



DESIGN AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**  
FOR  
DESIGN  
FOR THE  
**CORPUS CHRISTI, TEXAS SHIP CHANNEL IMPROVEMENT PROJECT  
MAIN CHANNEL AND BARGE LANES**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Galveston District and the Port of Corpus Christi Authority of Nueces County, Texas (hereinafter the “Non-Federal Sponsor”), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, Federal Construction, General funds for Fiscal Year 2009, included funds for the Government to initiate design of the Corpus Christi, Texas, Ship Channel, Channel Improvement Project (hereinafter the “Parent Project”) at Corpus Christi, Texas;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) for the provision of design for the Main Channel and Barge Lanes (an element of the Parent Project and hereinafter the “*Project*”, as defined in Article I.A. of this Agreement);

WHEREAS, construction or implementation of the *Project* is authorized by Section 1001(40) of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, a Limited Reevaluation Report, dated November 2012 and as revised dated December 2012 and approved by the Chief of Engineers on February 12, 2013, was prepared to update the project costs, economics, and environmental information to insure that the project components remain justified, and concluded that the Parent Project is technically sound, environmentally acceptable, and economically justified;

WHEREAS, construction or implementation of the *Project* is re-authorized by Section 7003 (3) of the Water Resources Reform Development Act of 2014, Public Law 113-121;

WHEREAS, the Office of Management and Budget and Department of the Army have determined that an Economic Update to the Limited Reevaluation Report, dated

November 2012 and as revised dated December 2012 and approved by the Chief of Engineers on February 12, 2013, is required to update and refine the analysis of benefits and costs before proceeding with the remaining elements of the authorized Parent Project;

WHEREAS, Section 105(c) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215), provides that the costs of design of a water resources project shall be shared in the same percentage as the purposes of such project;

WHEREAS, the Government and the Non-Federal Sponsor agree that, during the *period of design*, the Non-Federal Sponsor shall contribute 50 percent of *total design costs* and that, if a Project Partnership Agreement for construction of the *Project* is executed between the Government and a non-Federal interest, such non-Federal interest shall contribute any remaining portion of the non-Federal share of the costs of design in accordance with the provisions of such Project Partnership Agreement;

WHEREAS, approximately \$5,400,000.00 of unexpended Construction General funds contributed by the Non-Federal Sponsor for design and construction of other Parent Project elements remain in a Government account and the Non-Federal Sponsor will use said unexpended funds to pay the required Non-Federal Sponsor cost share,

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful design and implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

#### ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean an update of costs and benefits of the Main Channel and Barge Lanes as generally described in the Corpus Christi Ship Channel Deepening and Barge Shelves, Limited Reevaluation Report dated November 2012 and as revised dated December 2012, and approved by the Chief of Engineers on February 12, 2013

B. The term "*total design costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement

directly related to design of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs of engineering and design, economic and environmental analyses, and evaluation performed after a feasibility report whether performed prior to or after the effective date of this Agreement that were not previously shared with a non-Federal interest pursuant to any other agreement; the Government's costs of review processes required by the Government; the Government's costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article VII.B. and Article VII.C. of this Agreement. The term does not include any costs of additional work under Article II.E. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies for the *Project*; any costs incurred as part of feasibility studies under any other agreement for the *Project*; the Non-Federal Sponsor's costs of negotiating this Agreement; any costs of a contract for an Independent External Peer Review panel; or any costs of negotiating a project partnership agreement for the *Project* or separable element thereof.

C. The term "*period of design*" shall mean the time from the effective date of this Agreement to the date that a Project Partnership Agreement for construction of the *Project*, or a separable element thereof, is executed between the Government and a non-Federal interest or the date that this Agreement is terminated in accordance with Article X of this Agreement, whichever is earlier.

D. The term "*financial obligations for design*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total design costs*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.1. of this Agreement to *financial obligations for design*, as projected by the Government.

F. The term "*betterment*" shall mean a difference in the design of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

H. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

I. The term “*fiscal year of the Non-Federal Sponsor*” shall mean one year beginning on January 1 and ending on December 31.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND  
THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. To the extent possible, the Government shall design the *Project* in accordance with the Project Management Plan for the *Project* developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer, Galveston District (hereinafter the “District Engineer”) furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all design products that are developed by contract or by Government personnel during the *period of design*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all design products shall be exclusively within the control of the Government.

5. As of the effective date of this Agreement, \$63,488,643 of Federal funds for design and construction have been provided by Congress for the Parent Project of which

\$9,082,096 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Parent Project or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

B. The Non-Federal Sponsor shall contribute 50 percent of *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide funds in accordance with Article IV.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's share of 50 percent of *total design costs* if the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement will be less than such share.

2. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded 50 percent of *total design costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; and (b) the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement.

C. Upon conclusion of the *period of design*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

D. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

E. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article IV.D. of this Agreement.

1. Inclusion of *betterments* in the design of the general navigation features of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of designing the general navigation features of the

*Project* that include *betterments* between *total design costs* and the costs of the additional work.

2. Design of local service facilities in connection with design of the general navigation features of the *Project*.

3. Design of a dredged or excavated material placement facility necessary for the *Project* to provide additional capacity for dredged or excavated material from outside the general navigation features of the *Project*. In the event the Government elects to include such capacity, the Government shall allocate the costs of designing the dredged or excavated material placement facility between *total design costs* and the costs of the additional work.

F. If the Government and a non-Federal interest enter into a Project Partnership Agreement for construction of the *Project*, or a separable element thereof, the Government, in accordance with the provisions of this paragraph, shall include the amount of *total design costs* in total cost of construction of the general navigation features for the *Project*, or separable element thereof. Further, the Government, in accordance with the provisions of this paragraph, shall afford credit toward the non-Federal interest's share of total cost of construction of the general navigation features for the *Project*, or separable element thereof, for the Non-Federal Sponsor's contributions toward *total design costs* under this Agreement.

1. If the Government and a non-Federal interest enter into a Project Partnership Agreement for construction of the entire *Project*, the Government shall include the amount of *total design costs* in total cost of construction of the general navigation features for the *Project*. Further, the Government shall afford credit toward the non-Federal interest's share of total cost of construction of the general navigation features for the Non-Federal Sponsor's contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government.

2. If the Government and a non-Federal interest enter into a Project Partnership Agreement for construction of a separable element of the *Project*, the Government shall determine the portion of *total design costs* that are allocable to such separable element and include such amount in total cost of construction of the general navigation features for such separable element. Further, the Government shall determine the amount of the Non-Federal Sponsor's contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government, that are allocable or attributable to such separable element and shall afford credit for such amount toward the non-Federal interest's share of total cost of construction of the general navigation features of such separable element.

3. If the Government and a non-Federal interest do not enter into a Project Partnership Agreement for construction of the *Project* or a separable element thereof, the

Government shall not be obligated to refund or reimburse the Non-Federal Sponsor, in whole or in part, for the Non-Federal Sponsor's contribution toward *total design costs*. Further, refund or reimbursement by the Government for any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement is subject to the availability of funds.

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the *Project* or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Partnership Agreement.

### ARTICLE III - DESIGN COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the *period of design*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Design Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Design Coordination Team informed of the progress of design and of significant pending issues and actions, and shall seek the views of the Design Coordination Team on matters that the Design Coordination Team generally oversees.

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; scheduling of reports and work products; plans and specifications; real property and relocation requirements for construction of the *Project*; design contract awards and modifications; design contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Design Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design of the *Project*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VII.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, and the contributions provided by the parties.

1. As of the effective date of this Agreement, *total design costs* are projected to be \$417,000.00; the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement is projected to be \$208,500.00; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement is projected to be \$ 208,500.00; the *non-Federal proportionate share* is projected to be 50 percent; and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement are projected to be \$ 208,500.00. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By June 30, 2015 and by each quarterly anniversary thereof until the conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total design costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement; the *non-Federal proportionate share*; and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B.1. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.1. of this Agreement. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED,



Galveston” to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; and (b) the *non-Federal proportionate share of financial obligations for design* as *financial obligations for design* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total design costs*. In addition, the interim or final accounting, as applicable, shall determine each party’s required share thereof, and each party’s total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor’s total required share of *total design costs* exceeds the Non-Federal Sponsor’s total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to “FAO, USAED, **Galveston**” to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total design costs* exceed the Non-Federal Sponsor’s total required share thereof, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the

event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. If such appropriations are not received or, if the Non-Federal Sponsor requests that the Government not refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total cost of construction of the general navigation features for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.E. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall

determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. If such appropriations are not received or, if the Non-Federal Sponsor requests that the Government not refund the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total cost of construction of the general navigation features for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

#### ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI – HOLD AND SAVE

Subject to the provisions of Article XIV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design of the *Project* and design of any additional work pursuant to Article II.E. of this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of design of the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total design costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total design costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event the Government determines that modifications to the *Project* are required and that additional authorization by Congress will be required before the Government may construct such modifications, the Government shall notify the Non-Federal Sponsor in writing of such determinations and shall terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the

*Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE XI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:  
Port of Corpus Christi Authority  
222 Power Street  
Corpus Christi, TX 78401  
ATTN: Executive Director

If to the Government:  
USAED Galveston  
2000 Fort Point Road  
Galveston, TX 77550  
ATTN: CESWG-PM-J

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

**ARTICLE XII - CONFIDENTIALITY**

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

**ARTICLE XIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES**

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

**ARTICLE XIV - OBLIGATIONS OF FUTURE APPROPRIATIONS**

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Commissioners of the Port of Corpus Christi Authority of Nueces County, Texas, where creating such an obligation would be inconsistent with Article 16, Section 59(c) of the Constitution of the State of Texas.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

PORT OF CORPUS CHRISTI  
AUTHORITY OF NUECES COUNTY,  
TEXAS

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Richard P. Pannell  
Colonel, U.S. Army  
District Engineer

John P. LaRue  
Executive Director  
Port of Corpus Christi Authority  
Of Nueces County, Texas

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



**CERTIFICATE OF AUTHORITY**

I, Leo J. Welder, Jr., do hereby certify that I am the General Counsel for the Port of Corpus Christi Authority of Nueces County, Texas, that the Port of Corpus Christi Authority of Nueces County, Texas is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Port of Corpus Christi Authority of Nueces County, Texas in connection with design of the Corpus Christi, Texas Ship Channel Improvement Project Main Channel and Barge Lanes, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Port of Corpus Christi Authority of Nueces County, Texas have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Leo J. Welder, Jr., Partner  
Welder Leshin, LLP  
General Counsel

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

---

John P. LaRue  
Executive Director  
Port of Corpus Christi Authority of Nueces County, Texas

DATE: \_\_\_\_\_

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 11***

**Adopt a resolution to approve a Memorandum of Agreement with the Galveston District of the Corps of Engineers for Maintenance Dredging of Non-Federal Slips and Channels**

In July 2015, the U.S. Army Corps of Engineers (USACE) is scheduled to bid maintenance dredging of various reaches of the Corpus Christi Ship Channel system, including the PCCA's Inner Harbor. With all of the PCCA-owned docks located in the Inner Harbor, by including our dock slip maintenance dredging in the USACE's construction contract the work can be performed in a cost-effective manner. The savings are primarily due to not having to individually bear the significant mobilization/demobilization and pipeline costs that would be incurred in a stand-alone PCCA contract.

Including the PCCA's dredging with the USACE's contract requires a Memorandum of Agreement (MOA) with the federal government. Attached for your review and approval is a copy of the MOA for the USACE to perform maintenance dredging of non-federal channels and slips. In coordination with PCCA staff, the USACE will conduct surveys, supervise and administer the maintenance dredging of the PCCA's portions of the contract, and include this work with the federal maintenance contract. The USACE prepares the bid documents and advertises and administers the federal contract that includes the incremental work on the PCCA's slips. The PCCA agrees to contribute the funds for the non-federal maintenance dredging plus the Government's costs for survey and administrative work.

The USACE will include the maintenance dredging of several PCCA facilities located adjacent to the Corpus Christi Ship Channel as "options" in their contract. An estimated 94,000 cubic yards will be dredged from up to nine public docks, including Oil Docks 1, 2, 4, 7, 8 and 11; Cargo Docks 8 and 9; and Bulk Material Dock 2.

The 2015 budget included \$1,600,000 for maintenance dredging of the public dock facilities. The Government's current estimate for the non-federal maintenance dredging is \$1,800,000 for dredging, surveying, and administrative work. PCCA staff will review the "option" bids for the various dock slips and coordinate their award with the USACE if the bid prices are acceptable. Staff is requesting approval to expend up to \$2,000,000 based on the Government's estimated cost plus an additional \$200,000 should it be needed for contingencies and associated fees for performing maintenance dredging of PCCA dock facilities.

Staff recommends approval of the attached Memorandum of Agreement with the U.S. Army Corps of Engineers and approval to expend up to \$2,000,000 for maintenance dredging of PCCA facilities.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)

Page 67/472

**RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY AND THE  
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
FOR MAINTENANCE DREDGING OF NON-FEDERAL BERTHING AREAS AT  
CORPUS CHRISTI SHIP CHANNEL FEDERAL NAVIGATION PROJECT,  
CORPUS CHRISTI, TEXAS**

WHEREAS, a Memorandum of Agreement between The Department of the Army and the Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”) for Maintenance Dredging of Non-Federal Berthing Areas at Corpus Christi Ship Channel Federal Navigation Project, Corpus Christi, Texas (“Dredging MOA”) has been presented to PCCA’s Port Commission for approval; and

WHEREAS, PCCA is authorized by Section 60.152 of the Texas Water Code, as amended, to enter into the Dredging MOA; and

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, THAT:

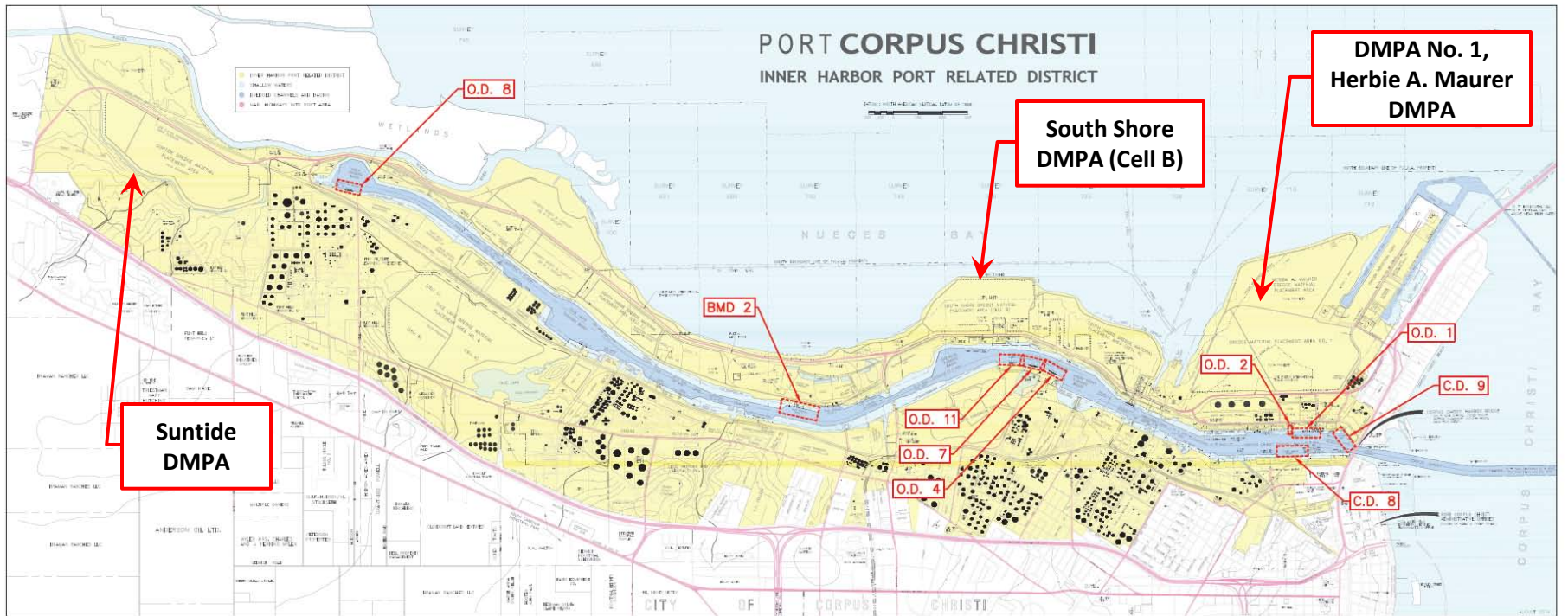
Section 1. The Port Commission hereby finds and determines that it is necessary and advisable that PCCA enter into the Dredging MOA in substantially the form presented to this meeting.

Section 2. The Dredging MOA, in substantially the form presented to this meeting, is hereby approved, and the Executive Director is hereby authorized and directed, for and on behalf of PCCA, to execute the Dredging MOA.

Section 3. The Chairman, the Vice Chairman, the Secretary, and the Executive Director are each hereby severally authorized and directed to execute, attest, seal and deliver any and all additional certificates, documents or other papers and to do any and all things deemed necessary to carry out the intent and purposes of this Resolution.

Section 4. This Resolution is hereby adopted by the Port Commission on June 16, 2015.

# Maintenance Dredging of PCCA Dock Slips



MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
FOR MAINTENANCE DREDGING OF NON-FEDERAL BERTHING AREAS AT  
CORPUS CHRISTI SHIP CHANNEL FEDERAL NAVIGATION PROJECT, CORPUS CHRISTI,  
TEXAS

This MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Director of Civil Works (hereinafter the “Director of Civil Works”), and the Port of Corpus Christi Authority of Nueces County, Texas, (hereinafter the “Non-Federal Sponsor”), represented by the Executive Director, Port of Corpus Christi Authority of Nueces County, Texas.

WITNESSETH, THAT:

WHEREAS, the Corpus Christi Ship Channel Federal Navigation Project (hereinafter the “Project”) was constructed pursuant to Section 101 of the Rivers and Harbors Act of 1968, P.L.90-483; and

WHEREAS, the Non-Federal Sponsor wishes to provide funds for the Government to perform maintenance dredging of the local service facilities (Non-Federal berthing areas) along the Corpus Christi Ship Channel from the Inner Harbor Reach, Corpus Christi, Texas (hereinafter the “LSF Maintenance Work”); and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to carry out the LSF Maintenance Work in connection with maintenance dredging of the Project.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

1. The Non-Federal Sponsor shall provide to the Government funds to pay all costs associated with the LSF Maintenance Work, including the costs of environmental compliance. While the Government will endeavor to limit costs associated with the LSF Maintenance Work under this MOA to the current estimate of \$1,800,000, the Non-Federal Sponsor acknowledges that the actual cost may exceed the amount of the estimate due to claims or other unforeseen circumstances and that the Non-Federal Sponsor is responsible for all costs, including any claims, related to the LSF Maintenance Work.

2. Within thirty (30) calendar days of execution of this MOA, the Non-Federal Sponsor shall provide to the Government the sum of \$15,000, which is the current estimate of funds to be required from the Non-Federal Sponsor for costs associated with including the Options to dredge the Non-Federal berthing areas as part of the solicitation for maintenance dredging the Federal Project. In the event the Non-Federal Sponsor decides to execute the Non-Federal berthing area option(s) on the contract, the Non-Federal Sponsor shall notify the Government of such decision in writing and within

thirty (30) calendar days of such notification provide to the Government the sum indicated by the Government as necessary to execute the selected option(s) plus the Government's estimate for administering the contract Non-Federal berthing area option(s). If at any time the Government determines that additional funds are needed to administer the executed option(s), the Government shall notify the Non-Federal Sponsor in writing of the amount, and no later than thirty (30) calendar days from receipt of such notice, the Non-Federal Sponsor shall provide to the Government the full amount of the additional funds.

3. The Non-Federal Sponsor shall provide funds for the LSF Maintenance Work to the Government by delivering a check payable to "FAO, USAED, Galveston District" to the District Engineer; or verifying to the satisfaction of the Government that such funds have been deposited in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor; or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence the LSF Maintenance Work until all applicable environmental laws and regulations have been complied with, including, but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341).

5. The Government shall provide the Non-Federal Sponsor with quarterly accountings of the obligations of funds for the LSF Maintenance Work. The first such accounting shall be provided within thirty (30) calendar days after the final day of the first complete Government fiscal year quarter following receipt of funds from the Non-Federal Sponsor, and subsequent accountings shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the LSF Maintenance Work. Upon conclusion of the LSF Maintenance Work, and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Sponsor's responsibility to pay for all costs associated with the LSF Maintenance Work, including contract claims or any other liability that may become known after the final accounting.

6. Should the final accounting show that the costs of the LSF Maintenance Work exceed the amount provided by the Non-Federal Sponsor, the Non-Federal Sponsor shall provide the additional required funds within sixty (60) calendar days of written notice of the final accounting by delivering a check payable to "FAO, USAED Galveston" to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting show that the costs of the LSF Maintenance Work are less than the amount provided by the Non-Federal Sponsor, the Government shall refund the excess to the Non-Federal Sponsor within sixty (60) calendar days of the written notice of the final accounting.

7. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In carrying out its obligations under this MOA, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not

limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

9. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

10. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the Non Federal Sponsor:

Executive Director  
Port of Corpus Christi Authority of Nueces County  
222 Power Street  
Corpus Christi, Texas 78401

If to the Government:

District Engineer  
USAED, Galveston  
2000 Fort Point Road  
Galveston, Texas 77553-1229

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

c. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

11. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

12. This MOA may be modified or amended only by written, mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.



THE DEPARTMENT OF THE ARMY

THE PORT OF , TEXAS CORPUS CHRISTI  
AUTHORITY OF NUECES COUNTY

BY: \_\_\_\_\_  
Steven L. Stockton, P.E.  
U.S. Army Corps of Engineers  
Director of Civil Works

BY: \_\_\_\_\_  
John P. LaRue  
Executive Director  
Port of Corpus Christi Authority of Nueces County,  
Texas

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**CERTIFICATE OF AUTHORITY**

I, Leo J. Welder, Jr., do hereby certify that I am the General Counsel of the Port of Corpus Christi Authority of Nueces County, Texas and that such is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Port of Corpus Christi Authority of Nueces County, Texas and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Port of Corpus Christi Authority of Nueces County, Texas have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Leo J. Welder, Jr., Partner  
Welder Leshin, LLP  
General Counsel

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

---

John P. LaRue  
Executive Director  
Port of Corpus Christi Authority of Nueces County, Texas

DATE: \_\_\_\_\_

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 12***

**Adopt a Resolution to Approve an Agreement with Department of the Army for Disposal of Material in Confined Dredged Material Disposal Facilities and Authorize Payment of the Associated Fees**

In July 2015, the U.S. Army Corps of Engineers (USACE) is scheduled to bid maintenance dredging of portions of the Corpus Christi Ship Channel system. The USACE will include options in the federal contract for maintenance dredging of PCCA Oil Docks 1, 2, 4, 7, 8 and 11; Cargo Docks 8 and 9; and Bulk Material Dock 2. Should the PCCA elect to award any or all of these options, the dredged material, total currently estimated at 94,000 CY, will be placed in various dredge material placement areas (DMPAs) along the Inner Harbor.

The USACE currently requires any party, including non-federal sponsors such as the PCCA, to enter into an agreement and pay a tipping fee for placement of non-federal dredged material into DMPAs designated for the federal project and maintained by the USACE. The USACE also requires advance payment of these fees before work begins.

All of the DMPAs that will be used in the process of dredging the Corpus Christi Ship Channel and the PCCA docks are USACE DMPAs, which have tipping fees ranging from \$0.73 to \$2.37 per cubic yard (CY). The total estimated tipping fees that the PCCA will be required to pay the USACE to deposit 94,000 CY of dredge material within the placement areas is \$153,860.

Staff recommends approval of the attached Agreement with the U.S. Army Corps of Engineers for the placement of dredge material into the various dredge material placement areas anticipated to be used within the Inner Harbor. Staff further recommends approval to pay tipping fees to the U.S. Army Corps of Engineers in the amount of \$153,800 plus \$15,000 (approximately 10%) contingency for variances in actual dredged volume, for a total of \$168,800.

In accordance with the terms of the Agreement, once dredging is complete, the USACE will conduct a final accounting of the amount of material placed in the DMPAs and then determine the actual tipping fees. In the event the final accounting shows that the advance payment made to the USACE is less than the actual tipping fees, the PCCA will be required to pay the difference; if it shows that the advance payment exceeds the tipping fee, the federal government will refund the excess funds to the PCCA.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)

**RESOLUTION APPROVING AN AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY AND  
THE PORT OF CORPUS CHRISTI AUTHORITY (PCCA)  
FOR DISPOSAL OF MATERIAL IN  
CONFINED DREDGED MATERIAL DISPOSAL FACILITIES --  
INNER HARBOR (IH) PLACEMENT AREAS (PA),  
IH-PA 1 & IH-PA 2 (RINCON), IH-PA 3B (CELL B) AND IH-PA 8 (SUNTIDE)  
CORPUS CHRISTI SHIP CHANNEL, NUECES COUNTY, TEXAS**

WHEREAS, an Agreement between The Department of the Army and the Port Of Corpus Christi Authority (“PCCA”) for Disposal of Material in Confined Dredged Material Disposal Facilities -- Inner Harbor (IH) Placement Areas (PA), IH-PA 1 & IH-PA 2 (Rincon), IH-PA 3B (Cell B) and IH-PA 8 (Suntide) Corpus Christi Ship Channel, Nueces County, Texas (“Disposal Agreement”); and

WHEREAS, PCCA is authorized by Section 60.152 of the Texas Water Code, as amended, to enter into the Disposal Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, THAT:

Section 1. The Port Commission hereby finds and determines that it is necessary and advisable that PCCA enter into the Disposal Agreement in substantially the form presented to this meeting.

Section 2. The Disposal Agreement, in substantially the form presented to this meeting, is hereby approved, and the Executive Director is hereby authorized and directed, for and on behalf of PCCA, to execute the Disposal Agreement.

Section 3. The Chairman, the Vice Chairman, the Secretary, and the Executive Director are each hereby severally authorized and directed to execute, attest, seal and deliver any and all additional certificates, documents or other papers and to do any and all things deemed necessary to carry out the intent and purposes of this Resolution.

Section 4. This Resolution is hereby adopted by the Port Commission on June 16, 2015.

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
PORT OF CORPUS CHRISTI AUTHORITY (PCCA) FOR DISPOSAL OF MATERIAL  
IN  
CONFINED DREDGED MATERIAL DISPOSAL FACILITIES –  
INNER HARBOR (IH) PLACEMENT AREAS (PA), IH-PA 1 & IH-PA 2 (RINCON),  
IH-PA 3B (CELL B) AND IH-PA 8 (SUNTIDE)  
CORPUS CHRISTI SHIP CHANNEL  
NUECES COUNTY, TEXAS

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Galveston District (hereinafter the "District Engineer"), and Port of Corpus Christi Authority (hereinafter "Requesting Party") represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, Section 401(c) of Public Law 92-500 (33 U.S.C. §1341), authorizes the Secretary of the Army (hereinafter the "Secretary"), acting through the Chief of Engineers, to permit the use of confined dredged material disposal facilities under the Secretary's jurisdiction by Federal licensees or permittees and to make an appropriate charge for such use, if such disposal is deemed to be in the public interest;

WHEREAS, on May 7, 2001, the Deputy Assistant Secretary of the Army (Civil Works) authorized the Director of Civil Works to enter into future agreements under Section 401(c), as part of a permitting process or other means, subject to a determination by the Director of Civil Works, based upon supporting documentation, that such an agreement is in the public interest;

WHEREAS, the Galveston District, U.S. Army Corps of Engineers in accordance with various authorizations including Rivers and Harbors Act of 1968 (PL 90-480), Section 124 (A) of the Water Resources Act of 1976 (PL 94-587), and Section 1001 (40) of the Water Resources Development Act of 2007 (PL 110-114,121 Stat 1056) is responsible for the operation and maintenance of the Corpus Christi Ship Channel, Nueces County, Texas, including the operations and maintenance of Confined Dredged Material Disposal Facilities, IH-PA 1 & IH-PA 2 (Rincon), IH-PA 3B (Cell B), and IH-PA 8 (Suntide); and

WHEREAS, Requesting Party applied for and was issued Permit #SWG-2007-01897 on August 26, 2009 and authorized the maintenance dredging of 23 cargo and oil dock areas, and also Rincon Canals A, B, and E over a 10 year period. The initial quantity of channel bottom material to be dredged from the dock within the Inner Harbor is approximately 344,500 cubic yards, and 100,000 cubic yards from the Rincon Canals. Material is to be dredged by mechanical or hydraulic means. Hydraulically dredged material is to be placed in various

confined and active dredged material placement areas along the Corpus Christi Ship Channel (CCSC). The authorization expires on 31 December 2018; and

WHEREAS, on June 4, 2015, the Director of Civil Works determined that allowing placement estimated at 94,000 cubic yards of material the Confined Dredged Material Disposal Facilities, IH-PA 1 & IH-PA 2 (Rincon), IH-PA 3B (Cell B), and IH-PA 8 (Suntide), by the Requesting Party is in the public interest; and

WHEREAS, the Government and the Requesting Party have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Requesting Party agree as follows:

#### ARTICLE I- DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Disposal Action" shall mean placement in the Confined Dredged Material Disposal Facilities, IH-PA 1 & IH-PA 2 (Rincon), IH-PA 3B (Cell B), and IH-PA 8 (Suntide), (hereinafter "Designated DMPA") estimated at 94,000 cubic yards of maintenance dredged material to be dredged from Cargo Dock No. 9, Oil Dock No. 1, Oil Dock No. 2, Cargo Dock No. 8, Oil Dock No. 4, Oil Dock No. 7, Oil Dock No.11, Bulk Material Dock No. 2 and Oil Dock No. 8 located in the vicinity of the CCSC, by the contractor for the Federal dredging contract, as generally described in the Section 401(c) Clean Water Act Determination and approved by the Director of Civil Works by a Determination of Public Interest for Dredged Material Placement Facility on June 4, 2015.

B. The term "cost of the Disposal Action" shall mean the tipping fee times the actual amount of cubic yards of dredged material placed by the contractor for the Government dredging contract in the Designated DMPAs, as determined by the Government.

C. The term "tipping fee" shall mean the fee for each cubic yard of dredged material placed in the Designated DMPAs. For the purposes of this Agreement, the tipping fees are as follows: For IH-PA 1 & IH-PA 2 (Rincon) the fee is \$0.75 per cubic yard, for IH-PA 3B (Cell B) the fee is \$2.03 per cubic yard, and for IH-PA 8 (Suntide) the fee is \$2.37 per cubic yard as determined by the Galveston District using historical project cost data.

D. The term "District Engineer" shall mean the U.S. Army Engineer, Galveston District.

#### ARTICLE II - OBLIGATIONS OF REQUESTING PARTY AND GOVERNMENT

A. The Government shall allow the Requesting Party capacity in the Designated DMPAs for placement estimated at 94,000 cubic yards of dredged material, subject to paragraph C. of this Article and in compliance with the Operations Plan as described in paragraph E. of this Article.

B. The Requesting Party shall comply with all applicable State and Federal laws and regulations in dredging and disposal of the material. In particular, the Requesting Party shall comply with the requirements of the Clean Water Act, 33 USC 1341, et. seq. and Permit #SWG-2007-01897 issued by the District Engineer on August 26, 2009.

C. The Requesting Party shall contribute 100 percent of the cost of the Disposal Action.

D. The Requesting Party shall pay to the Government in advance of placement of any dredged material an amount, equal to the tipping fee times the estimated cubic yards to be placed in the Designated DMPAs, currently estimated to be \$153,860.00. This amount is an estimate and is not to be construed as the total financial responsibility of the Requesting Party.

E. The Government shall determine the actual amount of cubic yards placed in the Designated DMPAs based on a review of the Government's after dredging surveys and volume computations of the yards dredged.

F. The Government shall have no obligation to pay costs for dredging of the material. Under 33 U.S.C 701h, the Government is authorized to include non-Federal dock dredging as part of the Government's dredging contract; therefore the Government will be responsible for transporting the dredged material to the Designated DMPAs and placement of the dredged material in the Designated DMPAs.

G. The Government and the Requesting Party may meet periodically to discuss the Requesting Party's Disposal Action, estimated costs of disposal, compliance with the permit, and other such matters as may be necessary. Any disputes that arise shall be resolved at the lowest level necessary. If unresolved, such disputes shall be resolved by the District Engineer and the Requesting Party's Agent and Attorney-in-Fact.

H. In implementing this Agreement, the Government and the Requesting Party shall comply with all applicable Federal, state and local laws and regulations, and permits, including but not limited to the National Environmental Policy Act and Section 401 of the Clean Water Act (33 U.S.C. 1341).

I. In the exercise of their respective rights and obligations under this Agreement, the Government and the Requesting Party each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

J. Nothing in this Agreement is intended to alter any responsibility or liability of any party pursuant to existing environmental laws and regulations.

### ARTICLE III - METHOD OF PAYMENT

A. The Requesting Party shall provide to the Government the full amount of the estimated cost of the Disposal Action required by Article II.D. of this Agreement, prior to



initiation of the Disposal Action, by delivering a check payable to "FAO, USAED, Galveston District, M3" to the District Engineer or providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

B. After completion of the Disposal Action or termination of this Agreement, the Government shall conduct a final accounting and furnish the Requesting Party with the results of the final accounting. The final accounting shall determine the cost of the Disposal Action.

1. In the event the final accounting shows that the contribution provided by the Requesting Party is less than its required contribution for cost of the Disposal Action, the Requesting Party shall, no later than 30 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Requesting Party's required contribution for cost of the Disposal Action by delivering a check payable to "FAO, USAED, Galveston District, M3" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the contribution provided by the Requesting Party exceeds its required contribution for cost of the Disposal Action, the Government shall, subject to the availability of funds, refund the excess to the Requesting Party no later than 30 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Requesting Party, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE IV – INDEMNIFICATION

The Requesting Party shall hold and save the Government free from all damages arising from the Disposal Action, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE V - TERMINATION

If both parties mutually agree in writing not to continue with the Disposal Action or the Disposal Action is completed, whichever occurs first, both parties shall conclude their activities relating to the Disposal Action and proceed to a final accounting in accordance with Article III.B. of this Agreement.

#### ARTICLE VI – NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Requesting Party:

Port of Corpus Christi Authority  
Attn: John P. LaRue, Executive Director  
P.O. Box 1541  
222 Power Street  
Corpus Christi, Texas 78401

If to the Government:

District Engineer  
Galveston District  
P.O. Box 1229  
2000 Fort Point Road  
Galveston, Texas 77550

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

**ARTICLE VII - CONFIDENTIALITY**

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

PORT OF CORPUS CHRISTI AUTHORITY

BY: \_\_\_\_\_  
Richard P. Pannell  
Colonel, U.S. Army  
District Engineer

BY: \_\_\_\_\_  
John P. LaRue  
Executive Director  
Port of Corpus Christi Authority

CERTIFICATE OF AUTHORITY

I, Leo J. Welder, Jr., do hereby certify that I am the principal legal officer for the Port of Corpus Christi Authority, that the Port of Corpus Christi Authority has the full authority and legal capability to perform the terms of this Agreement between the Department of the Army and Port of Corpus Christi Authority, in connection with the Disposal of Material in Confined Dredged Material Disposal Facilities IH-PA 1 & IH-PA 2 (Rincon), IH-PA 3B (Cell B), and IH-PA 8 (Suntide), and that the persons who have executed this Agreement on behalf of Port of Corpus Christi Authority, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_.

---

Leo J. Welder, Jr.  
Principal Legal Officer

**DATE:** June 16, 2015  
**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 13***

**Approve Public Oil Dock No. 14 Dock Use Agreement with Gravity Midstream Corpus Christi, LLC**

The PCCA entered into an agreement with M&G Resins USA, LLC, in June 2013 to design and construct Oil Dock 14 as a public barge dock to support operations at M&G's proposed plastics plant located on the north side of the Inner Harbor. Over the course of the next 18 months, after recognizing the interest and need from potential and existing liquid bulk customers for access to a new public ship dock and realizing there is also a need for additional ship layberth areas in the Inner Harbor, the Commission approved moving forward with the design and then ultimately awarding a construction contract to build Oil Dock 14 as a ship dock. Oil Dock 14 is now approximately 20% complete and is scheduled to be finished in the spring of 2016.

One company that staff has been in discussions with over the past several months regarding accessing Oil Dock 14 is Gravity Midstream Corpus Christi, LLC. Gravity, a portfolio company of EnCap Investments, L.P., has a contract and is in the final process of acquiring the assets of the Trigeant refinery located on the south side of the ship channel near the Tule Lake Turning Basin. Please see attached exhibit. Gravity plans to purchase assets, perform refinery upgrades, and construct pipelines to Oil Dock 14 for the shipment of crude and products.

Gravity has asked the PCCA for the right to use Oil Dock 14 on a priority basis upon finalizing the purchase of the Trigeant assets and after the PCCA completes construction of the dock facility. In response, staff has negotiated a Dock Use Agreement (Agreement) with Gravity that provides a priority right that is secondary to the docking right already granted the M&G for use of this facility. Per the terms of the Agreement, Gravity agrees that it will install pipelines and infrastructure to support its proposed loading/unloading operations and transport at least 122,400,000 barrels across Oil Dock 14 over the initial seven-year term—3.6 million barrels per quarter for the first year and 4.5 million barrels per quarter for the next six years. Should Gravity elect, the term can be extended an additional seven years by guaranteeing to transport 176,400,000 barrels of the term at a minimum rate of 6.3 million barrels per quarter.

The minimum throughput for the initial term will be guaranteed by an irrevocable Letter of Credit in the initial amount of \$11,811,600. The Letter of Credit equals the aggregate wharfage payments that would be made to the PCCA if Gravity were to move the guaranteed minimum throughput across Oil Dock 14 during the first seven years of operations at the current tariff rate for transfer of liquid bulk cargo over a public dock. The Letter of Credit may be reduced annually through the agreement's initial term to the approximate value of the remaining wharf age payments on the remaining guaranteed minimum throughput. If the Letter of Credit is not provided to the PCCA by August 14, 2015, the Agreement will terminate. See attached Agreement Summary.

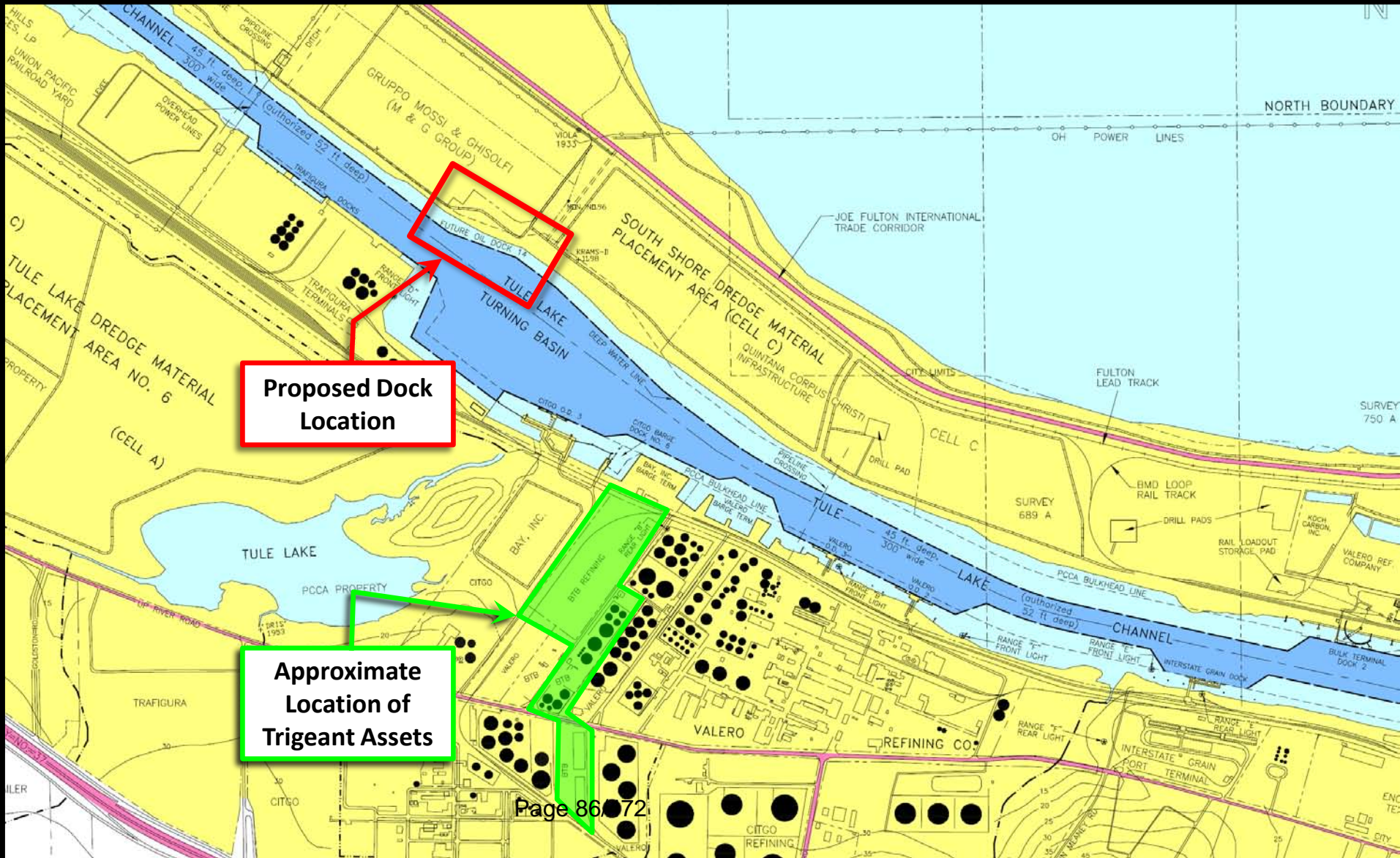
Staff recommends approval of the attached Public Oil Dock No. 14 Dock Use Agreement with Gravity Midstream Corpus Christi, LLC.

**LEAD CONTACT:** David L. Krams, P.E.; 361-885-6134; [krams@pocca.com](mailto:krams@pocca.com).



# Gravity Midstream Corpus Christi, LLC Public Oil Dock 14

AGENDA ITEM NO. 13



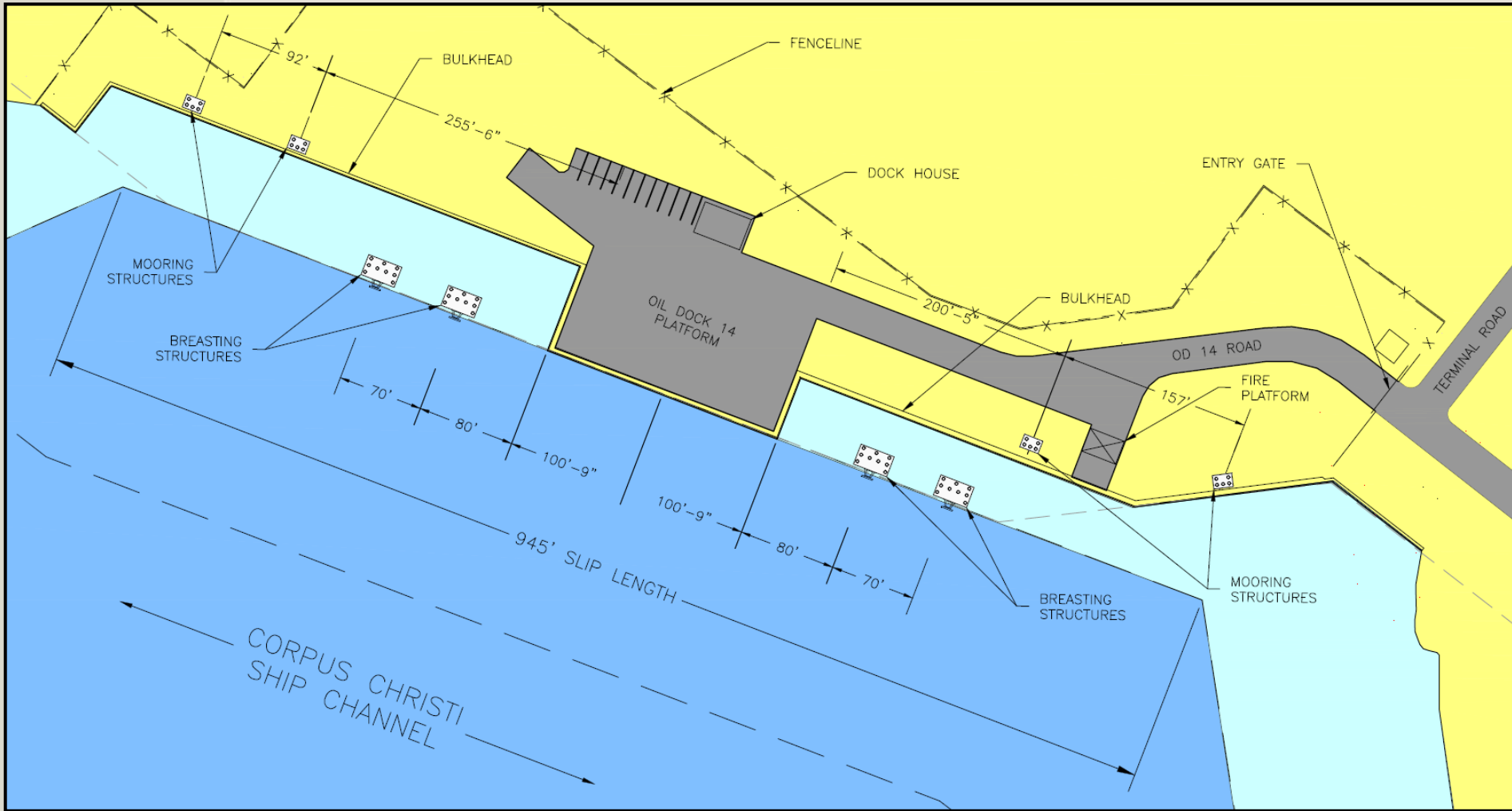
**Proposed Dock Location**

**Approximate Location of Trigeant Assets**



# Gravity Midstream Corpus Christi, LLC Public Oil Dock 14

AGENDA ITEM NO. 13



**PORT OF CORPUS CHRISTI AUTHORITY  
DOCK USE AGREEMENT SUMMARY**

Company: Gravity Midstream Corpus Christi, LLC

Premises: Public Oil Dock No. 14 as depicted on the attached drawing

Use: Secondary Priority Docking Right to M&G Resins for Loading Liquid Bulk Cargo to or Discharging Liquid Bulk Cargo From Vessels at the Ship Dock.

Term: 7 Years

Options: 1 - 7 Year

Start Date: Upon Operations (Anticipated to be third quarter of 2016)

Annual Fees: Minimum Guaranteed Throughput

<i>Operational Year</i>	<i>Guaranteed Quarterly Throughput</i>	<i>Annualized Throughput</i>	<i>Annualized Revenue (Based on \$0.0965 per bbl)</i>
First	3,600,000	14,400,000	\$1,389,600
Second	4,500,000	18,000,000	\$1,737,000
Third	4,500,000	18,000,000	\$1,737,000
Forth	4,500,000	18,000,000	\$1,737,000
Fifth	4,500,000	18,000,000	\$1,737,000
Sixth	4,500,000	18,000,000	\$1,737,000
Seventh	4,500,000	18,000,000	\$1,737,000
<b>Total Wharfage:</b>			<b>\$11,811,600</b>

Option Term Fee: Minimum Guaranteed Throughput

First through Seventh:	6,300,000	25,200,000	\$2,431,800
<b>Total for Seven Years:</b>			<b>\$28,834,200</b>

Adjustment of Fees: Periodic Adjustment of Wharfage Tariff Rate

Payment Guarantee: Gravity to provide irrevocable standby letter of credit in the amount of \$11,811,600 declining annually through the seven year initial term. In the event Gravity fails to deliver the letter of credit by August 14, 2015 this agreement shall terminate and be of no further force and effect.

Remarks: The projected revenue streams above are based upon the current PCCA published Tariff 100-A which is \$0.0965 per barrel for all liquid bulk cargo including but not limited to crude and refined petroleum, petroleum products, petrochemicals, chemicals and other liquids except liquefied natural gas.



**PUBLIC OIL DOCK No. 14**

**DOCK USE AGREEMENT**

**Between**

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

**And**

**GRAVITY MIDSTREAM CORPUS CHRISTI, LLC**

This Public Oil Dock No. 14 Dock Use Agreement (the “**Agreement**”) is made effective as of the \_\_\_\_ day of June, 2015 (the “**Effective Date**”), by and between PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS (the “**Authority**”) and GRAVITY MIDSTREAM CORPUS CHRISTI, LLC, a Delaware limited liability company (the “**Company**” or “**GM**”).

**RECITALS:**

(a) The Authority is currently constructing a new public oil dock (“**Public Oil Dock No. 14**”) on the north side of the Corpus Christi Ship Channel at the location shown on **Exhibit A** attached hereto.

(b) Public Oil Dock No. 14 will be a barge and ship dock and slip, with a dock slip of 945 feet in length, sufficient to accommodate inland barges and ships up to 835 feet long and 144 feet wide with a draft suitable for safe navigation in the adjacent Corpus Christi Ship Channel which is currently congressionally authorized and maintained by the Federal government at the depth of 45 feet (“**Ship Dock Project**”). The dock portion of the Ship Dock Project and its breasting structures, mooring facilities, dock house, footings, piers, pilings, erosion control, and structural components are collectively referred to herein as the “**Ship Dock**.”

(c) Neither the Ship Dock Project nor the Ship Dock itself includes the Company Facilities (as defined in Section 3.02(c)).

(d) The Company has a contract to purchase the assets and property located at 6600 Up River Road, Corpus Christi, Texas (the “**Trigeant Assets**”) and has asked the Authority for the right to use the Ship Dock on a priority basis upon closure and consummation of the purchase of the Trigeant Assets and completion of the Ship Dock.

(e) The Company guarantees that it will load on and/or discharge from ships and/or barges docked at the Ship Dock at least the minimum number of barrels of Liquid Bulk Cargo (as defined in Section 1.01, below) specified in this Agreement over the time periods specified in this Agreement.

(f) The Authority has determined that the Ship Dock Project constitutes “cargo-handling facilities” and “other facilities incidental to or useful in the development of the Authority’s

ports and waterways or in aid of navigation-related commerce in the port” as those terms and phrases are used in Section 60.101 of the Texas Water Code.

(g) The Company and M&G Resins USA, LLC, a Delaware limited liability company (“**M&G**”) may, subsequent to the execution of this Agreement, enter into an agreement for common development and/or shared services with respect to each of Company’s and M&G’s owned facilities on the Ship Dock.

NOW, THEREFORE, in consideration of the covenants and agreements herein made, and subject to the conditions herein set forth, the Authority and the Company contract and agree as follows:

**ARTICLE 1  
DEFINITIONS**

**Section 1.01 Certain Definitions.**

Each of the following words and terms shall have the meaning set forth or referred to in this Section whenever they are used in this Agreement:

“**Acts**” means Article 16, Section 59 of the Texas Constitution and Chapters 60 and 62, Texas Water Code, as amended.

“**Actual LBC Throughput**” has the meaning given to that term in Section 6.01(d).

“**Affiliate**” means any other business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Company. For purposes of this definition, “**control**” means (1) the beneficial ownership of fifty percent (50%) or more of the outstanding voting ownership interests of another business entity, or (2) the ability to direct the day-to-day management and long-term policies of another business entity, whether by contract or otherwise.

“**Aggregate LBC Deficit Payments**” means the total of all LBC Deficit Payments.

“**Agreement**” means this Public Oil Dock No. 14 Dock Use Agreement, together with all Exhibits attached hereto and all amendments and supplements hereto.

“**Authority**” means the Port of Corpus Christi Authority of Nueces County, Texas.

“**Authority Parties**” has the meaning given to that term in Article 4.

“**Authority’s Public Oil Docks**” means the public oil docks in the Port of Corpus Christi, which are owned by the Authority.

“**Authority’s Substantial Completion Notice**” has the meaning given that term in Section 3.01(d).

“**Barrel**” or “**BBL**” means a 42 US gallon barrel.

“**Business Day**” means a day, except Saturday, Sunday and any day on which banks in Texas are permitted or required to be closed.

“**Claims**” means all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys’ and experts’ fees and expenses), suits, settlements or judgments of any nature whatsoever (including claims for personal injury, bodily injury, real and personal property damage and economic loss).

“**Commencement Date**” means the first day of the month following the first to occur of: (i) the Commencement of Commercial Operations, or (ii) one hundred eighty (180) days after the date on which the Company receives the Authority’s Substantial Completion Notice.

“**Commencement of Commercial Operations**” means the date on which GM Liquid Bulk Cargo is first loaded onto or discharged from a ship or barge at the Ship Dock, exclusive of any GM Liquid Bulk Cargo run through the Company Facilities to test the performance of the system. Company will promptly give notice to Authority when the Commencement of Commercial Operations occurs.

“**Company**” means Gravity Midstream Corpus Christi, LLC, a limited liability company organized and existing under the laws of the State of Delaware and its permitted successors and assigns.

“**Company Facilities**” has the meaning given to that term in Section 3.02(a).

“**Company Parties**” has the meaning given to that term in Article 4.

“**Contractor**” means any business entity engaged by the Authority or the Company, as applicable, to construct or install the Ship Dock Project or the Company Facilities.

“**Declaration**” has the meaning given to that term in Section 8.21.

“**Dock Operations Agreement**” has the meaning given to that term in Section 3.04.

“**Extension Period**” has the meaning given to that term in Section 2.01(b).

“*force majeure*” has the meaning given to that term in Section 8.13.

“**GM**” means the Company.

“**GM Liquid Bulk Cargo**” means Liquid Bulk Cargo (i) which is owned by GM or in which GM otherwise has an ownership interest, or (ii) which GM is purchasing or selling in connection with the shipment of such Liquid Bulk Cargo in the Port of Corpus Christi, or (iii) in the possession of GM or one of its designated Affiliates for loading to or discharging from Vessels at the Ship Dock.

“**GM Wharfage Payments**” means the aggregate amount of Wharfage paid by GM or its Affiliates on GM Liquid Bulk Cargo loaded to or discharged from Vessels at the Ship Dock.

**“Guaranteed Payment Amount”** means the sum of Eleven Million Eight Hundred Eleven Thousand Six Hundred Dollars (\$11,811,600).

**“Guaranteed Payment Deficit”** means the difference obtained by subtracting (A) the sum of GM Wharfage Payments and the Aggregate LBC Deficit Payments from (B) the Guaranteed Payment Amount.

**“Indemnified Claim”** has the meaning given to that term in Article 4.

**“Indemnified Event”** has the meaning given to that term in Article 4.

**“Initial Letter of Credit”** has the meaning given to that term in Section 5.01(a).

**“Initial Term”** has the meaning given to that term in Section 2.01(a).

**“Investment Grade”** means having a credit rating of at least “BBB-” or higher by Standard & Poor’s or a rating of at least “Baa3” or higher by Moody’s Investors Service, Inc., if rated by both agencies, or by either of such agencies if only rated by one.

**“LBC Deficit Payment”** has the meaning given to that term in Section 6.01(d).

**“Letter of Credit”** means the Initial Letter of Credit issued to the Authority pursuant to Section 5.01(a) and any renewal or replacement letter of credit conforming to the requirements of Article 5.

**“Liquid Bulk Cargo”** or **“LBC”** means crude oil, petrochemicals, condensate, jet fuel, gasoil, residual fuel oil and similar and related feedstock, or other processed petroleum products, except liquefied natural gas.

**“M&G”** means M&G Resins USA, LLC, a Delaware limited liability company.

**“M&G Construction and Priority Use Agreement”** means the Public Oil Dock No. 14 Construction and Priority Use Agreement by and between the Authority and M&G made effective as of January 1, 2015, as amended.

**“Minimum Quarterly Throughput”** has the meaning given to that term in Section 6.01(a).

**“Parties”** means Authority and Company.

**“Party”** means Authority or Company, as the case may be.

**“Operational Period”** means the (1) the first seven (7) Operational Years if the Company does not elect to extend the Initial Term of this Agreement pursuant to Section 2.01(b), and (2) the first fourteen (14) Operational Years if the Company does elect to extend the Term of this Agreement pursuant to Section 2.01(b).

“**Operational Quarter**” means the three-month period beginning on the Commencement Date and each successive three-month period thereafter during the Operational Period; provided, however, that if this Agreement terminates or expires during an Operational Quarter, the period from first day of such Operational Quarter to the last day of the Term of this Agreement shall be deemed to be an Operational Quarter (“**Last Operational Quarter**”).

“**Operational Year**” means the twelve-month period beginning on the Commencement Date and each successive twelve-month period thereafter during the Operational Period.

“**Port Commission**” means the governing body of the Authority.

“**Public Oil Dock No. 14**” has the meaning given to that term in paragraph (a) of the Recitals.

“**Recitals**” means the Recitals to this Agreement.

“**Reportable Event**” has the meaning given to that term in Section 6.01(c).

“**Ship Dock**” has the meaning given to that term in paragraph (c) of the Recitals.

“**Ship Dock Project**” has the meaning given to that term in paragraph (b) of the Recitals; the Ship Dock Project is depicted on **Exhibit B** attached hereto.

“**Section**” means a section of this Agreement.

“**Specifications**” means the drawings, plans and written descriptions contained in the contract documents for each Contractor’s contract for the construction of the Ship Dock Project or the purchase, construction and installation of the Company Facilities on the Ship Dock Project, as applicable.

“**Tariff**” means the Authority’s Tariff 100-A, Naming Rates, Rules and Regulations Applying on the Public and Private Wharves, as such may be amended from time to time.

“**Term of this Agreement**” means the period from the Effective Date until this Agreement ends or is terminated in accordance with the provisions of this Agreement.

“**Termination Date**” has the meaning given to that term in Section 7.02(a).

“**Trigeant Assets**” has the meaning given to that term in paragraph (d) of the Recitals.

“**Vessel**” means any waterborne ship or barge.

“**Wharfage**” means the charges the Authority assesses pursuant to its Tariff against the cargo or Vessel on all cargo passing or conveyed over, onto or under wharves or between Vessels (to or from barge, lighter or water) when berthed at a wharf or when moored in a slip adjacent to a wharf within the Authority’s jurisdiction. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

**Section 1.02. Other Definitions**

Capitalized terms in this Agreement which are not defined in Section 1.01 are defined in the text of this Agreement.

**ARTICLE 2  
TERM; REPRESENTATIONS**

**Section 2.01. Term**

(a) The Term of this Agreement shall commence on the Effective Date and shall end at 11:59 p.m., Central Time, on the one hundred and first (101<sup>st</sup>) day after the last day of the seventh (7<sup>th</sup>) Operational Year (“**Initial Term**”), unless otherwise extended or terminated in accordance with the terms hereof.

(b) The Company shall have the right and option to extend the Term of this Agreement for one (1) additional period of seven (7) years as provided in this Section 2.01(b) (the “**Extension Period**”). The Extension Period shall commence on the day after the last day of the Initial Term and shall end at 11:59 p.m., Central Time, on the one hundred and first (101<sup>st</sup>) day after the last day of the fourteenth (14<sup>th</sup>) Operational Year, unless otherwise extended or terminated in accordance with the terms hereof. To exercise such right of extension, the Company shall give written notice thereof to Authority, at least one hundred eighty (180) days prior to the end of the Initial Term, irrevocably exercising its option to extend the Term of this Agreement for one (1) additional period of seven (7) years. Notice of the Company’s intention to extend the Initial Term, to be effective, must be sent by certified mail to Authority at the address provided in Section 8.16 and must be postmarked no later than the latest date provided in this Section for the Company’s exercising the option. Notwithstanding anything to the contrary contained in this Agreement, the Company may not exercise such option if at the time of exercise an Event of Default is continuing. If the Company affirmatively exercises its option to extend the Term of this Agreement, then this Agreement shall continue in full force and effect under all the terms and conditions set forth herein during the Extension Period.

**Section 2.02 Representations By Authority.**

The Authority makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Authority is a governmental agency, body politic and corporate of the State of Texas existing and operating as a navigation district pursuant to the Acts. The Authority has determined that the Ship Dock Project constitutes a “dock,” “cargo-handling facilities,” and “other facilities incidental to or useful in the development of the district’s ports and waterways or in aid of navigation-related commerce in the port” as those terms and phrases are used in Section 60.101 of the Texas Water Code.

(b) The Authority has the legal power under the Acts to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Authority has been duly authorized to execute and deliver this Agreement by proper action of the Port Commission.

(c) The Authority is not in default under any of the provisions of the laws of the United States or the State of Texas which would impair, interfere with or otherwise adversely affect the ability of the Authority to make and perform the provisions of this Agreement.

(d) There is no litigation pending, or to the knowledge of the Authority threatened, in any court, either state or federal, calling into question the creation, organization or existence of the Authority, the validity or enforceability of this Agreement or the authority of the Authority to construct the Ship Dock Project or to make or perform this Agreement.

(e) The execution and delivery of this Agreement and the performance of the transactions contemplated hereby will not violate any provision of law or regulation, or of any decree, writ, order or injunction, and will not contravene the provisions of or constitute a default under any agreement, indenture, bond resolution or other instrument to which the Authority is a party or by which the Authority is bound.

(f) All requirements and conditions specified in the Acts and all other laws and regulations applicable to the execution and delivery of this Agreement have been or will be fulfilled.

(g) The Ship Dock Project construction will be constructed with all reasonable dispatch.

**Section 2.03 Representations By Company.**

The Company makes the following representations as the basis for the undertakings on its part herein contained: It is a limited liability company duly organized under the laws of the State of Delaware; it is duly qualified to do business in the State of Texas; it is not in violation of any provisions of the laws of the State of Texas in a manner which materially impairs the Company's ability to perform its obligations hereunder; it is fully empowered to enter into and perform all agreements on its part herein contained; it has been authorized to enter into and deliver this Agreement in accordance with its governing documents and applicable state law; and the execution and delivery by it of this Agreement and the performance of the agreements herein contained do not contravene any provision of its governing documents or other requirements of law or constitute a material default under any existing agreement, indenture, mortgage, loan agreement, commitment or any other existing agreement of any kind to which it is a party or by which it is or may be bound.

**ARTICLE 3  
THE SHIP DOCK PROJECT**

**Section 3.01 Construction, Ownership and Maintenance of the Ship Dock Project.**

(a) The Authority shall construct the Ship Dock Project with all reasonable dispatch, subject to any events of *force majeure*. The Authority shall endeavor to have the Ship Dock Project substantially completed by May 31, 2016. For purposes of this Section 3.01, "**substantially completed**" means that the Authority's engineer has determined that the Ship Dock Project is suitable for use for its intended purpose but may still require minor miscellaneous work or adjustments.

(b) The Authority shall pay for the cost of construction of the Ship Dock Project as provided in its contract with the Contractor awarded the contract for construction of the Ship Dock Project. The Authority will own the Ship Dock.

(c) The Authority hereby grants to the Company, its representatives and Contractors all necessary and reasonable rights of ingress and egress to the Ship Dock required to coordinate the Company's construction of the Company Facilities on the Ship Dock on the schedule to be determined by Authority and Company and their respective Contractors, and the Authority agrees that it will cooperate with the Company, its representative and Contractor so that the Ship Dock Project and the Company Facilities shall be designed and constructed as provided in this Agreement and the Specifications for the construction of the Ship Dock Project and the Company Facilities.

(d) As soon as the Authority's engineer determines that the Ship Dock Project is substantially completed, the Authority shall give the Company written notice of this determination (the "**Authority's Substantial Completion Notice**").

(e) The Authority shall be responsible for the maintenance of the Ship Dock, including the breasting structures, mooring facilities, dock house, footings, piers, pilings, erosion control all structural components relating to the Ship Dock, the structural integrity of the Ship Dock, and dredging of the slip to accommodate Vessels accessing Ship Dock. The Authority shall have no responsibility for the maintenance of the Company Facilities.

### **Section 3.02 Construction and Ownership of the Company Facilities.**

(a) The Company will provide and install, pursuant to the terms of this Agreement, the necessary utilities, equipment, pipelines, pumps, combustors, manifolds, valves, support facilities and improvements (collectively, the "**Company Facilities**") to safely and properly move Liquid Bulk Cargo to or from Vessels docked at the Ship Dock and facilities on land at a minimum design loading rate of twenty-five thousand (25,000) Barrels per hour for ships (subject to any such ship's ability to load at such rate); and the Company will service and maintain the Company Facilities as described in this Agreement. The Company shall construct the Company Facilities with all reasonable dispatch, subject to any events of *force majeure* and Section 3.02(e).

(b) The Company shall construct the Company Facilities in the manner provided in this Agreement and in accordance with the Specifications. It is agreed and understood that the Company will enter into and execute all agreements and contracts necessary to cause the design and construction of the Company Facilities, and that the Company will carry out, pay, supervise and enforce all such agreements and contracts, and will require its Contractor(s) to provide insurance coverage on and in connection with the installation of the Company Facilities as described in **Exhibit D** attached hereto, which will name the Authority and Company as additional insureds in all insurance policies or coverages relating to the construction of the Company Facilities.

(c) The Company shall pay all costs incurred by the Company with respect to the purchase, construction and installation of the Company Facilities on the Ship Dock as provided in its contract with the Contractor(s) awarded the contract for construction of the Company Facilities. The Company will own the Company Facilities, and the Company Facilities shall be for the exclusive use of the Company and its designees. The Authority hereby grants to the Company, its



representatives and Contractors all necessary and reasonable rights of ingress and egress to the Ship Dock Project required to service and maintain the Company Facilities.

(d) Company hereby grants to the Authority, its representative and Contractors all necessary and reasonable rights of ingress and egress to the Company Facilities on the Ship Dock Project required to coordinate Authority's construction of the Ship Dock Project on the schedule to be determined by Authority and Company and their respective Contractors, and the Company agrees that it will cooperate with the Authority, its representative and Contractor so that the Ship Dock Project and the Company Facilities shall be designed and constructed as provided in this Agreement and the Specifications for the construction of the Ship Dock Project and the Company Facilities.

(e) The Company acknowledges and understands that the construction and installation of the Company Facilities and access to the Ship Dock is subject to and must be coordinated with the Authority and with M&G, which may be constructing its own facilities on the Ship Dock or may be using the Ship Dock for the movement of cargo at times when the Company is planning to construct the Company Facilities on the Ship Dock.

### **Section 3.03. Vessel Scheduling.**

(a) So long as the M&G Construction and Priority Use Agreement remains in effect, M&G will have a first priority right (the "**First Priority Docking Right**") to use the Ship Dock. Accordingly, a Vessel that is bound for the Ship Dock to load or unload Liquid Bulk Cargo for M&G across the Ship Dock, to or from an M&G pipeline or storage tank, shall be scheduled by the Authority's Harbormaster to the Ship Dock ahead of any other Vessel bound for the Ship Dock. The M&G's First Priority Docking Right, however, does not include the right to require the Harbormaster to order a Vessel moored at the Ship Dock and engaged in loading or unloading cargo from such Vessel to depart the Ship Dock until after such Vessel has completed its loading or unloading at the Ship Dock. Each Vessel which was denied access to the Ship Dock because M&G exercised its First Priority Docking Right will be granted the right to access the Ship Dock before the next M&G Vessel. To further clarify, the Vessel(s) skipped over because M&G exercised its First Priority Docking Right will be granted access to the Ship Dock before the next M&G Vessel and M&G cannot exercise its First Priority Docking Right consecutively on the same Vessel(s).

(b) So long as the Company complies with the requirements of Section 6.01, Authority agrees that during the Operational Period the Company will have a second priority right (the "**Second Priority Docking Right**") to use the Ship Dock. Accordingly, a Vessel that is bound for the Ship Dock to load or unload Liquid Bulk Cargo for the Company across the Ship Dock, to or from a Company pipeline or storage tank, shall be scheduled by the Authority's Harbormaster to the Ship Dock ahead of any other Vessel bound for the Ship Dock except an M&G Vessel entitled to a First Priority Docking Right. The Company's Second Priority Docking Right, however, does not include the right to require the Harbormaster to order a Vessel moored at the Ship Dock and engaged in loading or unloading cargo from such Vessel to depart the Ship Dock until after such Vessel has completed its loading or unloading at the Ship Dock. Each Vessel which was denied access to the Ship Dock because the Company exercised its Second Priority Docking Right will be granted the right to access the Ship Dock before the next Company Vessel. To further clarify, the Vessel(s) skipped over because the Company exercised

its Second Priority Docking Right will be granted access to the Ship Dock before the next Company Vessel and the Company cannot exercise its Second Priority Docking Right consecutively on the same Vessel(s).

(c) The Authority represents and warrants to Company that M&G has no right to assign or transfer its First Priority Docking Right to any other party for the purposes of loading and/or discharging LBC to or from Vessels at the Ship Dock without the prior written consent of the Port Commission.

#### **Section 3.04. Dock Operations Agreement.**

The Company and Authority will endeavor to enter into an agreement with M&G for the day-to-day operation of the Ship Dock (the “**Dock Operations Agreement**”). The Authority expects the Dock Operations Agreement to cover such matters as the location of the Company’s Facilities and M&G’s Facilities on the Ship Dock, the acquisition, maintenance and use of any shared equipment on the Ship Dock, and the responsibilities of the parties using the Ship Dock, but in no event shall any term or condition of the Dock Operations Agreement be in conflict with any term or condition of this Agreement. If the Company, M&G and the Authority are unable to mutually agree on a Dock Operations Agreement within fifteen (15) Business Days before the Commencement of Commercial Operations, the Company and Authority agree to enter into an alternate agreement before Commencement of Commercial Operations regarding the Company’s responsibilities during the term Company is using the Ship Dock. The alternate agreement will generally be in the form of the Authority’s agreement with M&G for the day-to-day operations of the Ship Dock, except with respect to term/duration, docking rights, any common or public use of Company’s Facilities (which are to be exclusively used by Company and its designees), or any other term or condition which would be in conflict with any term or condition of this Agreement.

#### **Section 3.05. Pipeline Easements.**

The Company shall acquire all pipeline easements necessary to connect the Company Facilities to the Trigeant Assets. The Company understands and agrees that one or more of these easements must be obtained from private property owners. The Authority agrees to grant the Company a pipeline easement on the Authority’s property (the “**Pipeline Easement**”), which will allow the Company to construct one or more pipelines on the Authority’s property for purposes of connecting the Company Facilities to the Trigeant Assets. The actual route of the Pipeline Easement must be approved by and coordinated with the Authority, but will generally follow the routing and description shown on the easement schematic attached hereto as **Exhibit E**. The Pipeline Easement will be granted in accordance with the terms and conditions of the Authority’s current standard form of pipeline easement for Authority customers and at the Authority’s rates in effect at the time the Pipeline Easement is granted.

### **ARTICLE 4 INDEMNITY**

**Company shall defend, indemnify and hold harmless Authority, its commissioners, officers, directors, managers, employees, and agents (for purposes of this Article 4, the “Authority Parties”) from and against any and all Claims arising out of or connected with**

the activities of the Company or its owners, officers, managers, agents, invitees, or licensees (“Company Parties”) under this Agreement, TO THE EXTENT SUCH CLAIMS ARISE OUT OF THE NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT, OR OTHER FAULT OR BREACH OF LEGAL DUTY BY COMPANY PARTIES (each an “Indemnified Claim”). In an Indemnified Claim against any Authority Party by or for an employee of a Company Party, the Company’s indemnification obligation under this Article 4 shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Company Party under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, TO THE EXTENT THE INDEMNIFIED CLAIM ARISES OUT OF THE JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE, CAUSATION, RESPONSIBILITY OR FAULT OF THE COMPANY PARTIES AND THE AUTHORITY PARTIES, WHETHER IN NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT, OR OTHER FAULT OR BREACH OF LEGAL DUTY, THEN (i) THE COMPANY SHALL DEFEND THE AUTHORITY PARTIES AGAINST SUCH INDEMNIFIED CLAIM, BUT (ii) THE COMPANY’S OBLIGATION TO INDEMNIFY THE AUTHORITY PARTIES AGAINST THE INDEMNIFIED CLAIM SHALL ONLY EXTEND TO THE PERCENTAGE OF TOTAL PROVEN RESPONSIBILITY OR FAULT OF THE COMPANY PARTIES IN CONTRIBUTING TO THE INDEMNIFIED CLAIM.

**ARTICLE 5  
LETTER OF CREDIT**

**Section 5.01 Letter of Credit.**

(a) On or before 5:00 P.M. Central Time on August 14, 2015 (the “**LC Delivery Deadline**”), the Company shall provide Authority with an irrevocable standby letter of credit (the “**Initial Letter of Credit**”) in the amount of Eleven Million Eight Hundred Eleven Thousand Six Hundred Dollars (\$11,811,600), to be held by the Authority as security for the faithful performance by Company of the Company’s obligations to pay (1) the LBC Deficit Payments, if any, pursuant to Section 6.01(d), and (2) the Guaranteed Payment Deficit, if any, pursuant to Sections 6.01(f), 6.01(g) and 7.02(b). Notwithstanding anything to the contrary in this Agreement, if the Company fails to deliver the Initial Letter of Credit to the Authority by the LC Delivery Deadline, this Agreement shall terminate and be of no further force and effect, and neither Party shall have any further liability to the other Party as a result of this Agreement.

(b) Subject to Section 5.01(f), Company shall maintain the Letter of Credit in full force and effect until the first to occur of (i) one hundred (100) days after the end of the seventh Operational Year, (ii) one hundred (100) days after the termination of this Agreement in accordance with its terms, or (iii) the date on which the Guaranteed Payment Deficit is zero or less. Upon the first to occur of the foregoing events, the Authority shall promptly return the Letter of Credit to Company if the full amount of credit available under the Letter of Credit has not been drawn.

(c) The Letter of Credit shall be in the form of an irrevocable standby letter of credit (i) in form and content reasonably satisfactory to Authority, (ii) with an expiration date that is not less than one year from the date of its delivery, (iii) expressly allowing the Authority to draw upon it at any time, in whole or in part, by delivering to the issuer notice that the Authority is entitled to draw on it pursuant to Section 5.02, Section 6.01(d), Section 6.01(f), Section 6.01(g) or Section 7.02(b) of this Agreement, as the case may be, (iv) issued by commercial bank reasonably satisfactory to the Authority, which is insured by the Federal Deposit Insurance Corporation and whose long-term, unsecured and unsubordinated debt obligations are rated Investment Grade, and (v) with an “evergreen” provision that provides that it is automatically renewed on an annual basis unless the issuer delivers sixty (60) days’ prior written notice of cancellation to Authority and Company. Any and all fees or costs charged by the issuer in connection with the Letter of Credit shall be paid by Company.

(d) Should the Authority elect to make a partial draw on the Letter of Credit upon the Company’s failure to make an LBC Deficit Payment pursuant to Section 6.01(d) when due, the Company expressly waives any right it might otherwise have to prevent Authority from drawing on the Letter of Credit. If the Company disputes the amount of an LBC Deficit Payment or the Authority’s right to draw on the Letter of Credit, the Company agrees to follow the dispute resolution procedures in Sections 8.19 and 8.20 and agrees that it will not be entitled to injunctive or other equitable relief until it has exhausted these procedures.

(e) Should the Authority elect to draw on the Letter of Credit upon the Company’s failure to make the Guaranteed Payment Deficit specified in Section 6.01(f), 6.01(g), or 7.02(b) when due, the Company expressly waives any right it might otherwise have to prevent Authority from drawing on the Letter of Credit. If the Company disputes the amount of the Guaranteed Payment Deficit or the Authority’s right to draw on the Letter of Credit, the Company agrees to follow the dispute resolution procedures in Sections 8.19 and 8.20 and agrees that it shall not be entitled to injunctive or other equitable relief until it has exhausted these procedures.

(f) On the ninety-first (91<sup>st</sup>) day of each of the following Operational Years, if the Company is not in default of its obligations under this Agreement, the amount of the Letter of Credit shall be reduced as follows:

<b>On the ninety-first day of the</b>	<b>The Letter of Credit shall be reduced to:</b>
Second Operational Year	\$10,422,000
Third Operational Year	\$8,685,000
Fourth Operational Year	\$6,948,000
Fifth Operational Year	\$5,211,000
Sixth Operational Year	\$3,474,000
Seventh Operational Year	\$1,737,000

**Section 5.02 Additional Rights to Draw on Letter of Credit**

In addition to its right to draw upon the Letter of Credit in accordance with Sections 6.01(d), 6.01(f), 6.01(g) and 7.02(b), the Authority shall have the right to draw upon the Letter of Credit in any of the following circumstances: (i) if the credit rating of the long-term, unsecured

and unsubordinated debt obligations of the issuer of the Letter of Credit is downgraded below Investment Grade and, in such case, Company fails to deliver to Authority a replacement Letter of Credit complying with the terms of this Agreement within thirty (30) Business Days of a request therefor from Authority; (ii) the issuer of the Letter of Credit enters into any supervisory agreement with any governmental authority such that Authority reasonably believes that Authority will not be able to draw on the Letter of Credit in accordance with its terms, or the issuer of the Letter of Credit fails to meet any capital requirements imposed by applicable law, and, as a result, Authority reasonably believes that Authority will not be able to draw on the Letter of Credit in accordance with its terms, and, in any such case Company fails to deliver to Authority a replacement Letter of Credit complying with the terms of this Agreement within thirty (30) Business Days of a request therefor from Authority; or (iii) if Company fails to provide Authority with any renewal or replacement Letter of Credit complying with the terms of this Agreement at least thirty (30) Business Days prior to expiration of the then current Letter of Credit, where the issuer of such Letter of Credit has advised Authority of its intention not to renew the Letter of Credit. In the event the Letter of Credit is drawn upon due solely to the circumstances described in the foregoing clauses (i), (ii) or (iii), the amount drawn shall be held by Authority without interest as a security deposit to be otherwise retained, expended or disbursed by Authority for any amounts or sums due under this Agreement to which the proceeds of the Letter of Credit could have been applied pursuant to this Agreement.

**ARTICLE 6**  
**LBC DEFICIT PAYMENTS DURING THE OPERATIONAL PERIOD**

**Section 6.01 Minimum Quarterly Throughput Obligations during the Operational Period.**

(a) In consideration of the rights and privileges granted to it in this Agreement, the Company guarantees that it will load on and/or discharge from Vessels at the Ship Dock the following number of Barrels of GM Liquid Bulk Cargo during each Operational Quarter of the Operational Period (“**Minimum Quarterly Throughput**”):

(1) the Minimum Quarterly Throughput for each Operational Quarter of the first Operational Year shall be Three Million Six Hundred Thousand (3,600,000) Barrels of GM Liquid Bulk Cargo per quarter;

(2) the Minimum Quarterly Throughput for each Operational Quarter of the second, third, fourth, fifth, sixth, and seventh Operational Years shall be Four Million Five Hundred Thousand (4,500,000) Barrels of GM Liquid Bulk Cargo per quarter; and

(3) if the Company exercises its option to extend the Term of this Agreement pursuant to Section 2.01(b), the Minimum Quarterly Throughput for each Operational Quarter of the eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth Operational Years shall be Six Million Three Hundred Thousand (6,300,000) Barrels of GM Liquid Bulk Cargo per quarter.

(b) If the Last Operational Quarter is less than ninety-one (91) days, the Minimum Quarterly Throughput for the Last Operational Quarter shall equal a percentage of the Minimum Quarterly Throughput for the Operational Year in which the Last Operational Quarter occurs, where the percentage is a fraction (expressed as a percentage), the numerator of which is the

actual number of days in the Last Operational Quarter, and the denominator of which is ninety-one (91).

(c) Notwithstanding anything to the contrary contained in this Section 6.01, the Minimum Quarterly Throughput for any Operational Quarter shall be reduced by  $1/2184^{\text{th}}$  for each hour the Company is prevented from loading and/or discharging GM Liquid Bulk Cargo to/from Vessels at the Ship Dock due to any events of *force majeure*, breakdown of or damage to the Ship Dock facilities not caused by the Company, dock congestion, channel closure, an order by any governmental authority which prohibits a Vessel from berthing at the Ship Dock due to inadequate water depth and the portion of the slip used for berthing has a water depth of less than 45 feet, any failure by the Authority to apply for, obtain or maintain any permit, license, approval or other rights necessary for the operation of the Ship Dock, or any failure or default by the Authority in performing its obligations under this Agreement (each, a “**Reportable Event**”). In the event the Company is prevented from loading and/or discharging GM Liquid Bulk Cargo to/from Vessels at the Ship Dock due to a Reportable Event, the Company shall give the Authority written notice of such Reportable Event, with reasonably full particulars of such Reportable Event, within forty-eight (48) hours after the occurrence of the Reportable Event. If the Company fails to give the Authority timely written notice of a Reportable Event, the Company shall not be entitled to claim a reduction in the Minimum Quarterly Throughput as a result of such Reportable Event. The Company understands and agrees that maintenance dredging of the Ship Dock is not a Reportable Event.

(d) If the Minimum Quarterly Throughput for any Operational Quarter of the Operational Period exceeds the actual number of Barrels of GM Liquid Bulk Cargo that the Company loads on and/or discharges from Vessels at the Ship Dock during that Operational Quarter (the “**Actual LBC Throughput**”), then the Company shall make a deficit payment (“**LBC Deficit Payment**”) to the Authority for such Operational Quarter in an amount equal to the product of (A) the number of Barrels by which the Minimum Quarterly Throughput for such quarter exceeds the Actual LBC Throughput for such quarter, multiplied by (B) the Wharfage for LBC published in the Tariff on the first day of the third month such quarter. The Company shall make the LBC Deficit Payment for any Operational Quarter of the Operational Period to the Authority within forty-five (45) days after the Company’s receipt of the Authority’s invoice for any such LBC Deficit Payment. If the Company fails to make an LBC Deficit Payment when due, the Authority shall have the right to draw upon the Letter of Credit any time thereafter an amount equal to such LBC Deficit Payment and apply the proceeds thereof to the payment of such LBC Deficit Payment.

(e) Subject to the terms and conditions of this Agreement, the Company guarantees that it or its Affiliates will pay the Authority at least the Guaranteed Payment Amount for GM Liquid Bulk Cargo loaded to or discharged from Vessels at the Ship Dock during the first seven (7) Operational Years.

(f) If the Guaranteed Payment Amount has not been paid in full by the end of the first seven (7) Operational Years, the Company shall pay to the Authority the Guaranteed Payment Deficit within ten (10) days after the Company’s receipt of the Authority’s invoice for the Guaranteed Payment Deficit. If the Company fails to pay the Guaranteed Payment Deficit to the Authority when due, the Authority shall have the right to draw upon the Letter of Credit any time thereafter an amount equal to the Guaranteed Payment Deficit (or the full amount of the Letter of

Credit at that time, if less) and apply the proceeds thereof to the payment of the Guaranteed Payment Deficit. The Company's obligation to pay the Guaranteed Payment Deficit pursuant to this Agreement is a continuing obligation of the Company and this obligation shall not terminate until the full amount of the Guaranteed Payment Deficit has been paid notwithstanding the fact that this Agreement may have been terminated.

(g) If this Agreement terminates during the first seven (7) Operational Years before the Guaranteed Payment Amount has been paid in full, the Company shall pay to the Authority the Guaranteed Payment Deficit within ten (10) days after the Company's receipt of the Authority's invoice for the Guaranteed Payment Deficit. If the Company fails to pay the Guaranteed Payment Deficit to the Authority when due, the Authority shall have the right to draw upon the Letter of Credit any time thereafter an amount equal to the Guaranteed Payment Deficit (or the full amount of the Letter of Credit at that time, if less) and apply the proceeds thereof to the payment of the Guaranteed Payment Deficit. The Company's obligation to pay the Guaranteed Payment Deficit pursuant to this Agreement is a continuing obligation of the Company and this obligation shall not terminate until the full amount of the Guaranteed Payment Deficit has been paid notwithstanding the fact that this Agreement shall have been terminated.

(h) The covenants of this Section 6.01 are a material inducement to each of the Authority's and the Company's willingness to enter into this Agreement.

**Section 6.02 Records.**

Company shall keep and maintain a complete and accurate set of books and records showing all GM Liquid Bulk Cargo loaded or unloaded at the Ship Dock in order that Authority may ascertain therefrom the Actual LBC Throughput for each Operational Quarter of the Operational Period. Such books and records shall be subject to inspection by Authority, its agents and attorneys at any reasonable time.

**Section 6.03. Place of Payment**

All LBC Deficit Payments shall be (i) made by electronic transfer to an account to be designated by Authority, (ii) delivered to the Authority's administrative offices at 222 Power Street, Corpus Christi, Texas, or such other physical address as Authority may designate from time to time, or (iii) mailed to Authority, Attention: Executive Director, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other mailing address as Authority shall designate in writing. All such payments must be paid in legal tender of the United States of America without notice, demand, abatement, deduction or offset, except as otherwise provided herein.

**ARTICLE 7  
EVENTS OF DEFAULT AND REMEDIES**

**Section 7.01 Default by the Company.**

An "Event of Default" by the Company shall occur:

(1) if the Company fails to pay any LBC Deficit Payment when due, and any such default shall continue for thirty (30) days after the receipt of written notice thereof by the Company; or

(2) if the Company fails in any material respect to keep, perform, or observe any material non-monetary covenant, condition, agreement, or obligation under this Agreement that is to be kept, performed or observed by Company, and shall fail to cure, correct or remedy such non-monetary failure within forty-five (45) days after Company has received written notice specifying such non-monetary failure, unless such non-monetary failure cannot be cured with due diligence within such period of forty-five (45) days, in which case such non-monetary failure shall not be deemed to continue if the Company proceeds with due diligence to cure the failure and diligently completes the curing thereof; or

(3) if the Company shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (hereinafter collectively called "**Bankruptcy Laws**"), or if the Company shall (i) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, or liquidator (or other similar official under Bankruptcy Laws) of the Company or of any substantial portion of the Company's property; (ii) admit in writing its inability to pay its debts generally as they become due; (iii) make a general assignment for the benefit of its creditors; (iv) file a petition commencing a voluntary case under or seeking to take advantage of any Bankruptcy Law; or (v) acquiesce in writing to, any petition commencing an involuntary case against the Company pursuant to any Bankruptcy Law; or

(4) if an order for relief against the Company shall be entered in any involuntary case under the Federal Bankruptcy Code or any similar order against the Company shall be entered pursuant to any other Bankruptcy Law, or if a petition commencing an involuntary case against the Company or proposing the reorganization of the Company under the Federal Bankruptcy Code shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within ninety (90) days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (i) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the Company, (ii) the appointment of a receiver, custodian, trustee, or liquidator (or other similar official under Bankruptcy Laws) of the Company or of any substantial portion of the Company's property, or (iii) any similar relief as to the Company pursuant to any Bankruptcy Law, and any such proceeding or case shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for ninety (90) days.

**Section 7.02 Remedies of Authority.**

(a) If an Event of Default occurs and is continuing, then Authority may, at any time thereafter prior to the curing thereof and without waiving any other remedies available to Authority (Authority's remedies being cumulative), terminate this Agreement effective as of the date the Company receives the notice of termination ("**Termination Date**").



(b) Should the Authority terminate this Agreement due to an Event of Default occurring before the Guaranteed Payment Amount has been paid in full, the Company shall pay to the Authority the Guaranteed Payment Deficit within ten (10) days after the Company's receipt of the Authority's invoice for the Guaranteed Payment Deficit. If the Company fails to pay the Guaranteed Payment Deficit to the Authority when due, the Authority shall have the right to draw upon the Letter of Credit any time thereafter an amount equal to the Guaranteed Payment Deficit (or the full amount of the Letter of Credit at that time, if less) and apply the proceeds thereof to the payment of the Guaranteed Payment Deficit. The Company hereby acknowledges that, but for this provision, the Authority would not have entered into this Agreement. The Authority hereby acknowledges and agrees that (i) termination of this Agreement, and (ii) collection of any Guaranteed Payment Deficit (either directly from the Company or by making a draw on the Letter of Credit) shall be the Authority's sole and exclusive remedies for any Event of Default by the Company under this Agreement occurring before the Guaranteed Payment Amount is paid in full. The Company's obligation to pay the Guaranteed Payment Deficit pursuant to this Agreement is a continuing obligation of the Company and this obligation shall not terminate until the full amount of the Guaranteed Payment Deficit has been paid notwithstanding the fact that this Agreement shall have been terminated.

(c) Should the Authority terminate this Agreement due to an Event of Default occurring after the Guaranteed Payment Amount has been paid in full, the Company shall pay to the Authority the accrued but unpaid LBC Deficit Payment(s), if any, as of the Termination Date within ten (10) days after the Company's receipt of the Authority's invoice for such LBC Deficit Payment(s). If the Company fails to pay the unpaid LBC Deficit Payment(s) to the Authority when due, the Authority shall have the right to enforce the payment of the unpaid LBC Deficit Payment(s) by any method provided by law or equity. The Authority hereby acknowledges and agrees that (i) termination of this Agreement, and (ii) collection of the accrued but unpaid LBC Deficit Payment(s) as of the Termination Date shall be the Authority's sole and exclusive remedy for any Event of Default by the Company under this Agreement occurring after the Guaranteed Payment Amount has been paid in full. The Company's obligation to pay the accrued but unpaid LBC Deficit Payments as of the Termination Date pursuant to this Agreement is a continuing obligation of the Company and this obligation shall not terminate until the full amount of such LBC Deficit Payment(s), if any, has been paid notwithstanding the fact that this Agreement shall have been terminated.

**Section 7.03 No Waiver.**

**Any assent, expressed or implied, by the Authority or Company to any breach of any agreement, covenant or obligation contained in this Agreement shall operate as such only in the specific instance, and shall not be construed as an assent or a waiver to any such agreement, covenant or obligation generally or of any subsequent breach thereof. The remedies provided herein or at law or equity shall not be mutually exclusive.**

**Section 7.04. Default by Authority.**

(a) Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless Authority shall have failed to correct any such default within forty-five (45) days following receipt of written notice from Company to Authority, properly

specifying any obligations Authority has failed to perform. If Authority fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Agreement that are to be kept, performed or observed by Authority, and if Authority fails to remedy the same within forty-five (45) days after Authority has been given a written notice specifying such failure, then in such event an “**Actionable Authority Default**” shall be deemed to have occurred, unless such failure cannot be cured with due diligence within such period of forty-five (45) days, in which case such failure shall not be deemed to continue if the Authority proceeds with due diligence to cure the failure and diligently completes the curing thereof.

(b) If an Actionable Authority Default occurs and is continuing, then in such event the Company shall be entitled, at any time thereafter prior to the curing thereof and without waiving any other remedies available to the Company (Company’s remedies being cumulative), to (i) enforce the performance of this Agreement by any method provided by law or equity, (ii) a release from its obligation to make any LBC Deficit Payments, and (iii) the Authority’s prompt return of the Letter of Credit upon Company’s written request.

**ARTICLE 8  
GENERAL PROVISIONS**

**Section 8.01 Compliance.**

Company must comply with all federal, state and local laws, rules or regulations, including Authority’s Tariff 100-A, applicable to the operation or use of the Ship Dock. Company must comply with the requirements of Item 669 of Authority’s Tariff to the extent the same apply to Company, its agents, servants and employees.

**Section 8.02 No Partnership; No Third Party Beneficiaries.**

The relationship between Authority and Company at all times shall remain solely that of Ship Dock owner and Ship Dock user, and not be deemed a partnership or joint venture. This Agreement is for the sole benefit of Authority and Company and no other person, entity or third party unless the benefit to a person, entity or third party is expressly stated in this Agreement.

**Section 8.03 Parties Bound.**

This Agreement binds and inures to the benefit of the Parties and their respective legal representatives, heirs, distributees, successors and assigns where assignment is permitted by this Agreement.

**Section 8.04 Applicable Law.**

**This Agreement must be construed and its performance enforced under Texas law. Venue of any action arising out of this Agreement will be in Nueces County, Texas.**

**Section 8.05 Severability.**

If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

**Section 8.06 Time of Essence.**

Time is of the essence with respect to each date or time specified in this Agreement by which an event is to occur.

**Section 8.07 Rights and Remedies Cumulative.**

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. All the rights and remedies may be exercised and enforced concurrently or whenever occasion for the exercise arises.

**Section 8.08 Attorneys' Fees.**

In the event of a breach or default based upon any of the terms of this Agreement and the Parties employ an attorney to protect or enforce their rights hereunder, then the prevailing Party will be paid its reasonable attorneys' fees by the losing Party.

**Section 8.09 Public Disclosure.**

Authority is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Public Information Act (Texas Government Code, chapters 551 and 552), and as such Authority is required to disclose to the public (upon request) this Agreement and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, Company agrees that the disclosure of this Agreement or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Authority as required by the Texas Open Meetings Act, Texas Public Information Act or any other law will not expose Authority (or any party acting by, through or under Authority) to any claim, liability or action by Company. Authority shall provide immediate notice to Company of any open records request and allow Company to seek protective order within the statutory time limits. In the event that Authority is requested to disclose any information regarding the Company or the transactions contemplated hereby which can be withheld under the Texas Public Information Act, Authority will provide the Company with prompt prior notice so that the Company may seek a protective order or other appropriate remedy and/or waive the right to have the information withheld.

**Section 8.10 Authorization.**

The person executing this Agreement on behalf of the Company personally warrants and represents unto Authority that (a) (if applicable) Company is a duly organized and existing legal entity, in good standing in the state of Delaware, and is fully qualified to transact business in the State of Texas, (b) Company has full right and authority to execute, deliver and perform this Agreement, (c) the person executing this Agreement on behalf of Company was authorized to do so, and (d) upon request of Authority, such person will deliver to Authority reasonable satisfactory evidence of his or her authority to execute this Agreement on behalf of Company.

**Section 8.11 Recording.**

Neither this Agreement (including any exhibit hereto) nor any memorandum of it may be recorded without the prior written consent of Authority.

**Section 8.12 Interpretation.**

Both Authority and Company and their respective legal counsel have reviewed and have participated in the preparation of this Agreement. Accordingly, no presumption will apply in favor of either Authority or Company in the interpretation of this Agreement or in the resolution of the ambiguity of any provision hereof. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. Reference to this Agreement means this Agreement as amended or modified and in effect for time to time in accordance with the terms thereof.

**Section 8.13 Force Majeure.**

No failure or omission by the Company or the Authority, in the performance of any obligation under this Agreement, except the Company's failure to make LBC Deficit Payments when due, shall be considered a breach of this Agreement or create any liability for damages if and to the extent such failure or omission shall arise from any cause or causes beyond the reasonable control of the Party claiming suspension, and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, and which wholly or partially prevents or delays such Party's performance of its obligations under this Agreement, including any of the foregoing which satisfy the foregoing criteria: acts of God, earthquakes, fires, tornadoes, named storms, hurricanes, floods, wars (whether or not affecting the United States of America), service interruptions involving a pipeline, rebellions, insurrections, riots, explosions, strikes, lockouts, criminal acts, terrorism, transportation embargoes, and the necessity for compliance with rules, regulations, or orders of any governmental authority (excepting the Authority) ("*force majeure*").

In the event the Company or the Authority is rendered unable, in whole or in part, by *force majeure* to carry out its obligations under this Agreement, it is agreed that upon such Party's giving notice, with reasonably full particulars of such *force majeure*, in writing to the other Party within forty-eight (48) hours after the occurrence of the cause relied upon, the obligations of the Party giving such notice, so far as the obligations are affected by such *force majeure*, shall be suspended during the continuance of any inability caused by the *force majeure* event, but no longer, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

**Section 8.14 Contractual Relationship.**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Authority or Company.

**Section 8.15 Transfer or Assignment.**

(a) Neither this Agreement nor any of the rights and obligations hereunder may be transferred or assigned, in whole or in part, by either of the Parties without the prior written consent of the other Party, except as set forth in Section 8.15(b) or Section 8.15(c). Each Party agrees not to unreasonably withhold its consent to a transfer or an assignment of this entire Agreement to any other party; *provided, that,*

(i) if the Company's obligation to maintain the Letter of Credit is still in effect at the time of such proposed transfer or assignment, the Port Commission shall be entitled to refuse consent to the proposed transfer or assignment if the Port Commission is not reasonably satisfied that the Letter of Credit then in effect (A) will remain in effect in accordance with its terms following the proposed transfer or assignment, or (B) will be replaced with a new letter of credit conforming to the requirements of Article 5, which will remain in effect following the proposed transfer or assignment; or

(ii) if the Company's obligation to maintain the Letter of Credit is no longer in effect at the time of such proposed transfer or assignment, the Port Commission shall be entitled to refuse consent to the proposed transfer or assignment if the Port Commission is not reasonably satisfied with the creditworthiness or credit support of the transferee or assignee proposed by Company.

(b) Notwithstanding anything to the contrary contained herein, the Company shall be entitled, upon notice to the Authority, but without the Authority's consent, to pledge or assign its rights and interests in this Agreement to any lender as security in connection with any financing transaction for the benefit of the Company or any of its Affiliates.

(c) Notwithstanding anything to the contrary contained herein, the Company shall be entitled, upon notice to Authority, but without Authority's or the Port Commission's consent, to transfer or assign all (but not less than all) of its rights and interests in this Agreement to (1) any party that acquires all or substantially all of Company's assets and the Company Facilities and that assumes in writing all of Company's obligations under this Agreement, or (2) any party into or with which Company is merged or consolidated (whether or not Company is the surviving entity in such merger), subject to the following conditions:

(i) at the time of the transfer or assignment no Event of Default is continuing;

(ii) the Company delivers a copy of the instrument or instruments of transfer or assignment of this Agreement to the Authority within ten (10) days after the date of sale, merger or consolidation, as the case may be;

(iii) the Company delivers an original instrument of assumption by the transferee or assignee of all of the Company's obligations under this Agreement to the Authority within ten (10) days after the date of sale, merger or consolidation, as the case may be; and

(iv) if the Company's obligation to maintain the Letter of Credit will still be in effect at the time of such transfer or assignment, the Company delivers or causes to be

delivered to the Authority prior to the transfer or assignment (A) reasonable assurance that the Letter of Credit will remain in effect in accordance with its terms following the transfer or assignment, which assurance may be in the form of an opinion of counsel to the issuer of the Letter of Credit addressed to the Authority, or (B) a replacement letter of credit conforming to the requirements of Article 5, which will remain in effect following the transfer or assignment.

(d) Any permitted transfer or assignment of this Agreement by the Company under Section 8.15(a) or Section 8.15(c), unless the transfer or assignment is by merger or consolidation and the Company is the surviving entity in such merger or consolidation, shall result in a complete release of the Company from its obligations under this Agreement.

**Section 8.16 Notices.**

Any notice, request or other communication under this Agreement shall be given in writing and shall be delivered by certified mail or by nationally recognized overnight carrier. Any such notice shall be deemed to have been received on the date of the receipt thereof by the receiving party. All notices delivered hereunder shall be made to respective parties at the address specified below:

Port of Corpus Christi Authority  
of Nueces County, Texas  
P. O. Box 1541  
Corpus Christi, Texas 78403  
Attention: Executive Director

Gravity Midstream Corpus Christi, LLC  
11 Greenway Plaza, Suite 2950  
Houston, Texas 77046  
Attention: Mr. J. David Hubenak, Vice President and General Counsel

**Section 8.17 Entire Agreement; Survival.**

(a) This Agreement, including any exhibits, constitutes the Parties' final and mutual agreement with respect to the particular subject matter of this Agreement. There are no written or oral representations or understandings with respect to the particular subject matter of this Agreement that are not fully expressed in this Agreement. No change, waiver or discharge of this Agreement is valid unless it is contained in a writing that is signed by the Party against whom it is sought to be enforced.

(b) Termination or expiration of this Agreement shall not affect the rights and obligations of either Party that may have accrued prior to the date of termination or expiration. Without limiting the generality of the foregoing, the provisions of Section 3.02(c), Article 4, Section 5.01(b), Section 7.02(b), and Section 7.02(c), as well as all rights and obligations with respect to any amounts that remain unpaid under this Agreement as of the date of termination or expiration, shall survive the termination or expiration of this Agreement. Furthermore, all other obligations in this Agreement which by their nature continue beyond the Term of this Agreement, shall survive the expiration or termination of this Agreement.

**Section 8.18 Recitals.**

The Recitals are incorporated into this Agreement by reference, as if fully set forth herein at length, and shall be considered terms of this Agreement.

**Section 8.19 Dispute Resolution**

In the event a dispute arises between the Parties regarding the application or interpretation of, or in any way relating to, this Agreement, the Parties agree to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner. If the Parties shall have failed to resolve the dispute within the ten (10) Business Days after any written notice of the dispute has been received by the other Party, then either Party may elect to refer the dispute to the respective upper management of the Parties by notice in writing to the other Party, and the appropriate upper management of the Parties shall meet within the ten (10) Business Days after the date of the notice, to resolve the dispute. If the dispute is not resolved within five (5) Business Days after such a meeting has commenced (but in any event within ten (10) Business Days after the date of the letter referring the matter to upper management), then either Party may at any time thereafter resort to mediation, under the provisions of Section 8.20.

**Section 8.20 Mediation.**

Authority and Company agree they will, before taking any other legal action, including the filing of an action in State or Federal Court, attempt in good faith, to mediate in Corpus Christi, Texas, any controversy or claim arising out of or related to this Agreement before a mediator to be agreed upon by Authority and Company; provided, however, that nothing in this Section shall prevent the Authority from drawing on the Letter of Credit in accordance with the terms of this Agreement and the Letter of Credit even if the Company disputes the right of the Authority to do so. Authority and Company must agree upon a mediator within fifteen (15) days after a written request for mediation by either Party. If the Parties cannot agree on the appointment of a mediator within fifteen (15) days, either Party may request that the American Arbitration Association appoint a mediator and such appointment will be final. The mediator will schedule a mediation meeting at a time and place determined by the mediator. Authority and Company will each pay one-half of the costs of mediation to the mediator. Any mediation shall not extend beyond thirty (30) days after the appointment of the mediator, and should the Parties fail to resolve any dispute by mediation within such 30-day period, the Parties shall have all rights available at law or in equity.

**Section 8.21 Declaration.**

For informational purposes only to assist in the administration of this Agreement, the Authority and Company hereby agree to execute a Declaration (“**Declaration**”), in substantially the form attached hereto as **Exhibit C**, to confirm the date on which Commencement of Commercial Operations occurs, and the Commencement Date, no later than five (5) Business Days following the first date that all of this information is known.

*[Signature page follows this page]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate originals, each of which shall be deemed to be an original, as of the dates provided below each signature, to be effective, however, for all purposes as of the Effective Date.

**Port of Corpus Christi Authority of  
Nueces County, Texas**

By: \_\_\_\_\_  
John P. LaRue, Executive Director

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

**Gravity Midstream Corpus Christi, LLC**

By: \_\_\_\_\_  
Arthur J. Brass, President

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

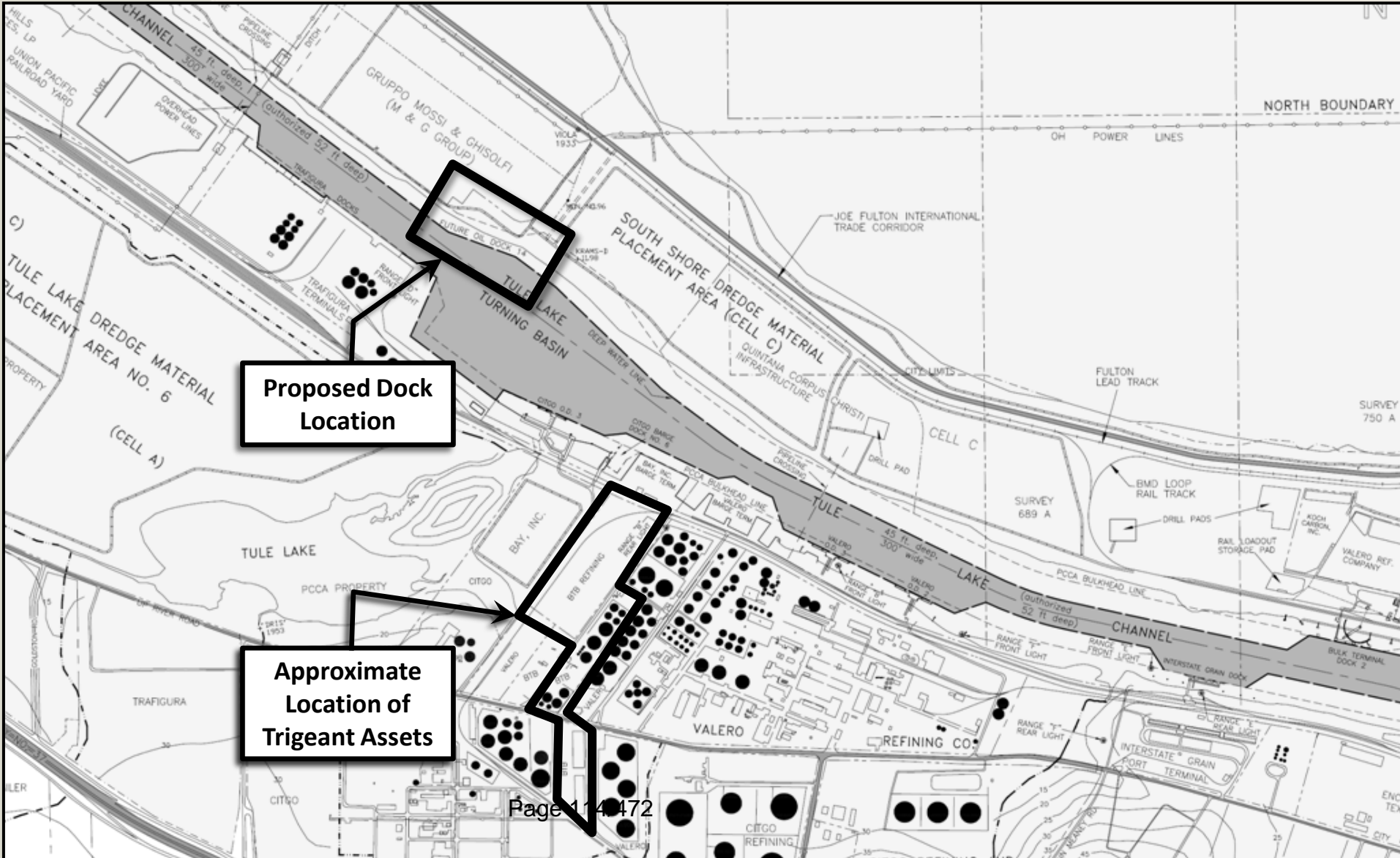


**EXHIBIT A**  
**LOCATION OF THE PUBLIC OIL DOCK NO. 14**



# EXHIBIT A

## Location of the Public Oil Dock No. 14

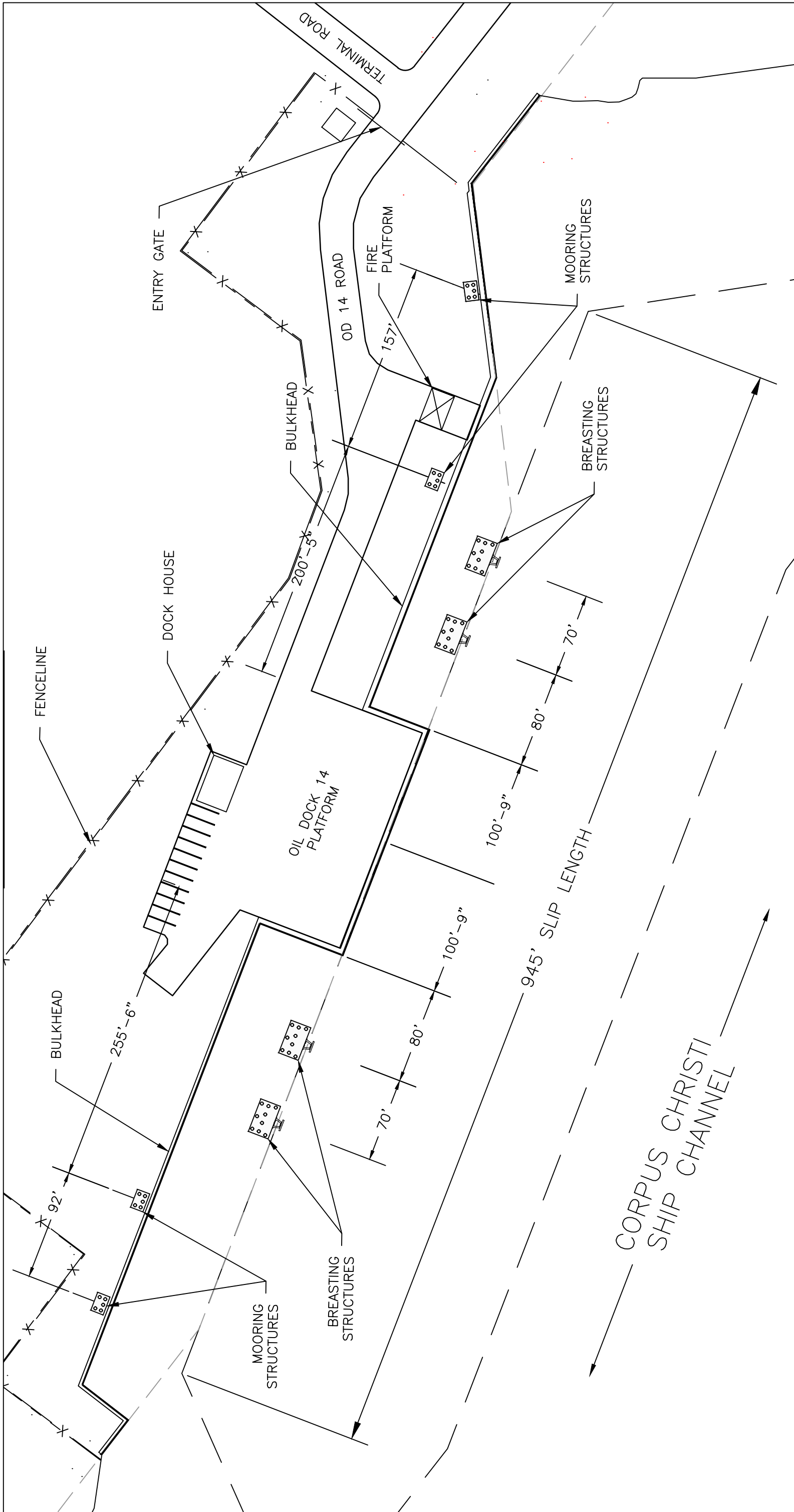


**Proposed Dock Location**

**Approximate Location of Trigeant Assets**

**EXHIBIT B**  
**DRAWING OF THE PUBLIC OIL DOCK NO. 14**  
**AND ADJACENT SLIP**

# EXHIBIT B



h:\ben vasquez\drawings & exhibits\oil docks\od 14\mooring structures 3 & 4.dwg



PORT CORPUS CHRISTI

PORT OF CORPUS CHRISTI AUTHORITY

OIL DOCK 14

EXHIBIT "B"

SCALE: 1:80'  
DWN. BY: BLV

DATE: 2015/06/10  
TIME: 08:40:12

**EXHIBIT C**

**DECLARATION REGARDING CERTAIN INFORMATION RELATING TO  
THE DOCK USE AGREEMENT BETWEEN  
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
AND GRAVITY MIDSTREAM CORPUS CHRISTI, LLC**

This Declaration is made this \_\_\_ day of \_\_\_\_\_, 201\_\_ (“*Declaration Date*”), pursuant to that certain Construction, Payment and Use Agreement between Port of Corpus Christi Authority of Nueces County, Texas (“*Authority*”) and Gravity Midstream Corpus Christi, LLC (“*Company*”), made effective as of the \_\_\_ day of \_\_\_\_\_, 2015 (the “*Agreement*”). Capitalized terms in this Declaration shall have the meanings ascribed to those terms under the provisions of the Agreement, except as provided herein.

Now therefore, pursuant to Section 8.21 of the Agreement, the Authority and Company hereby declare as follows:

- (a) Commencement of Commercial Operations occurred on \_\_\_\_\_, 201\_\_; and
- (b) the Commencement Date is \_\_\_\_\_, 201\_\_.

IN WITNESS WHEREOF, the Parties have caused this Declaration to be executed by their duly authorized offices effective as of the Declaration Date.

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
John P. LaRue, Executive Director

**GRAVITY MIDSTREAM CORPUS CHRISTI, LLC**

By: \_\_\_\_\_  
Arthur J. Brass, President

**EXHIBIT D**  
**INSURANCE COVERAGES TO BE  
PROVIDED BY THE CONTRACTORS  
FOR COMPANY**

The Company will require its Contractor(s) to provide the following insurance coverage on and in connection with the installation of the Company Facilities:

- A. Workers Compensation Insurance (Coverage A) for statutory requirements including protection for liability under the Federal Longshoremen's Harbor Workers' Compensation Act.
- B. Employers Liability Insurance (Coverage B) with limits of not less than \$5,000,000 per occurrence. Coverage B will provide coverage for liability under the Jones Act, Death on the High Seas Act, and General Maritime Law for all employees or all employees except members of the crew of vessels if full crew liabilities are covered by limits under the Protection and Indemnity policies. Such Maritime Coverage will include protection against the liability of employer to provide transportation wages, maintenance and cure to any maritime employees. Coverage B will be amended to provide that a claim "*in rem*" will be treated as a claim against the employer.
- C. Comprehensive General Liability Insurance including Contractual Liability covering obligations assumed herein with limits of not less than \$5,000,000 including an endorsement for sudden and accidental environmental impairment liability. If waterborne craft or vessels are to be used, the watercraft exclusion endorsement must be deleted from the policy. Authority and Company will be named as additional insureds; and by endorsement, underwriters will agree to waive subrogation against Authority and Company.

Authority shall be furnished by Company prior to each Contractor commencing any work, as proof of the insurance policies (the "**Policies**") required of Contractor, a certificate or certificates of insurance (and the endorsements required in this paragraph shall be attached to the certificate or certificates of the insurance) describing the Policies, which certificates must be approved by, and on file with, the Texas Insurance Commission, and must be reasonably acceptable in their content, to Authority and Company. Each of the Policies will be endorsed to (a) (except for Workers' Compensation and employer's liability insurance) name Authority, its Port Commissioners, officers, officials, employees and agents as an additional insured, (b) provide that it will not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days' prior written notice to Authority, and (c) provide that notwithstanding any language in any policy of insurance held by Company ("**Company Insurance**") to the effect that the Company Insurance is primary, the policy or policies held by Contractor are primary coverage and the Authority Insurance is non-contributory.

Contractor shall deliver to Authority and Company certificates of renewal at least thirty (30) days prior to the expiration date of each of the Policies and copies of new policies at least thirty (30) days prior to terminating any of the Policies. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to

Authority and Company if either exceeds \$50,000.00; and, in such event, Authority may decline to approve this Contractor's contract without any liability to Contractor. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority or Company may procure such insurance at Contractor's expense, and Authority or Company is entitled to reimbursement from Contractor for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Contractor receives Authority's or Company's notice of payment until reimbursement.

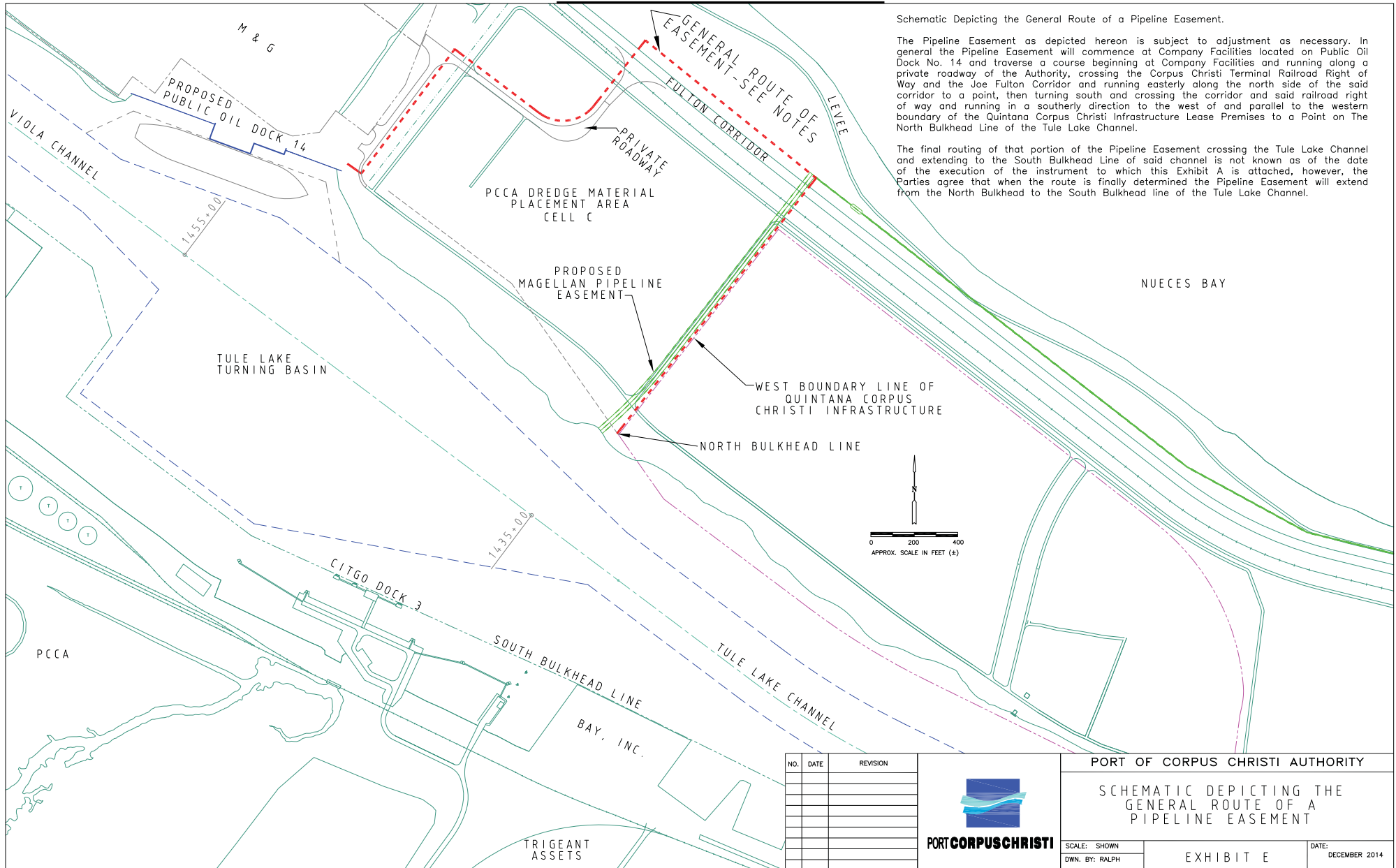
END OF EXHIBIT D

**EXHIBIT E**

**[ PIPELINE EASEMENT ROUTING SCHEMATIC ]**



# EXHIBIT E



Schematic Depicting the General Route of a Pipeline Easement.

The Pipeline Easement as depicted hereon is subject to adjustment as necessary. In general the Pipeline Easement will commence at Company Facilities located on Public Oil Dock No. 14 and traverse a course beginning at Company Facilities and running along a private roadway of the Authority, crossing the Corpus Christi Terminal Railroad Right of Way and the Joe Fulton Corridor and running easterly along the north side of the said corridor to a point, then turning south and crossing the corridor and said railroad right of way and running in a southerly direction to the west of and parallel to the western boundary of the Quintana Corpus Christi Infrastructure Lease Premises to a Point on The North Bulkhead Line of the Tule Lake Channel.

The final routing of that portion of the Pipeline Easement crossing the Tule Lake Channel and extending to the South Bulkhead Line of said channel is not known as of the date of the execution of the instrument to which this Exhibit A is attached, however, the Parties agree that when the route is finally determined the Pipeline Easement will extend from the North Bulkhead to the South Bulkhead line of the Tule Lake Channel.

NO.	DATE	REVISION



<b>PORT OF CORPUS CHRISTI AUTHORITY</b>	
SCHEMATIC DEPICTING THE GENERAL ROUTE OF A PIPELINE EASEMENT	
SCALE: SHOWN DWN. BY: RALPH	DATE: DECEMBER 2014
EXHIBIT E	

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 14***

**Consent to the Location and Terms of a Power Line Easement to be Granted by Mossi & Ghisolfi Logistics Co. (“M&G”) to AEP Texas Central Company on Property PCCA is Buying from M&G, and Authorize the Executive Director to Execute the Consent and all Other Documents Necessary to Close the Purchase of the Property**

In accordance with the Purchase and Sale Agreement negotiated between Mossi & Ghisolfi Logistics Co. (M&G) and the PCCA, as amended and effective as of May 29, 2015, before closing on the transaction the PCCA must provide written consent as to the location and terms of a power line easement that M&G is granting to AEP Texas Central Company on the property being purchased.

At the time of writing (June 11, 2015), the easement between M&G and AEP is still under negotiation. However, it is possible that the easement could include an indemnity agreement that creates a significant contingent liability for the PCCA should PCCA purchase the property. PCCA’s general counsel does not believe the Executive Director has the authority to consent to the terms of the easement without Commission approval, if it includes an indemnity agreement that creates a significant contingent liability for the PCCA.

Staff will advise you of the status of the easement at the time of the meeting. If buying the M&G property subject to the easement would cause PCCA to assume a potentially material risk, counsel will apprise you of the particulars in executive session. Following the executive session, you will be asked to decide whether or not to consent to the easement. All of this could become moot, however, if by the time of the meeting M&G and AEP have agreed to an easement that does not contain an indemnity which PCCA must assume.

If the Commission consents to the terms of the easement, staff further recommends that the Executive Director be authorized to execute the consent and the other closing documents described in the Purchase and Sale Agreement and any and all additional certificates, documents or other papers he deems necessary or appropriate to close the PCCA’s purchase of the property.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com).

**FIRST AMENDMENT  
TO  
PURCHASE AND SALE AGREEMENT**  
(M&G LE sale of Tracts A & B out of Tract II to Port of Corpus Christi)

---

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made and executed to be effective as of May 29, 2015 by and between Mossi & Ghisolfi Logistics Co., as seller ("Seller"), and Port of Corpus Christi Authority of Nueces County, Texas, as purchaser ("Purchaser").

**RECITALS:**

A. Seller and Purchaser are parties to that certain Purchase and Sale Agreement with an Effective Date of May 19, 2015 (as hereby amended, the "Contract"), relating to the purchase and sale of two tracts of land, being a 9.2 acre tract of land (Tract A) and a 108.589 acre tract of land (Tract B), both located along the north side of the Fulton International Corridor in the North Tule Lake Area of Corpus Christi, Nueces County, Texas, and as being more particularly described in the Contract the ("Property")

B. Any capitalized terms used but not defined in this Amendment shall have the same meaning given to such term in the Contract.

C. Seller and Purchaser desire to amend the Contract as more particularly set forth below.

**AGREEMENTS:**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the agreements set forth in the Contract and in this Amendment, the parties hereto agree as follows:

1. Due Diligence Expiration Date Extension. The term Due Diligence Expiration Date as defined in Section 1.1 of the Contract shall be amended as follows for all purposes:

**"Due Diligence Expiration Date"** means 5:00 p.m. CDT on the later of the date that is 30 days after the Effective Date or the Closing Date (as defined in Section 4.1 below).

2. Closing Extension. Section 4.1 of the Contract is hereby entirely deleted and fully replaced with the following provision in order to the extend the Closing Date as follows:

**"Section 4.1 Time and Place; Automatic Termination.** Closing of the transaction contemplated by this Contract ("Closing") shall be held at the Title Company's office in Corpus Christi, Texas, on or before **June 26, 2015** or such other date as the Parties may agree to in writing ("Closing Date").

3. General Terms.

a. Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

b. Defined Terms. Capitalized terms used herein but not defined herein shall have the meanings given to them in the Contract.

- c. Multiple Signatures. This Amendment may be executed in multiple counterparts which, when combined together, shall constitute an original of this Amendment. In addition, facsimile signatures or PDF signatures (sent by e-mail) of the parties shall be effective on all counterparts of this Amendment.
- d. Amendment Controls. This Amendment, together with the Contract, embodies the entire agreement of the parties hereto. The Contract, as amended hereby, can only be further modified or varied by written instrument subscribed to by all the parties hereto.
- e. Contract Ratification. All terms and conditions of the Contract not specifically amended hereby are hereby ratified, confirmed, and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

**SELLER:**

Mossi & Ghisolfi Logistics Co.,  
a Delaware corporation

By: RD Crooks  
Robert D. Crooks, as President

**PURCHASER:**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
JOHN P. LARUE, Executive Director

- c. Multiple Signatures. This Amendment may be executed in multiple counterparts which, when combined together, shall constitute an original of this Amendment. In addition, facsimile signatures or PDF signatures (sent by e-mail) of the parties shall be effective on all counterparts of this Amendment.
- d. Amendment Controls. This Amendment, together with the Contract, embodies the entire agreement of the parties hereto. The Contract, as amended hereby, can only be further modified or varied by written instrument subscribed to by all the parties hereto.
- e. Contract Ratification. All terms and conditions of the Contract not specifically amended hereby are hereby ratified, confirmed, and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

**SELLER:**

Mossi & Ghisolfi Logistics Co.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert D. Crooks, as President

**PURCHASER:**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
JOHN P. LARUE, Executive Director

San Jacinto GF # 150229668

**PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

**PORT OF CORPUS CHRISTI AUTHORITY OF  
NUECES COUNTY, TEXAS (as "Purchaser")**

**AND**

**MOSSI & GHISOLFI LOGISTICS CO. (as "Seller")**

Dated: May 19, 2015



TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS... 1
Section 1.1 - Certain Definitions ... 1
Section 1.2 - Other Definitions ... 6
Section 1.3 - Construction ... 6
ARTICLE 2 - PURCHASE AND SALE ... 6
Section 2.1 - Contract to Buy and Sell... 6
Section 2.2 - Purchase Price ... 6
Section 2.3 - Interest on Down Payment ... 7
Section 2.4 - Escrow Agreement ... 7
ARTICLE 3 - TITLE AND CONDITION; SURVEY; PURCHASER'S DUE DILIGENCE REVIEW ... 8
Section 3.1 - Due Diligence Review; Title and Environmental Objections ... 8
Section 3.2 - State of Title ... 12
Section 3.3 - Condition of Property ... 12
Section 3.4 - Title Insurance ... 13
Section 3.5 - Indemnification of Seller ... 13
Section 3.6 - Confidential Information ... 13
Section 3.7 - Due Diligence Materials and Documents ... 14
ARTICLE 4 - CLOSING ... 14
Section 4.1 - Time and Place; Automatic Termination ... 14
Section 4.2 - Settlement at Closing ... 14
ARTICLE 5 - APPORTIONMENTS AND ALLOCATION OF EXPENSES ... 15
Section 5.1 - Apportionments ... 15
Section 5.2 - Apportionment of Other Costs ... 15
Section 5.3 - Insurance Policies; Property Taxes ... 16
Section 5.4 - Closing Statements ... 16
Section 5.5 - Survival of Obligations ... 16
ARTICLE 6 - REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGMENTS ... 16
Section 6.1 - Seller's Representations and Warranties ... 16
Section 6.2 - Purchaser's Representations and Warranties ... 20
Section 6.3 - Disclaimer; Purchaser's Acknowledgments regarding Condition of the Property; Acceptance of the Property ... 21
ARTICLE 7 - COVENANTS ... 22
Section 7.1 - Approval of Contracts ... 22
Section 7.2 - Operation of Property Prior to Closing ... 22
Section 7.3 - No Encumbrances ... 22
Section 7.4 - Statements ... 23
Section 7.6 - Change in Seller's Representations or Warranties ... 23
Section 7.7 - Change in Purchaser's Representations or Warranties ... 23
Section 7.10 - Tract A Easement Reservation by Seller ... 23
ARTICLE 8 - CONDITIONS TO OBLIGATIONS OF SELLER AND PURCHASER ... 24
Section 8.1 - Conditions Precedent to Seller's Obligations to Close ... 24
Section 8.2 - Conditions Precedent to Purchaser's Obligations to Close ... 24
ARTICLE 9 - REMEDIES; STATUTORY NOTICES ... 25
Section 9.1 - Time Is of the Essence ... 25
Section 9.2 - Seller's Remedies ... 25
Section 9.3 - Purchaser's Remedies ... 26
ARTICLE 10 - MISCELLANEOUS ... 26
Section 10.1 - Broker ... 26

Handwritten signature

Section 10.2 - Next Business Day ..... 26  
Section 10.3 - Notices..... 26  
Section 10.4 - Assignment of Contract..... 27  
Section 10.5 - Entire Contract; Merger..... 27  
Section 10.6 - Interpretation ..... 27  
Section 10.7 - Choice of Law; Binding Effect..... 27  
Section 10.8 - Counterparts; Facsimile..... 28  
Section 10.9 - No Third Party Beneficiary ..... 28  
Section 10.10- Severability; Reformation ..... 28  
Section 10.11- Further Assurances ..... 28  
Exhibit "A" Depiction of Tracts A, B & C ..... 31  
Exhibit "B" Special Warranty Deed ..... 32  
Exhibit "C" Temporary Construction Easement..... 33  
Exhibit "D" Access and Utility Easement ..... 34  
Exhibit "E" Surface Site Lease and Option Agreement..... 35  
Exhibit "F" First Amendment to Lease Agreement..... 36  
Exhibit "G" Amendment to Rail Access Easement and License..... 37



PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT (the "Contract") dated this the \_\_\_\_ day of May, 2015 (the "Effective Date"), between (i) PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas ("Purchaser"), and (ii) Mossi & Ghisolfi Logistics Co., a Delaware corporation ("Seller"), and (iii) San Jacinto Title Services of Texas ("Title Company") which Title Company is executing this Contract for the purposes stated in Section 2.4 hereof.

RECITALS:

- A. WHEREAS, Seller owns Tract II (as defined in the Section 1.1 of this Contract); and
B. WHEREAS, Purchaser desires to purchase Tract A, being approximately 9.2 acres located within Tract II and as defined in Section 1.1 below, and Seller desires to sell Tract A to Purchaser according to the terms of this Contract; and
C. WHEREAS, Purchaser desires to purchase Tract B, being approximately 112 acres located within Tract II and as defined in Section 1.1 below, and Seller desires to sell Tract B to Purchaser according to the terms of this Contract.

NOW THEREFORE, for and in consideration of the mutual covenants, rights, and obligations set forth herein, the benefits to be derived therefrom, and other good and valuable consideration, the receipt and the sufficiency of which is hereby acknowledged, Purchaser and Seller, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Certain Definitions. Except as provided in Section 1.2 or unless the context requires otherwise, capitalized terms in this Contract shall have the meanings given them in this Section 1.1.

"AEP Power Facilities" means the new AEP Power Sub-Station Site and a new approximately 100-foot wide power line easement for the construction of a new double circuit aerial electrical transmission lines, and as defined in Section 7.8 below.

"AEP Power Sub-Station Site" means the up to 6.5 acre tract of land as depicted on Exhibit "A" attached hereto, which shall be conveyed to AEP Texas Central Company for the purpose of constructing and operating a new electrical power sub-station facility.

"Adjustment Date" shall have the meaning assigned to such term in Section 5.1.

"Business Day" or "Business Days" means any day calculated as a day other than a Saturday, Sunday, or any other day on which banking institutions in the State of Texas are closed for a bank holiday.

Handwritten signature or initials.

“**Closing**” shall have the meaning assigned to such term in Section 4.1.

“**Closing Date**” shall have the meaning assigned to such term in Section 4.1.

“**Closing Documents**” means the Transfer Documents and all other documents to be executed and delivered by the Parties in connection with the Closing.

“**Closing Statement**” shall have the meaning assigned to such term in Section 4.2(c).

“**Code**” shall have the meaning assigned to such term in Section 6.1(a)(iii).

“**Confidential Information**” shall have the meaning assigned to such term in Section 3.6.

“**Contract**” shall have the meaning assigned to it in the introductory paragraph of this Contract, including all exhibits attached hereto, and amendments thereto.

“**Cure Period**” shall have the meaning assigned to such term in Section 3.1(d).

“**Deed**” shall have the meaning assigned to such term in Section 4.2(a).

“**Down Payment**” shall have the meaning assigned to such term in Section 2.2(a).

“**Driscoll Pipeline Corridor**” shall mean the pipeline corridor created by that certain Designation of Pipeline Corridor with an effective date of July 22, 2002 and recorded under document number 2002056125 of the Official Public Records of Nueces County, Texas.

“**Due Diligence Expiration Date**” means 5:00 p.m. CDT on the later of the date that is 30 days after the Effective Date or the date on which a fully-executed counterpart of this Contract is deposited with the Title Company.

“**Due Diligence Materials**” means, to the extent they are within Seller’s possession or reasonable control on the Effective Date or thereafter prior to the Closing, all documents, reports and similar information relating to the Property, including without limitation: the most recent boundary surveys; the most recently available title commitments and title policies; environmental assessments and reports any jurisdictional determinations by the U.S. Army Corps of Engineers with respect to any portion of the Property); and Permits applicable to the Property, if any.

“**Due Diligence Review**” shall have the meaning assigned to such term in Section 3.1(a).

“**Effective Date**” shall have the meaning assigned to it in the introductory paragraph of this Contract.

“**Environmental Audit**” shall have the meaning assigned to such term in Section 3.1(e).

“**Environmental Law**” means any law relating to environmental conditions and industrial hygiene applicable to the Property, including, without limitation, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Endangered Species Act, the Safe Drinking Water Act, the Texas Water Code, the Texas Solid Waste Disposal Act, and all similar applicable federal, state and local environmental statutes, ordinances and the regulations, orders and decrees now or hereafter promulgated thereunder.

**“Environmental Objection Date”** shall have the meaning assigned to such term in Section 3.1(e).

**“Environmental Report”** shall have the meaning assigned to such term in Section 3.1(e).

**“Escrow Fee”** shall have the meaning assigned to such term in Section 2.4(e).

**“Fulton Corridor”** means the roadway known as the Joe Fulton International Trade Corridor which runs along the north side of the Corpus Christi Ship Channel in the Inner Harbor of the Port of Corpus Christi.

**“Hazardous Materials”** shall have the meaning assigned to such term in Section 6.1(b)(5).

**“Improvements”** means all buildings, fixtures, walls, fences, landscaping, infrastructure, utilities and related facilities, other structures, and improvements situated on, affixed to, or appurtenant to the Property.

**“Leases”** means, collectively, any leases under which a Person is leasing a portion of the Property.

**“Lien”** means any lien, judgment, mortgage, deed of trust, charge, option, contractual restriction on transfer, security interest, tax lien, pledge, encumbrance, conditional sale or title retention arrangement, or any other claim against the Property (or any portion thereof), as the case may be, or any agreement to create or confer any of the foregoing, in each case whether arising by agreement or under any statute, law, governmental ordinance, rule, regulation, decree, order, or requirement of any governmental authority now or hereafter existing or otherwise.

**“M&G Plant Site”** means any and all portions of the tracts of land described in that certain Special Warranty Deed dated March 19, 2013, as recorded under Document No. 2013010971 of the Official Records of Nueces County, Texas, which are located on the south side of the Fulton Corridor, save and except the Property.

**“New Title Objections”** shall have the meaning assigned to such term in Section 3.1(d).

**“Notice”** or **“Notices”** shall have the meanings assigned to such terms in Section 10.3.

**“OFAC”** shall have the meaning assigned to such term in Section 6.1(b)(xii).

“**Optional Survey Items**” shall have the meaning assigned to such term in Section 3.1(c).

“**Parties**” means Purchaser and Seller.

“**Party**” means Purchaser or Seller, as the case may be.

“**Permits**” means all permits (e.g., air, storm and water), licenses, and warranties held by Seller, or which Seller is entitled to receive, in connection with the ownership or operation of the Property or any applicable portion thereof to which reference is made.

“**Permitted Encumbrance**” and “**Permitted Encumbrances**” shall have the meanings assigned to such terms in Section 3.2.

“**Person**” means any person, entity or governmental authority of any nature whatsoever, specifically including an individual, firm, company, corporation, partnership, trust, joint venture, association, joint stock company, limited liability company, estate, unincorporated organization or other entity or organization.

“**Possession or reasonable control**” means, with respect to any Party, the legal right to obtain any relevant information or document, including, without limitation, the Due Diligence Materials.

“**Property**” means Tract A and Tract B, collectively, which together comprise approximately 105 acres of land, more or less, in Nueces County, Texas, together with all right, title and interest of Seller, if any and without any representations of warranties as to: (1) the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances in anywise appertaining thereto; and (2) all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, which adjoins Tract A or Tract B.

“**Property Condition Report**” shall have the meaning assigned to such term in Section 3.1(e).

“**Purchaser**” shall have the meaning assigned to it in the introductory paragraph of this Contract.

“**Purchaser’s Default**” shall have the meaning assigned to such term in Section 9.2.

“**Purchaser’s Title and Survey Objections**” shall have the meaning assigned to such term in Section 3.1(d).

“**Purchase Price**” shall have the meaning assigned to such term in Section 2.2.

“**Seller**” shall have the meaning assigned to it in the introductory paragraph of this Contract.

“**Survey**” shall have the meaning assigned to such term in Section 3.1(c).

“**Surviving Provisions**” means those rights, duties, or obligations expressly stated in this Contract to survive the expiration or termination of this Contract.

“**Title and Survey Objection Date**” shall have the meaning assigned to such term in Section 3.1(d).

“**Title Commitment**” shall have the meaning assigned to such term in Section 3.1(c).

“**Title Company**” shall have the meaning assigned to such term in the introductory paragraph of this Contract, and the contact information of the Title Company is as follows:

**Shelly Cristan-Grahmann**  
Vice President/Commercial Branch Manager  
San Jacinto Title Services of Texas  
520 Lawrence Street  
Corpus Christi, Texas 78401  
Phone: 361-884-7582  
Fax: 361-882-3702  
Email: [shellygrahmann@sanjacintotitle.com](mailto:shellygrahmann@sanjacintotitle.com)

“**Title Exception Documents**” shall have the meaning assigned to such term in Section 3.1(c).

“**Title Policy**” shall have the meaning assigned to such term in Section 3.4.

“**Total Termination Notice**” shall have the meaning assigned to such term in Section 3.1(b).

“**Tract A**” means the surface estate only in and to that certain tract of approximately 9.2 acres of real property, more or less, in Nueces County, Texas, which is generally depicted on **Exhibit A**, and the exact final acreage and dimensions of Tract A will be mutually agreed to between Seller and Purchaser by the Due Diligence Expiration Date, and which will by that date be more particularly described by a written metes and bounds legal description. The written metes and bounds legal description for Tract A will attached to and become part of this Contract for all purposes on the Due Diligence Expiration Date; provided, however, that Seller and Purchaser execute at closing the Driveway, Pipeline and Utility Bank Easement as hereinafter provided.

“**Tract B**” means that certain tract of approximately 108.589 acres of real property, more or less, **save and except** up to 6.5 acres of land to be used for a power sub-station by AEP (the “**AEP Sub-Station Site**”), in Nueces County, Texas, which is generally depicted on **Exhibit A**, and the exact final acreage and dimensions of Tract B will be mutually agreed to between Seller and Purchaser by the Due Diligence Expiration Date, and which will by that date be more particularly described by a written metes and bounds legal description. The written metes and bounds legal description for Tract B will attached to and become part of this Contract for all purposes on the Due Diligence Expiration Date.

“**Tract II**” means that certain 241.79 acres of land, more or less, situated on the north side of the Fulton Corridor in the North Tule Lake Area of Corpus Christi, Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1, and as being more particularly described in that certain Special Warranty Deed as recorded under Nueces County Clerk’s Document No. 2014049705 (the “**Tract II Deed**”).

“**Transfer Documents**” shall have the meaning assigned to such term in Section 4.2(a).

“**Wetlands Deed Restricted Tract**” means that certain 75.31 acres as more particularly described in the Tract II Deed and as depicted on **Exhibit A**.

**Section 1.2 Other Definitions.** Subject to Section 1.1, capitalized terms in this Contract which are not defined in Section 1.1, or are defined in Section 1.1 only by reference to later text, are defined in the later text of this Contract.

**Section 1.3 Construction.** Whenever the context requires, the gender of all words used in this Contract shall include the masculine, feminine, and neuter. Unless the context required otherwise, the singular number includes the plural number and vice versa. All references to Article(s) and Section(s), unless the context requires otherwise, are to article(s) and section(s) of this Contract, and all references to Exhibit(s), unless the context requires otherwise, are to exhibit(s) attached hereto, each of which is incorporated herein and made a part of this Contract for all purposes. The recitals are incorporated herein and made a part hereof.

**ARTICLE 2  
PURCHASE AND SALE**

**Section 2.1 Contract to Buy and Sell.** In consideration of the payment of the Purchase Price by Purchaser to Seller and for other good and valuable consideration (including, but not limited to, the mutual covenants contained in this Contract) and subject to and in accordance with the terms and conditions of this Contract, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the Property.

**Section 2.2 Purchase Price.**

(a) The purchase price for the Property (the “**Purchase Price**”) is approximately \$17,668,350.00, which is based on the unit price of \$150,000.00 per gross acre for the Property.

(b) The components of the Purchase Price are as follows:

(i)	Tract A:	\$ 1,380,000.00 (based on 9.2 acres)
(ii)	<u>Tract B:</u>	<u>\$ 16,288,350.00 (based on 108,589 acres)</u>
	TOTALS:	\$ 17,668,350.00 (based on total of 117.789 acres)

(c) If the Purchaser’s Survey reflects that the number of acres comprising the Property is more or less than 117.789 acres, the Purchase Price will be increased or reduced by

the product of (1) One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00), multiplied by (2) the number of gross acres of the Property more or less than 117.789 acres.

(d) The Purchase Price shall be payable as follows:

(i) **Down Payment.** A down payment in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "**Down Payment**") will be delivered by Purchaser to the Title Company as provided in Section 2.3. At 5:00 p.m. CDT on the Due Diligence Expiration Date, the Down Payment shall become non-refundable, except as otherwise provided herein. At Closing, the Down Payment and all interest accruing thereon shall be credited against the Purchase Price. If the Closing does not occur, the Down Payment shall be paid as provided in this Contract.

(ii) **Balance of the Purchase Price.** The balance of the Purchase Price shall be paid by Purchaser on the Closing Date by federal wire transfer of immediately available funds to Title Company for the benefit of Seller.

**Section 2.3 Interest on Down Payment.** Within one Business Day after the Effective Date, Purchaser shall deliver the Down Payment to the Title Company, which shall deposit the Down Payment in a federally insured (to the extent permitted by law) interest-bearing account and all interest earned on such account shall be added to the Down Payment and distributed to the Party entitled to receive the Down Payment in accordance with the terms of this Contract. Purchaser shall be responsible for reporting the interest income on the Down Payment earned before Closing if the Closing occurs or the Down Payment is refunded to Purchaser. If the Down Payment is paid to Seller as a result of a Purchaser's Default, such interest shall be deemed earned and reported by Seller.

**Section 2.4 Escrow Agreement.**

(a) The Title Company agrees to hold and disburse the Down Payment and all interest accruing thereon as provided by this Section 2.4. The Title Company (i) acknowledges receipt of the Down Payment and deposit of the Down Payment into an interest-bearing account at a federally insured financial institution in the State of Texas; and (ii) shall promptly release the Down Payment and interest thereon to the Party entitled to the Down Payment as provided by Section 2.4(b) and Section 2.4(c). The Title Company shall not be responsible for the rate of interest accruing on the Down Payment or for losses caused by the insolvency of the institution at which the Down Payment is on account if the Title Company complies with this Section 2.4(a).

(b) The Title Company shall not release or disburse any portion of the Down Payment, or any interest accrued thereon, to any Person except as provided by (i) a settlement or closing statement executed by both Purchaser and Seller for the Closing; (ii) one or more Notices to the Title Company executed by both Purchaser and Seller; or (iii) the order of a court exercising jurisdiction over the Parties or the Down Payment. The Title Company is further authorized to rely upon and comply with such settlement or closing statements, Notices, or orders without further notice to or consent by any third party, and the Title Company shall not be obligated to inquire into the authenticity of, or authority for, signatures to any such settlement or

closing statements, Notices, or orders. If the Title Company has not received one or more of such settlement or closing statements, Notices, or orders providing for disposition of all portions of the Down Payment, and all interest accrued thereon, on or before the close of business on the fifth Business Day after the Closing Date, then the Title Company is hereby authorized to commence a suit in the nature of an interpleader in any court of competent jurisdiction and to tender the undisbursed amount of the Down Payment, and all undisbursed interest accrued thereon, into the custody of such court. Thereafter, the Title Company shall have no further obligations or liabilities under this Contract or otherwise in connection with the Down Payment or any interest accrued thereon.

(c) In the event that Purchaser elects to terminate this Contract pursuant to Section 3.1 or Section 9.3 prior to the Closing, the Down Payment, together with all interest accrued thereon, shall be refunded to Purchaser by the Title Company, without any further notice or authorization required (notwithstanding anything in this Section 2.4 to the contrary), and this Contract shall be deemed terminated, whereupon neither Party shall have any further liability to the other hereunder except for the Surviving Provisions. In the event that Seller elects to terminate this Contract under Section 9.2 prior to the Closing, the Down Payment shall be paid to Seller by the Title Company, without any further notice or authorization required (notwithstanding anything in this Section 2.4 to the contrary), and this Contract shall be deemed terminated, whereupon neither Party shall have any further liability to the other hereunder except for the Surviving Provisions.

(d) This Section 2.4, in addition to the other Surviving Provisions, shall survive the expiration or termination of this Contract.

(e) As consideration for performance by the Title Company of its obligations under this Contract, the Title Company shall be entitled to receive an escrow fee in the amount of One Hundred Dollars (\$100) (the "Escrow Fee") from Purchaser and Seller. Purchaser and Seller shall each pay to the Title Company one-half (1/2) of the Escrow Fee promptly upon the release of the Down Payment to Purchaser or Seller by the Title Company as provided by Section 2.4(b) or Section 2.4(c) or, if the Title Company commences a proceeding in the nature of an interpleader also as provided by Section 2.4(b), the Title Company may deduct the Escrow Fee from the Down Payment before paying the Down Payment into the custody of the court.

(f) Purchaser and Seller, jointly and severally, shall hold harmless and indemnify the Title Company from and against all claims, costs, expenses, damages, and losses in connection with the performance by the Title Company of its obligations under this Contract, except any such claims, costs, expenses, damages, and losses caused by the gross negligence or willful misconduct of the Title Company.

### ARTICLE 3

#### TITLE AND CONDITION; SURVEY; PURCHASER'S DUE DILIGENCE REVIEW

##### Section 3.1 Due Diligence Review; Title and Environmental Objections.

(a) Due Diligence Review. Between the Effective Date and the Due Diligence Expiration Date, Purchaser shall have the right, at its sole cost and expense, to inspect,



review and make copies of (if applicable) all characteristics and aspects of the Property, including the Due Diligence Materials (which Seller agrees to promptly make available to Purchaser for inspection and copying upon request), and to make inquiry of governmental agencies in connection therewith (the "**Due Diligence Review**").

Within one (1) day after the Effective Date, Seller shall make available to Purchaser any Due Diligence Materials not previously given to Purchaser. Commencing on the Effective Date and continuing through the Closing Date or the earlier date on which this Contract terminates, Seller shall permit authorized representatives of Purchaser to have access to the Property at mutually agreed upon reasonable times for purposes of satisfying Purchaser with respect to the representations, warranties, and covenants of Seller set forth in this Contract and with respect to satisfaction of any diligence requirements of Purchaser. Purchaser acknowledges that, except as expressly provided in this Contract, the Due Diligence Materials provided by Seller are made available to Purchaser in their "AS IS, WHERE IS" condition "WITH ALL FAULTS." Seller has not verified the accuracy of any statements or information contained in the Due Diligence Materials, except as otherwise expressly provided herein or otherwise agreed in writing by Seller. Seller has not made and does not make any representation or warranty of any kind whatsoever, whether oral or written, express or implied, statutory, or otherwise with respect to the Due Diligence Materials, except as otherwise expressly provided in this Contract or otherwise in writing (including any applicable Closing Documents).

(b) **Termination Notice**. Purchaser shall have the right, in its sole and absolute discretion, to terminate this Contract in its entirety (except for the Surviving Provisions) by delivering written notice of such decision (the "**Total Termination Notice**") to Seller and the Title Company on or prior to 5:00 p.m. CDT on the Due Diligence Expiration Date. Failure to deliver a Total Termination Notice on or prior to such deadline shall be deemed to constitute an election to go forward with this Contract with respect to the Property.

(c) **Title Commitment, Title Exceptions and Survey**. Within ten (10) days after the Effective Date, Seller shall, at Seller's expense, furnish to Purchaser for Purchaser's review (i) a commitment for title insurance issued by the Title Company showing Seller as the record owner of the Property, insuring Purchaser's fee simple title to the Property and Purchaser's title to the Improvements to be good and indefeasible, subject to the terms of such commitment and the exceptions specified therein, in the amount of the Purchase Price, naming Purchaser as the proposed insured and having an effective date after the Effective Date (the "**Title Commitment**"), (ii) complete and legible copies of all restrictive covenants evidencing exceptions in the Title Commitment (collectively, the "**Title Exception Documents**"), and (iii) that certain Land Title Survey covering or including the Property and being the parent Tract II of land as prepared by Murray Bass, RPLS #2128 with Bass & Welsh Engineering, dated December 17, 2014, under Job Number 09028 (the "**Seller's Survey**"). Purchaser, at Purchaser's expense, shall obtain as soon as practicable after the Effective Date a current on-the-ground plat or survey and metes and bounds description of the Property (the "**Purchaser's Survey**"). The Purchaser's Survey will contain the surveyor's certification that there are no encroachments on the Property and will set forth the gross number of total acres comprising the Property. The Purchaser's Survey shall be certified to Seller, Purchaser and the Title Company to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the applicable survey category. For purposes of the property

description to be included in the Deed or any other Transfer Document, the field notes prepared by the surveyor and as mutually agreed upon by the Parties prior to the expiration of the Cure Period shall control any conflicts or inconsistencies with the general depictions set forth on Exhibit A attached hereto and such field notes shall be incorporated herein by this reference upon their completion and approval by Seller and Purchaser.

Seller authorizes the Title Company to deliver the Title Commitment and the Title Exception Documents to Purchaser at Purchaser's address set forth in Section 10.3.

(d) **Title and Survey Objections**. Purchaser shall have until 5:00 p.m. CDT on that date which is ten (10) days after delivery to Purchaser of the last of the Title Commitment, the Title Exception Documents, and the Purchaser's and Seller's Surveys (the "**Title and Survey Objection Date**"), to provide Seller with any objections Purchaser has (i) to any matters affecting title to the Property or any portion thereof, or (ii) to any matters set forth on the Survey (collectively, "**Purchaser's Title and Survey Objections**").

Purchaser shall deliver written notice to Seller of Purchaser's Title and Survey Objections (the "**Title and Survey Objection Notice**") on or prior to the Title and Survey Objection Date. Seller may, but is not obligated to, cure Purchaser's Title and Survey Objections prior to the later of the Due Diligence Expiration Date or five (5) days after the Title and Survey Objection Date (the "**Cure Period**"). If Seller fails to cure all of Purchaser's Title and Survey Objections within the Cure Period, Purchaser shall have the right to terminate this Contract on that basis by delivering a written notice so terminating this Contract to Seller and the Title Company on or prior to 5:00 p.m. CDT on the last day of the Cure Period. In the event Purchaser terminates this Contract pursuant to the preceding sentence, the Down Payment shall be refunded to Purchaser by the Title Company within ten (10) days after the Title Company and Seller receive Purchaser's notice of termination of this Contract, and all obligations and liabilities of the Parties shall cease and terminate, except with respect to the Surviving Provisions.

If Purchaser does not exercise such termination right, any unresolved Purchaser's Title and Survey Objections shall be deemed to be Permitted Encumbrances. Notwithstanding any title objection or the failure to give such title objections, or any other provision of the Contract to the contrary, the Permitted Encumbrances shall not include, and Seller is obligated to cure (i) any Schedule C title exceptions which would be (and shall remain) the obligation of the Seller to cure, or (ii) any title exceptions, caused by Seller's voluntary acts after the Effective Date or first appearing of record after the Effective Date and not approved by Purchaser hereunder, and Seller shall be required to remove each of the foregoing title exceptions on or before the applicable Closing Date or Seller may elect to terminate this Contract and arrange for the Down Payment to be released and returned to Purchaser.

If Purchaser fails to deliver a Title and Survey Objection Notice on or prior to the Title and Survey Objection Date, Purchaser shall be deemed to have waived its right to object to matters shown on Schedule B of the Title Commitment and to any matters set forth on the Survey, and all matters shown on Schedule B of the Title Commitment or set forth on the Survey shall be Permitted Encumbrances, except as provided to the contrary in the preceding paragraph. Furthermore, Purchaser shall have five (5) days after Purchaser's receipt of any amended title

commitment within which to notify Seller of any new objections Purchaser has to any matters affecting title to the Property first disclosed thereby ("**New Title Objections**"). If Seller fails to cure all of the New Title Objections within five (5) days following delivery of the New Title Objections, Purchaser shall have the right to terminate this Contract on that basis by delivering a written notice so terminating this Contract to Seller and the Title Company on or prior to 5:00 p.m. CDT on the date that is ten (10) days following delivery of the New Title Objections to Seller. In the event Purchaser terminates this Contract pursuant to the preceding sentence, the Down Payment shall be refunded to Purchaser by the Title Company within ten (10) days after the Title Company and Seller receive Purchaser's notice of termination of this Contract, and all obligations and liabilities of the Parties shall cease and terminate, except with respect to the Surviving Provisions.

(e) **Reports and Studies**. Seller has provided or will provide Purchaser with all environmental reports, geotechnical reports, engineering reports and other similar property condition reports covering the Property (each, a "**Property Condition Report**"), if any, in Seller's possession or reasonable control within one (1) day after the Effective Date. Purchaser shall have the right in its sole discretion to engage independent consultants to inspect the Property to determine the condition of the Property, including, without limitation, the presence of any Hazardous Materials and any apparent violation of any Environmental Law (the "**Environmental Audit**") and to deliver to Purchaser a report describing the findings and conclusions of the Environmental Audit (the "**Environmental Report**"). The cost and expense of the Environmental Audit and any other Property Condition Report prepared by or on behalf of Purchaser shall be borne by Purchaser. Upon Purchaser's request, Seller shall cooperate with Purchaser's consultants in their preparation of the Environmental Audit and their preparation of any Property Condition Report. Notwithstanding the foregoing, Purchaser shall not perform or cause to be performed, without Seller's prior written consent, soil borings or other invasive or destructive sampling or testing which consent shall be in Seller's reasonable discretion, except that Seller shall permit such sampling as is customary for purposes of any Property Condition Report. Seller reserves the right to have a representative present during any access to the Property by Purchaser or its employees, agents, or consultants or during the performance of any testing (whether or not invasive) at the Property. If the Environmental Audit reveals the existence of any environmental condition or violation of any Environmental Law with respect to the Property that Purchaser is unwilling to accept or that Seller is unwilling to cure, Purchaser shall have the right and option to terminate this Contract on that basis by delivering written notice so terminating this Contract to Seller and the Title Company on or prior to 5:00 p.m. CDT on the Environmental Objection Date. For purposes of this Contract, the "**Environmental Objection Date**" is the first to occur of the following dates (or such later date as the Parties may agree upon in writing): (i) ten (10) days after the Purchaser receives the Environmental Report; or (ii) the Due Diligence Expiration Date. In the event Purchaser terminates this Contract pursuant to this subsection, the Down Payment shall be refunded to Purchaser by the Title Company within ten (10) days after the Title Company and Seller receive Purchaser's notice of termination of this Contract, and all obligations and liabilities of the Parties shall cease and terminate, except with respect to the Surviving Provisions.

(f) **Waiver**. Purchaser's election to proceed to Closing, subject to and in accordance with this Contract, shall be an acknowledgment by Purchaser that Purchaser and Purchaser's agents have had access to all documents and information relating to the Property as

Purchaser deemed necessary to complete the Due Diligence Review and make its own independent investment decision to acquire the Property; provided, however, that the foregoing shall not be in derogation of any other rights or remedies of Purchaser under this Contract (including, without limitation, any other right to terminate expressly set forth in the Contract).

**Section 3.2 State of Title.**

(a) Purchaser shall take title to the Property subject to (i) all recorded restrictive covenants, easements, and oil and gas leases relating to the Property; (ii) any of Purchaser's Title Objections which Seller elected not to cure or is not obligated to cure; (iii) taxes, assessments, and governmental charges not yet due and payable or due and payable but not yet delinquent; (iv) applicable zoning regulations and ordinances, platting laws, and municipal and governmental ordinances and regulations; and (v) such other items shown on Schedule B of the Title Commitment and not objected to or not required to be objected to by Purchaser in accordance with Section 3.1 (collectively, the "**Permitted Encumbrances**" and individually, a "**Permitted Encumbrance**").

(b) The Permitted Encumbrances shall not include, and Seller is obligated to cure (i) any Schedule C title exceptions which would be (and shall remain) the obligation of the Seller to cure, (ii) any violation of law recorded against the Property, (iii) any title exceptions caused by Seller's voluntary acts after the Effective Date or first appearing of record after the Effective Date and not approved by Purchaser hereunder and Seller shall be required to remove each of the foregoing title exceptions on or before the Closing Date or Seller may elect to terminate this Contract and arrange for the Down Payment to be released and returned to Purchaser.

**Section 3.3 Condition of Property.** Except as otherwise set forth in this Contract and in the Transfer Documents (including the Deed), and without limiting the provisions of Section 6.3, Seller makes no express or implied representations or warranties in connection with the Property, and Purchaser shall accept the Property on the Closing Date in its existing condition as of such date, "AS IS, WHERE IS" and "WITH ALL FAULTS." Purchaser hereby acknowledges that it will make its own investigations. Purchaser has been advised to investigate the condition and suitability of all aspects of the Property and all matters affecting the value or desirability of the Property, including, but not limited to, potential environmental hazards.

**NOTWITHSTANDING ANYTHING IN THIS CONTRACT TO THE CONTRARY, AS A CONDITION PRECEDENT TO SELLER'S UNDERTAKINGS AND AGREEMENTS HEREUNDER, SELLER EXPRESSLY DISCLAIMS AND PURCHASER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED MAKING ANY REPRESENTATIONS, WARRANTIES, OR ASSURANCES WITH RESPECT TO THE PROPERTY SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES AS TO MATTERS OF ZONING, MINERALS, TAX CONSEQUENCES, PHYSICAL CONDITION, OCCUPANCY, ENVIRONMENTAL CONDITIONS, OPERATING HISTORY OR PROJECTIONS, VALUATIONS, GOVERNMENTAL APPROVALS OR GOVERNMENTAL REGULATIONS. PURCHASER AGREES THAT WITH RESPECT TO THE PROPERTY IT WILL RELY UPON ITS INSPECTIONS THEREOF OR ITS DETERMINATIONS NOT TO INSPECT THE SAME, AND UPON CLOSING SHALL ACCEPT THE PROPERTY IN ITS "AS IS" "WHERE IS" CONDITION, WITH ALL FAULTS, AND WITHOUT REFERENCE TO MERCHANTABILITY, HABITABILITY, OR FITNESS FOR**

ANY SPECIFIC PURPOSE. PURCHASER HAS NOT RELIED UPON ANY REPRESENTATION OR EXPRESSION OF FACT BY SELLER REGARDING THE PROPERTY, AND PURCHASER SPECIFICALLY DISCLAIMS RELIANCE ON ANY SUCH REPRESENTATIONS. PURCHASER SHALL RELY ON ITS INVESTIGATIONS OF THE PROPERTY IN DETERMINING WHETHER TO ACQUIRE IT. THE PROVISIONS OF THIS SECTION ARE A MATERIAL PART OF THE CONSIDERATION FOR SELLER ENTERING INTO THIS CONTRACT, AND SHALL SURVIVE CLOSING. THE SPECIAL WARRANTY DEED TO BE DELIVERED TO THE PURCHASER BY THE SELLER PURSUANT TO THE TERMS OF THE CONTRACT WILL CONTAIN SIMILAR "AS IS" LANGUAGE.

**Section 3.4 Title Insurance.** On the Closing Date, Seller shall cause the Title Company to issue, or to be unconditionally committed to issue, to Purchaser a Texas Owner's Title Policy (the "**Title Policy**"), issued by the Title Company, from an underwriter acceptable to Purchaser, insuring Purchaser's title to the Property in the amount of the Purchase Price, subject only to the standard exceptions and exclusions from coverage contained in such policy and the Permitted Encumbrances. Seller shall pay the Title Company the basic premium for the issuance of the Title Policy. Purchaser shall pay the cost of any additional endorsements or expanded coverage requested by Purchaser under the Title Policy.

**Section 3.5 Indemnification of Seller.** Purchaser shall be solely responsible for any and all damage or loss of any kind or nature whatsoever, whether to persons or to property, that may arise as a result of or otherwise because of the acts or omissions of Purchaser or Purchaser's employees, agents, or contractors in connection with the Due Diligence Review, or Purchaser or Purchaser's employees, agents, or contractors entering upon the Property, and Purchaser shall promptly and at Purchaser's sole cost and expense restore the Property and repair any material damage occasioned by such review and inspections to substantially the condition the Property was in immediately prior to such review. **Purchaser, to the extent allowed by law, hereby agrees to indemnify, protect, defend (with counsel reasonably acceptable to Seller), save, and hold Seller harmless of and from all debts, duties, obligations, liabilities, suits, claims, demands, settlements, causes of action, damages, losses, fees, and expenses (including, without limitation, reasonable attorneys' fees and expenses and court costs) in any way relating to or that may arise out of or from any act or omission of Purchaser or Purchaser's employees, agents, or contractors in connection with the Due Diligence Review or Purchaser or Purchaser's employees, agents, or contractors entering upon the Property or in exercising its rights under this Article 3, except to the extent that such debts, duties, obligations, liabilities, suits, claims, demands, settlements, causes of action, damages, losses, fees, and expenses are caused by the gross negligence or willful misconduct of the Seller.**

**Section 3.6 Confidential Information.** Except as required by court order, governmental authority or by operation of law, all matters reviewed or discovered by Purchaser in the course of the Due Diligence Review and all other documents and materials furnished by or on behalf of the Seller to Purchaser pursuant to the transaction contemplated by this Contract that are, and are reasonably believed by Purchaser to be, strictly confidential in nature including without limitation all business and price terms (collectively, "**Confidential Information**") shall not be disclosed by Purchaser to third parties prior to Closing without the consent of Seller; provided, however, that Purchaser may share Confidential Information with its Commissioners, directors, officers, employees, consultants, advisors and attorneys ("**Representatives**") who are actually engaged in, and need to know such Confidential Information in order to perform the Due

Diligence Review or to evaluate and vote on this Contract, each of whom must be advised of the confidential nature of the Confidential Information and of the terms of this Agreement. If no Closing occurs hereunder, the Purchaser's obligations under this Section 3.6 shall be Surviving Provisions. Regardless, neither Party shall have any obligation of confidentiality with respect to Confidential Information that was previously known, that becomes publicly known now or in the future at no fault of the Party receiving such Confidential Information, or the disclosure of which is required by court order or other legal requirement. In the event that Purchaser or any of its Representatives is requested to disclose any information regarding the Seller or the transactions contemplated hereby which can be withheld under the Texas Public Information Act, Purchaser will provide the Seller with prompt prior notice so that the Seller may seek a protective order or other appropriate remedy and/or waive the right to have the requested information withheld.

**Section 3.7 Due Diligence Materials and Documents.** Purchaser agrees that, in the event this Contract is terminated or the Closing is not completed for any reason, all Due Diligence Materials provided by Seller, and all copies thereof to the extent the same are of a confidential nature, will be returned to Seller promptly upon Seller's request (being within 10 days after any such termination or failure to close). In addition, copies of all tests, reports, analyses, compilations, and studies prepared by or for Purchaser in connection with the transaction contemplated in this Contract will be delivered to Seller without representation or warranty on part of Purchaser within 10 days after such termination or failure to close.

#### ARTICLE 4 CLOSING

**Section 4.1 Time and Place; Automatic Termination.** Closing of the transaction contemplated by this Contract ("Closing") shall be held at the Title Company's office in Corpus Christi, Texas, on May 29, 2015 or such other date as the Parties may agree to in writing ("Closing Date").

**Section 4.2 Settlement at Closing.**

(a) **Transfer Documents.** At the Closing, Seller shall convey and transfer to Purchaser the Property and the Improvements thereon (to the extent constituting real property or fixtures), subject only to the Permitted Encumbrances applicable thereto, by executing, acknowledging, and delivering to Purchaser a special warranty deed in substantially the form of the special warranty deed attached to this Contract as **Exhibit B** (the "**Deed**"). At Closing the Parties shall also execute and deliver the following documents (which together with the Deed are collectively referred to in this Contract as the "**Transfer Documents**"):

- (i) Driveway, Pipeline and Utility Bank Easement (across Tract A)
- (ii) Temporary Construction Easement (Laydown Yard)
- (iii) A copy of the recorded Amended Designation of Pipeline Corridor (Tracts A & B)
- (iv) Surface Site Lease and Option Agreement, the form of which is attached hereto as **Exhibit "E"**

- (v) First Amendment to Lease Agreement, the form of which is attached hereto as Exhibit "F", and
- (vi) Amendment of Rail Access Easement and License, the final form of which is attached hereto as Exhibit "G"

(b) **Payment of Purchase Price.** After crediting the Down Payment against the Purchase Price in accordance with Section 2.2(d)(i), Purchaser shall pay the remaining balance of the Purchase Price at Closing, net of any applicable Closing prorations and other credits, by delivering the remaining balance of the Purchase Price to the Title Company by federal wire transfer of immediately available funds for the benefit of Seller.

(c) **Other Closing Deliveries.** In addition to the Transfer Documents, Seller and Purchaser shall also execute and/or deliver the following documents and items to the Title Company at the Closing: (i) Seller shall deliver all Leases and Permits, if any, to the extent such items are in Seller's possession or reasonable control; (ii) Purchaser and Seller shall execute and deliver a closing statement evidencing payment of the Purchase Price and reflecting all applicable prorations (the "Closing Statement"); (iii) Purchaser and Seller shall execute and deliver the Access and Utility Easement (across Tract A); (iv) Seller shall deliver to Title Company a Foreign Investment in Real Property Tax Act affidavit, executed and acknowledged by Seller; (v) Purchaser and Seller shall deliver such resolutions, authorizations, consents, or organizational documents relating to Purchaser and Seller as may be reasonably required by the other or by the Title Company; and (vi) Purchaser and Seller shall deliver any other documents at or following the Closing reasonably required by either Party or by the Title Company to effectuate the transactions contemplated by this Contract.

**ARTICLE 5  
APPORTIONMENTS AND ALLOCATION OF EXPENSES**

**Section 5.1 Apportionments.** The following items shall be apportioned between Purchaser and Seller as of 11:59 p.m. CDT on the day prior to the Closing Date (the "Adjustment Date"):

- (a) fuel, electric, and other utility costs, if any;
- (b) routine governmental license and permit fees, if any;
- (c) water and sewer charges, if any; and
- (d) garbage and rubbish removal charges, if any.

If any of the foregoing cannot be apportioned on the Closing Date because of the unavailability of the amounts which are to be apportioned, such items shall be apportioned on the basis of a good faith estimate by the Parties and reconciled as soon as practicable after the Closing Date but, in any event, no later than sixty (60) days after the Closing Date.

**Section 5.2 Apportionment of Other Costs.** Purchaser shall pay for the Purchaser's Survey as provided in Section 3.1. Seller shall be responsible for all matters relating to the

clearing of title which Seller elects or is obligated to cure and for the fees and expenses of Seller's attorneys. The premium for the Title Policy shall be paid by the Parties in accordance with Section 3.4. Purchaser shall be responsible for any costs incurred by Purchaser in preparing and performing the Due Diligence Review, except as otherwise expressly provided herein, the fees and expenses of Purchaser's attorneys, and all recording charges due in connection with the Closing. All other costs associated with the Closing shall be apportioned fifty percent (50%) to Purchaser and fifty percent (50%) to Seller.

**Section 5.3 Insurance Policies; Property Taxes.** No insurance policies of Seller are to be transferred to Purchaser, and no apportionment of premiums for any such policies shall be made. Purchaser shall not be responsible for payment of property taxes, if any, concerning the Property prior to the Closing Date.

**Section 5.4 Closing Statements.** All prorrations pursuant to this Article 5 in connection with the Closing shall be reflected on the Closing Statement.

**Section 5.5 Survival of Obligations.** The obligations of the Parties under this Article 5 shall be Surviving Provisions.

**ARTICLE 6  
REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGMENTS**

**Section 6.1 Seller's Representations and Warranties.** Seller represents and warrants to Purchaser that:

(a) with regard to Seller:

(i) **Due Authorization.** Seller has duly authorized the execution, delivery and performance of this Contract and the Closing Documents and all of Seller's obligations set forth herein including, without limitation, the conveyance of the Property to Purchaser and the performance of all Surviving Provisions applicable to Seller, and no other action by Seller or any other party is necessary for the Seller to perform such obligations, and upon the execution and delivery of any document to be delivered by Seller on or prior to the Closing Date, such document shall constitute the valid and binding obligation and agreement of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application affecting the rights and remedies of creditors;

(ii) **Litigation in Regard to Contract.** There are no pending or, to the Seller's knowledge, threatened actions or proceedings that question the validity of this Contract, any action taken or to be taken by Seller hereunder, or the ability of Seller to consummate the transactions contemplated by this Contract, or otherwise affect Purchaser's ability to own or operate the Property after Closing;

(iii) **Not a Foreign Person.** For purposes of Section 1445 of the United States Internal Revenue Code, as amended (the "**Code**"), Seller is not a foreign person (as such term is defined in the Code and applicable federal income tax regulations);



(iv) **No Violation of Other Agreements.** Except for a construction loan and associated deed of trust secured by the Property, from which the Property will be released prior to Closing, neither the execution, delivery, or performance of this Contract by Seller, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions, or provisions of, or conflict with or constitute a default under, or result in the creation of any Lien, title defect, easement, restrictive covenant, condition, or restriction upon or against the Property pursuant to the terms of, any agreement, judgment, or order, or any indenture, mortgage, deed of trust, note, or evidence of indebtedness by which Seller is bound. Without limiting the generality of the foregoing, Seller hereby represents and warrants that (i) any prior agreement, whether written or oral, to sell or lease the Property, or any portion thereof, has been terminated and is of no further force or effect, and (ii) no third party has any purchase right or option of any kind, conditional or otherwise, with respect to the Property;

(v) **No Bankruptcy.** No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy laws has been filed or commenced or is pending or contemplated against Seller or the Property; and

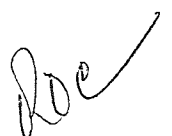
(vi) **Status and Authority of Seller.** Seller is a duly organized and validly existing limited liability company under the laws of the State of Delaware that is in good standing and qualified to do business in Texas, and it has all requisite power and authority to execute and deliver this Contract and the Closing Documents to be executed and delivered by Seller and to perform its obligations under this Contract to consummate the transaction contemplated hereby;

(b) with regard to the Property and based on Seller's current actual knowledge, without any duty to inquire or investigate:

(i) **Defect Notices.** Seller has not received any written notice from the holder of any mortgage presently encumbering the Property, from any insurance company which has issued a policy with respect to the Property, or from any board of fire underwriters or any other governmental agency or authority claiming any defects or deficiencies in the Property or suggesting or requesting the performance of any repairs, alterations, or other work to the Property, which have not been cured or repaired;

(ii) **Violations of Law.** Seller has received no written notice relating to the Property of any violations of federal, state, or local laws, rules, regulations, orders, or other governmental requirements pertaining to zoning, subdivision, environmental, which have not been corrected, and all such uses are being conducted in accordance with all applicable laws;

(iii) **Litigation Against the Property.** There is no pending or actual action, suit, or proceeding against or affecting Seller or the Property or any portion thereof relating to or arising out of the ownership, management, or operation of the Property, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, or agency or other governmental instrumentality;



(iv) **Condemnation.** Except for the AEP Power Facilities, Seller has not received any notice that any condemnation proceedings or other proceedings in the nature of eminent domain are currently pending or threatened in connection with the Property, and to Seller's knowledge no such proceedings are otherwise currently threatened;

(v) **Environmental Condition; Notices.** Seller has delivered or will deliver to Purchaser true, correct, and complete copies of all environmental reports in Seller's possession or reasonable control regarding the Property. Based on Seller's current actual knowledge, and without any duty to conduct any further environmental studies, during Seller's ownership of the Property, no Hazardous Materials were deposited or released on the Property by Seller. Further, based on Seller's current actual knowledge, and without any duty to conduct any further environmental studies, Seller has not received any written notice of any uncured violation of any applicable, federal, state or local environmental laws, regulations (including Environmental Laws), ordinances or orders related to or in connection with disposal, storage, treatment, processing, emission, release or discharge of any Hazardous Materials with regard to the Property. For purposes of this Contract, "**Hazardous Materials**" means and refers to all hazardous, toxic and radioactive substances, wastes, materials, pollutants, or contaminants, including by way of illustration only, asbestos, materials containing asbestos, "PCB's", pesticides, petroleum products, ammonia, chlorine and derivatives of petroleum products, and other substances or materials which are included under or regulated under any local, state or federal law pertaining to environmental regulation of hazardous substances, contamination or cleanup of hazardous substances (either by definition, determination or identification in such laws, or by judicial or administrative interpretation), including, for example only, the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, Texas pollution prevention or environmental laws or other similar state, federal or local laws (including Environmental Laws). Based on Seller's current actual knowledge, and without any duty to conduct any further environmental studies, Seller is not aware of, and has not received, any notices from any insurance companies, governmental agencies or authorities or from any other parties (i) of any conditions, defects or inadequacies with respect to the Property (including health hazards or dangers, nuisance or waste), which, if not corrected, would result in termination of insurance coverage or increase its costs therefor, (ii) with respect to any violation of any applicable zoning, building, health, environmental, traffic, flood control, fire safety, handicap or other law, code, ordinance, rule or regulation, or (iii) of any proceedings which could cause the change, redefinition or other modification of the zoning classification of the Property. Prior to Closing, Seller shall immediately notify Purchaser of any violations or conditions of which Seller receives notice (whether written or oral);

(vi) **Permits.** Intentionally Deleted;

(vii) **Property Taxes; Tax Appeals.** Based on Seller's current actual knowledge, without any duty to inquire, there are no pending tax audits or appeals with respect to real property taxes or assessments against the Property;

(viii) **Other Contracts; Leases.** Except for the AEP Power Facilities, and based on Seller's current actual knowledge, without any duty to inquire, Seller does not have any actual knowledge of any leases, easements, contracts for sale and purchase or other written agreements affecting the ownership, occupancy or maintenance of the Property;

(ix) **Future Improvements.** Except for the AEP Power Facilities, Seller has no obligation to any tenant under any Lease, to any governmental or quasi-governmental entities or to any other Person which commitment relates to the Property and would survive Closing and be a binding obligation of Purchaser thereafter, in each case to pay or contribute property or money or to construct, install or maintain any improvements on or off the Property;

(x) **Payment of Bills.** All bills and other payments due with respect to the ownership, operation, leasing, and maintenance of the Property have been paid or will be paid prior to Closing in the ordinary course of business;

(xi) **Access.** Based on Seller's current actual knowledge, without any duty to inquire, Seller has no knowledge of any fact or condition existing which would result or could result in the termination or reduction of the current access from the Property to the existing highways and roads that provide access to the Property, or of any reduction in or to sewer or other utility services presently serving the Property; however, Purchaser to is confirm any access to the Property as Seller makes no representations or warranties as to access or utility availability to the Property.

(xii) **Money Laundering and Patriot Act.** (i) Seller is not named and is not acting, directly or indirectly, for or on behalf of any Person, group, or nation named by any Executive Order, including, without limitation, Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked Person, nation, or transaction pursuant to any law, order, rule, or regulation that is enacted, enforced, or administered by the Office of Foreign Assets Control ("**OFAC**"); (ii) Seller is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such Person, group, or nation; and (iii) none of the proceeds used to consummate this transaction have been or will be derived from a "specified unlawful activity" as defined in, and Seller is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Seller agrees to notify Purchaser immediately if Seller was, is, or in the future becomes, a "senior foreign political figure" within the meaning of Section 312 of the USA PATRIOT Act of 2001, as amended, or an immediate family member or close associate of a senior foreign political figure. Notwithstanding anything in this Contract to the contrary, Seller understands that this Contract is a continuing transaction and that the foregoing representations, certifications, and warranties are ongoing and shall be and remain true and in force on the date hereof and throughout the term of this Contract and that any breach thereof shall be a default under this Contract (not subject to any notice or cure rights) giving rise to remedies by Purchaser; and

**SELLER HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO PURCHASER), SAVE, AND HOLD PURCHASER HARMLESS OF AND FROM ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, SETTLEMENTS, CAUSES OF ACTION, DAMAGES, LOSSES, FEES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO OR THAT MAY ARISE OUT OF OR FROM**



ANY BREACH BY SELLER OF ITS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 6.1; provided, however, that the indemnity in this Section 6.1 for a breach of Seller's representations and warranties in Section 6.1(b)(v) and (xi) shall only be effective for a period of six (6) months after Closing, after which such indemnity shall automatically expire and terminate for all purposes.

**Section 6.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

(a) **Status and Authority of Purchaser.** Purchaser is a navigation district and a political subdivision of the State of Texas and has all requisite power and authority under the laws of the State of Texas, to execute and deliver this Contract and the Closing Documents to be executed and delivered by Seller and to perform its obligations under this Contract to consummate the transaction contemplated hereby;

(b) **Due Authorization.** Purchaser has taken all necessary action to authorize the execution, delivery, and performance of this Contract and all of Purchaser's obligations set forth herein including the Surviving Provisions applicable to Purchaser, and upon the execution and delivery of any document to be delivered by Purchaser on or prior to the Closing Date, such document shall constitute the valid and binding obligation and agreement of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application affecting the rights and remedies of creditors;

(c) **Authorizations and Consents.** Purchaser has obtained all necessary authorizations and consents to enable it to execute and deliver this Contract;

(d) **No Violation of Other Agreements.** The compliance with or fulfillment of the terms and conditions of this Contract and the Transfer Documents will not conflict with, violate, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any of Purchaser's organizational documents or any contract or agreement to which Purchaser is a party or by which Purchaser is otherwise bound unless the same results from Seller's post-closing breach;

(e) **Litigation.** There are no pending or, to the knowledge of Purchaser, threatened actions or proceedings against Purchaser that, if determined adversely to Purchaser, would materially adversely affect Purchaser's ability to perform its obligations under this Contract or that would enjoin or prevent the consummation of the Closing; and

(f) **Money Laundering and Patriot Act.** (i) Purchaser is not named and is not acting, directly or indirectly, for or on behalf of any Person, group, or nation named by any Executive Order, including, without limitation, Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked Person, nation, or transaction pursuant to any law, order, rule, or regulation that is enacted, enforced, or administered by OFAC; (ii) Purchaser is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such Person, group, or nation; and (iii) none

of the proceeds used to consummate this transaction have been or will be derived from a "specified unlawful activity" as defined in, and Purchaser is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Purchaser agrees to notify Seller immediately if Purchaser was, is, or in the future becomes, a "senior foreign political figure" within the meaning of Section 312 of the USA PATRIOT Act of 2001, as amended or an immediate family member or close associate of a senior foreign political figure. Notwithstanding anything in this Contract to the contrary, Purchaser understands that this Contract is a continuing transaction and that the foregoing representations, certifications, and warranties are ongoing and shall be and remain true and in force on the date hereof and throughout the term of the Contract and that any breach thereof shall be a default under the Contract (not subject to any notice or cure rights) giving rise to remedies by Seller.

**PURCHASER, TO THE EXTENT ALLOWED BY LAW, HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO SELLER), SAVE, AND HOLD PURCHASER HARMLESS OF AND FROM ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, SETTLEMENTS, CAUSES OF ACTION, DAMAGES, LOSSES, FEES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES AND COURT COSTS) IN ANY WAY RELATING TO OR THAT MAY ARISE OUT OF OR FROM ANY BREACH BY PURCHASER OF ITS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION.**

**Section 6.3 Disclaimer; Purchaser's Acknowledgments regarding Condition of the Property; Acceptance of the Property.** Purchaser hereby acknowledges that prior to the Due Diligence Expiration Date, subject to the terms of this Contract, Purchaser will have had the full and free opportunity to perform the Due Diligence Review and independently inspect and review all conditions of the Property including environmental conditions.

Purchaser acknowledges and agrees that except as expressly set forth in this Contract or in the Closing Documents, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to (a) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Purchaser, Purchaser's affiliates, or any tenant may conduct thereon, (d) the compliance of or by the Property or the operations at the Property with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, (f) the manner or quality of the construction or materials, if any, incorporated into the Property, (g) the manner, quality, and state of repair or lack of repair of the Property, (h) compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Property of Hazardous Materials, or (i) any other matter with respect to the Property. Additionally, except as expressly set forth in this Contract or in the Closing Documents, no Person acting on behalf of Seller is authorized to make, and by execution hereof Purchaser acknowledges that no Person has made, any representation, agreement, statement, warranty,

guarantee, or promise regarding the Property or the transaction contemplated herein; and no such representation, agreement, statement, warranty, guarantee, or promise, if any, made by any Person acting on behalf of Seller shall be valid or binding upon Seller unless expressly set forth herein. Except as expressly set forth in this Contract or in the Closing Documents, Purchaser further acknowledges and agrees that Purchaser and Purchaser's affiliates shall rely solely on the Due Diligence Review and on their own independent investigation of the Property, subject to the terms of this Contract and the Closing Documents, and agrees, except as expressly set forth in this Contract or in the Closing Documents, to accept the Property at the Closing and waive all objections or claims against Seller (including, but not limited to, any right or claim of contribution or any claim purporting to arise out of Seller's own negligence (but not its gross negligence or willful misconduct) to the extent provided in this Contract) arising from or related to the Property or to any Hazardous Materials on the Property, other than with respect to claims against third parties. Purchaser further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy, truthfulness, or completeness of such information except as expressly set forth in this Contract or in the Closing Documents. Except as expressly set forth in this Contract or in the Closing Documents, Seller is not liable or bound in any manner to Purchaser by any verbal or written statement, representation, or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, contractor, agent, employee, servant, or other Person. Accordingly, Purchaser acknowledges and agrees that, to the maximum extent permitted by law, and except as set forth in this Contract or the Closing Documents, the sale of the Property as provided for herein is made on an "AS IS, WHERE IS" condition and basis "WITH ALL FAULTS." The terms of this Section 6.3 shall survive Closing for all purposes.

ARTICLE 7  
COVENANTS

In addition to the covenants contained in the other Sections of this Contract, the Parties hereby covenant with each other that, from the Effective Date until the Closing Date:

**Section 7.1 Approval of Contracts.** Except for the AEP Power Facilities (hereinafter described), Seller shall not enter into any leases or other agreements with respect to the Property which would encumber or be binding upon Purchaser from and after the Closing Date without in each instance obtaining the prior written consent of Purchaser.

**Section 7.2 Operation of Property Prior to Closing.** Except as expressly contemplated, permitted or required by this Contract, between the Effective Date and the Closing Date, Seller shall operate and maintain the Property in the ordinary course and consistent with past practices (including compliance with all applicable laws, rules and regulations, and obtaining and maintaining all Permits), and preserve intact and maintain the Property in its condition as of the Effective Date.

**Section 7.3 No Encumbrances.** Except for the AEP Power Facilities, Seller agrees to not otherwise encumber the Property and to provide Purchaser with copies of any written

violation notices or other written notices involving litigation, condemnation, environmental, zoning, or other land use regulation proceedings it receives with respect to the Property.

**Section 7.4 Statements.** Seller shall deliver to Purchaser copies of any bills for real estate taxes and personal property taxes and copies of any notices pertaining to real estate taxes or assessments applicable to the Property that are received by Seller after the Effective Date or the Closing Date, as applicable.

**Section 7.5 Intentionally Deleted.**

**Section 7.6 Change in Seller's Representations or Warranties.** To the extent Seller becomes aware of facts or circumstances which would cause Seller's representations or warranties pursuant to Article 6 to be inaccurate or incomplete, Seller shall immediately notify Purchaser in writing and include all relevant documentation Seller is aware of and keep Purchaser reasonably informed in writing through the Closing.

**Section 7.7 Change in Purchaser's Representations or Warranties.** To the extent Purchaser becomes aware of facts or circumstances which would cause Purchaser's representations or warranties pursuant to Article 6 to be inaccurate or incomplete, Purchaser shall immediately notify Seller in writing and include all relevant documentation Purchaser is aware of and keep Seller reasonably informed in writing through the Closing.

**Section 7.8 AEP Power Sub-Station Site and New Power Line Easement.** Purchase is aware and acknowledges that a portion of Tract B is subject to on-going discussions with AEP Texas Central Company ("**AEP**") as to a the new power sub-station site and a new approximately 100-foot wide power line easement for the construction of a new double circuit aerial electrical transmission lines (collectively, the "**AEP Power Facilities**"). Seller agrees to provide to Purchaser the most recent information as to the location and terms of the proposed AEP Power Facilities. The final description of Tract B shall be subject to the AEP Power Facilities, with the condition that Seller obtain Purchaser's prior written consent as to location and terms of the easement to be granted for the AEP Power Facilities, which consent shall not be unreasonably withheld. The approximate location(s) of the AEP Power Facilities are depicted in Exhibit A attached hereto for all purposes.

**Section 7.9 Laydown Area Reservation by Seller.** Seller is constructing a new plant facility located on the south side of Fulton Corridor. At Closing, Purchaser and Seller will execute the temporary construction easement (the "**Temporary Construction Easement**") across a portion of Tract B containing approximately 27.84 acres of land for use as Seller's laydown yard during construction of Seller's plant. The Temporary Construction Easement to be in the form attached hereto as **Exhibit C.**

**Section 7.10 Driveway, Pipeline and Utility Bank Easement Reservation by Seller.** Seller and Buyer to execute at closing a Driveway, Pipeline and Utility Bank Easement in the form attached hereto as **Exhibit D, A legal description of one of the two access and utility easement locations will be prepared and attached to the form attached as Exhibit D on or before the Due Diligence Expiration Date.**



**Section 7.11 Amended Designation of Driscoll Pipeline Corridor.** Seller prior to closing will record a document in the Official Records of Nueces County, Texas amending the Driscoll Pipeline Corridor to reduce the width of the main portion of the Driscoll Pipeline Corridor on Tracts A and B from one hundred feet (100') in width to no more than sixty feet (60') in width (the "**Amended Designation of Driscoll Pipeline Corridor**"). The entire width of the Amended Driscoll Pipeline Corridor will be located entirely on the Property

**ARTICLE 8  
CONDITIONS TO OBLIGATIONS OF SELLER AND PURCHASER**

**Section 8.1 Conditions Precedent to Seller's Obligations to Close.** Seller's obligation to sell the Property and to take the other actions required to be taken by Seller at the Closing is subject to satisfaction, or waiver by Seller, of each of the following conditions as of the time of the Closing, and if any of these conditions has not been satisfied, or waived by Seller, as of the time of the Closing and remains uncured for five (5) Business Days after Seller gives Purchaser Notice thereof, Seller shall be entitled, at its option, to pursue its remedies under Section 9.2:

- (a) Purchaser shall have complied in all material respects with all of the terms, covenants, and conditions hereof to be complied with on the part of Purchaser;
- (b) Purchaser shall have executed and delivered the final agreed upon Closing Documents (except the Closing Statement) to the Title Company prior to Closing;
- (c) All representations and warranties of Purchaser in Section 6.2 shall be true and correct in all material respects at the time of Closing as if made at such time (and Purchaser shall certify same upon the Closing); and
- (d) Purchaser shall have executed and delivered to Seller the following documents:
  - (i) First Amendment to Lease Agreement, the form of which is attached hereto as **Exhibit "F"**, and
  - (ii) Amendment of Rail Access Easement and License, the final form of which is attached hereto as **Exhibit "G"**.

**Section 8.2 Conditions Precedent to Purchaser's Obligations to Close.** Purchaser's obligation to purchase the Property and to take the other actions required to be taken by Purchaser at the Closing is subject to satisfaction, or waiver by Purchaser, of each of the following conditions as of the time of the Closing, and if any of these conditions has not been satisfied, or waived by Purchaser, as of the time of the Closing and remains uncured for five (5) Business Days after Purchaser gives Seller Notice thereof, Purchaser shall be entitled, at its option, to pursue its remedies under Section 9.3:

- (a) Seller shall have complied in all material respects with all of the terms, covenants, and conditions hereof to be complied with on the part of Seller;



(b) All representations and warranties of Seller in Section 6.1 shall be true and correct in all material respects at the time of Closing as if made at such time;

(c) The physical condition of the Property shall be substantially the same on the Closing Date as on the Effective Date, reasonable wear and tear excepted, and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing would materially adversely affect the value of the Property or the ability of Purchaser to operate the Property in the manner in which it is currently being operated;

(d) Purchaser shall have received an owner's policy of title insurance for the Property consistent with Sections 3.2 and 3.4;

(e) Seller shall have executed and delivered the final agreed upon Closing Documents (except the Closing Statement) to the Title Company prior to Closing;

(f) Seller shall have executed and delivered the final agreed upon Surface Site Lease and Option Agreement, the form of which is attached hereto as Exhibit "E"; and

(g) Purchaser's Port Commission authorizes Purchaser to enter into the following agreements:

- (i) Surface Site Lease and Option Agreement, the form of which is attached hereto as Exhibit "E",
- (ii) First Amendment to Lease Agreement, the form of which is attached hereto as Exhibit "F", and
- (iii) Amendment of Rail Access Easement and License, the final form of which is attached hereto as Exhibit "G"

## ARTICLE 9 REMEDIES; STATUTORY NOTICES

**Section 9.1 Time Is of the Essence.** Time is of the essence with respect to all of the terms and conditions set forth in this Contract.

**Section 9.2 Seller's Remedies.** If the Closing fails to occur as a result of a default by Purchaser in the performance of its obligations under this Contract after an opportunity to cure as provided in Section 8.1 (a "Purchaser's Default") and if Seller is not in breach of its obligations under this Contract, Seller shall, as Seller's sole and exclusive remedy, give Notice thereof to Purchaser and the Title Company, in which event Purchaser shall promptly execute and deliver written instructions directing the Title Company to pay the Down Payment to Seller as liquidated damages, and upon such disbursement this Contract shall terminate and be of no further force or effect, except as to the Surviving Provisions and as otherwise expressly provided by this Contract. Seller and Purchaser agree that it would be impractical and extremely difficult to estimate the damages that Seller may suffer in the event of Purchaser's Default. Therefore, Seller and Purchaser hereby agree that the reasonable estimate of the total net detriment that

Seller would suffer in the event of Purchaser's Default, and Seller's sole remedy (whether at law or in equity), shall be the right to receive from the Title Company and retain the full amount of the Down Payment. The payment to Seller of the Down Payment as liquidated damages is not intended as a forfeiture or penalty within the meaning of applicable law and is intended to settle all issues and questions about the amount of damages suffered by Seller in the event of a Purchaser's Default.

**Section 9.3 Purchaser's Remedies.** If the Closing fails to occur as a result of a default by Seller in the performance of its obligations under this Contract after an opportunity to cure as provided in Section 8.2 and if Purchaser is not in breach of its obligations under this Contract, Purchaser shall, as Purchaser's sole and exclusive remedy, either (i) give Notice thereof to Seller and the Title Company, in which event Seller shall promptly execute and deliver written instructions directing the Title Company to return the Down Payment to Purchaser, and upon such disbursement this Contract shall terminate and be of no further force or effect, except as to the Surviving Provisions and as otherwise expressly provided by this Contract, or (ii) commence a suit for specific performance of this Contract, provided such action is commenced within ninety (90) days following the Closing Date.

**ARTICLE 10  
MISCELLANEOUS**

**Section 10.1 Broker.** Seller and Purchaser each represent and warrant to the other that no real estate brokerage commission is payable to any Person in connection with the transaction contemplated hereby, and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission or other charge of any kind to any other Person claiming by, through or under the indemnifying party. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims. The provisions of this Section are Surviving Provisions.

**Section 10.2 Next Business Day.** In the event that any date described herein for payment or performance of the provisions hereof falls on a Saturday, Sunday, or legal holiday, the time for such payment or performance shall be extended to the next Business Day.

**Section 10.3 Notices.** Any notices or other communications between the Parties (each a "Notice," and collectively, "Notices") shall be in writing and shall be given (a) by hand, (b) by United States registered or certified mail, postage prepaid, return receipt requested, (c) by overnight courier service guaranteeing next Business Day delivery, or (d) via telecopier or facsimile transmission to the facsimile number listed below, addressed to the Party for whom intended as follows:

If to Seller: Mossi & Ghisolfi Logistics Co.  
Attn.: Andre Meyers  
450 Gears Road, Suite 240  
Houston, Texas 77067  
Phone: 281- 874-8076  
Fax: 281-716-4640  
Email: Andre.S.Meyer@gruppomgus.com



With a Copy to: Jason Davis  
Crain, Caton & James, PC  
1401 McKinney Street, 17<sup>th</sup> Floor  
Houston, Texas 77010  
Phone: 713-752-8679  
Email: jdavis@craincaton.com

If to Purchaser: Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403  
Fax: 361-881-5155

Either Party may designate by Notice given to the other Party a new address, facsimile number or person to which Notices hereunder shall thereafter be sent. All Notices hereunder shall be deemed to have been delivered (i) immediately upon actual receipt or refusal by the Party to whom intended; (ii) three (3) Business Days after deposit thereof at any main or branch United States post office if sent in accordance with this Section; (iii) one (1) Business Day after deposit thereof with an overnight courier service if sent in accordance with this Section; (iv) immediately upon delivery by hand in accordance with this Section; or (v) upon successful transmission of all pages on or before 3:00 P.M. local time to the recipient's facsimile machine or, if transmitted after such time or on a non-Business Day, then as of the next succeeding Business Day, if sent in accordance with this Section.

**Section 10.4 Assignment of Contract.** This Contract may not be assigned by either Party without the prior written consent of the other Party, which will not be unreasonably withheld.

**Section 10.5 Entire Contract; Merger.** All understandings and agreements, oral or written, heretofore had between the Parties with respect to the subject matter hereof are hereby superseded by this Contract, which alone, with the attached Exhibits, fully and completely expresses their agreement. This Contract is entered into after full investigation, and neither Party is relying upon any statement or representation not embodied in this Contract made by the other Party. This Contract may not be terminated, modified, or amended, nor any provision hereof waived, in whole or in part, except by a writing signed by the Party against whom enforcement of such termination, modification, amendment, or waiver is sought.

**Section 10.6 Interpretation.** Any reference to a portion of this Contract surviving Closing is intended to mean that such portion will survive Closing, earlier termination of this Contract, or delivery of the Deed. Article and Section headings are inserted for convenience only and shall not form a part of the text of this Contract.

**Section 10.7 Choice of Law; Binding Effect.** Enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict-of-laws principles that would require the application of any other law. The obligations of the Parties under this Contract are performable in Nueces County, Texas. This Contract shall

be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

**Section 10.8 Counterparts; Facsimile.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument. This Contract may be executed via facsimile followed by regular mail of the originals and shall be considered executed and binding upon receipt of the fax of the signature page of the last of the Parties to sign this Contract.

**Section 10.9 No Third Party Beneficiary.** The provisions of this Contract are not intended to benefit any Person not a party hereto.

**Section 10.10 Severability; Reformation.** If any provision of this Contract is or becomes invalid, illegal or incapable of being enforced or performed in the manner contemplated herein by a court of competent jurisdiction or by any applicable law or public policy, all other terms and provisions of this Contract shall nevertheless remain in full force and effect.

**Section 10.11 Further Assurances.** Seller and Purchaser agree to take, or cause to be taken, all actions, to do, or cause to be done, all things reasonably necessary (including executing and delivering, from time to time, at the request of the other all such further conveyance documents, assignments and further assurances as reasonably may be required) to consummate the transaction contemplated by this Contract; provided, however, that no such action or execution and delivery of such documents, assignments and further assurances shall increase or otherwise modify or affect the duties or obligations of the Parties hereto.

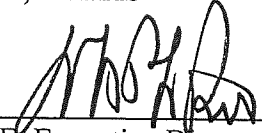
NEXT PAGE IS THE SIGNATURE PAGE.

A handwritten signature in black ink, appearing to be 'hoe', is located in the bottom right corner of the page.

IN WITNESS WHEREOF, each Party has caused this Contract to be executed by its duly authorized representative as of the Effective Date.


**PURCHASER:**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By:   
JOHN P. LARUE, Executive Director

**SELLER:**

**Mossi & Ghisolfi Logistics Co.,  
a Delaware corporation**

By:   
Name: ROBERT D. CROOKS  
Title: PRESIDENT / CEO

**ATTACHMENTS:**

- Exhibit "A" – Depiction of Tracts A & B
- Exhibit "B" – Special Warranty Deed
- Exhibit "C" – Temporary Construction Easement
- Exhibit "D" – Driveway, Pipeline and Utility Bank Easement
- Exhibit "E" – Surface Site Lease and Option Agreement
- Exhibit "F" – First Amendment to Lease Agreement
- Exhibit "G" – Amendment of Rail Access Easement and License

TITLE COMPANY'S RECEIPT OF SALES CONTRACT:

The Title Company hereby joins in the execution of this Contract this 20 day of May, 2015, in order to evidence its receipt of this Contract and its agreement to be bound by the terms of Section 2.4 of this Contract.

San Jacinto Title Company

By: 

Name: Shelly Grahnman

Title: V.P.



Exhibit "A"

Depiction of Tracts A & B

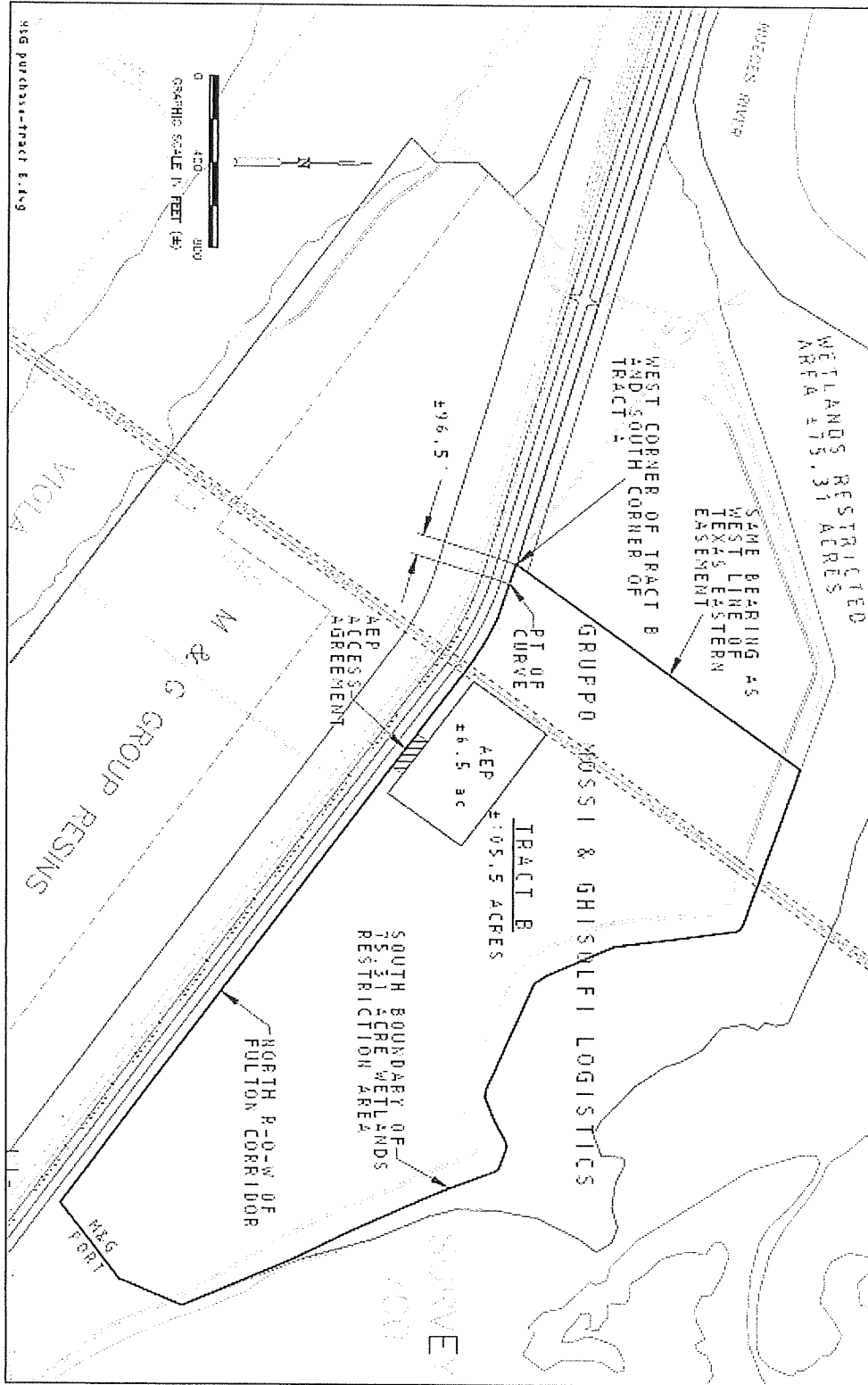


Exhibit "A"

*Handwritten signature*

**Exhibit "B"**

**Special Warranty Deed  
(See Attached)**

**Exhibit "B"**

32

Handwritten signature or initials in black ink, appearing to be 'JOC'.



SPECIAL WARRANTY DEED

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

**DATE:** \_\_\_\_\_, 2015

**GRANTOR:** MOSSI & GHISOLFI LOGISTICS CO., a Delaware corporation

**GRANTOR'S ADDRESS:** 450 Gears Road, Suite 240  
Houston, Texas 77067

**GRANTEE:** PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas

**GRANTEE'S ADDRESS:** Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403

**CONSIDERATION:** The sum of \$10.00 and other good and valuable consideration paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged.

**LAND:** The surface estate only in and to the following described tracts of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1 (collectively, the "Land"):

The land described as Tracts A and B on **EXHIBIT "A"** attached hereto and made a part hereof for all purposes (the "Land"), and as depicted on **EXHIBIT "B"** attached hereto.

**SURFACE WAIVER:**

Grantor releases and relinquishes (such release and relinquishment being herein called the "Surface Waiver") unto Grantees, as a part of this conveyance, all of Grantor's right to use the surface of the Property and any portion of the Property within the zone which is two hundred fifty feet (250') of the surface of the Property or such to greater depth as is necessary to avoid surface subsidence (the "Surface") for exploring, drilling for, mining and producing the Oil, Gas and Other Minerals, including releasing and relinquishing the right of ingress and egress in, over, under and across the Surface of the Land for such purposes and releasing and relinquishing such Surface from operations in connection with mining, quarrying, exploring, drilling, testing, treating, processing, refining, producing, storing, transporting, completing, operation and/or developing of any of the

Oil, Gas and Other Minerals or the erection of surface structures incident to such activities.

Provided, however, such Surface Waiver shall not include, and Grantor shall have and hereby reserve for Grantor and Grantor's heirs, successors and assigns, the right to:

(1) conduct operations in connection with the surveying, mining, quarrying, exploring, drilling, testing, treating, processing, refining, producing, storing, transporting, completing, operation and/or developing of any of the Oil, Gas and Other Minerals by operations which Grantors may conduct on any adjoining or nearby property outside the boundaries of the Property, and/or by the use of directional wells or other operations drilling at surface locations outside the boundaries of the Property, provided that any such drilling or operations are done at a minimum of two hundred fifty feet (250') below the surface of the Property, no drilling, operations, or any activities associated therewith is performed on the Land and in any event in such a manner as to not interfere with Grantees' peaceful enjoyment of the Property;

(2) execute oil, gas and mineral leases covering the Property or any portions thereof, but subject to, and recognizing the Surface Waiver;

(3) execute and deliver pooling or unitizing leases and agreements, and amendments and supplements thereto, covering the Property or any part thereof, together with other property in the vicinity of the Property, for the purpose of surveying, mining, quarrying, exploring, drilling, testing, treating, processing, refining, producing, storing, transporting, completing, operating, and/or developing of any of the Oil, Gas and Other Minerals but subject to and recognizing the Surface Waiver; and

(4) execute and deliver oil, gas and mineral leases, and/or amendments thereto, permitting the lessee therein and its heirs, legal representatives, successors and assigns to pool or unitize the Property or any part thereof with other property in the vicinity of the Property; provided that such leases, amendments, supplements, pooling and unitization leases and agreements are subject to the above provisions relating to Surface Waiver.

**PROPERTY:**

The Land, together with and including all of the Grantors' right, title and interest in and to the rights and appurtenances in any way belonging or appurtenant to the Land, without any representations or warranties, except for the special warranty as to title, including, without limitation: (i) any improvements on the Land; (ii) strips and gores, if any, adjacent or contiguous to the Land; (iii) any land lying in or under the bed of any street, alley, road, creek or stream running through, abutting or adjacent to the Land; (iv) easements, rights of ingress and egress and reversionary interests benefitting or serving the Land; and all of Grantor's right, title and interest in and to any claims or causes of action it may have or that could be asserted against third parties arising out of any

injury or damage to the Land accruing or occurring prior to the date of this Deed; and the full right and power to maintain an action against any such third party (but not in the name of Grantor), and to settle, compromise, or reassign any such claim and cause of action, and to give a release in full discharge of liability of the same (collectively the “Property”).

**THIS CONVEYANCE IS MADE AND ACCEPTED SUBJECT TO THE FOLLOWING “RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY”:**

- A.** This conveyance and the special warranty of title are made and accepted subject to the following matters to the extent that such are presently in force and effect and affect the Property:
- (1) All easements, rights-of-way and restrictive covenants, if any, of record with the County Clerk of Nueces County, Texas, and all easements which may be apparent by inspection of the surface;
  - (2) All real property taxes and special assessments affecting the Property for the year 2015, which having been prorated, are hereby fully assumed by Grantee. Further, Grantee hereby assumes and accepts the Property subject to any tax assessments or roll back taxes that cover the Property and which arise from Grantee’s use of the Property, which such additional taxes shall be the obligation of Grantee;
  - (3) All prior mineral estate reservations and conveyances (including prior assignments or reservations of royalty interests) by Grantor and by Grantor’s predecessors in title as shown by the records of the County Clerk of Nueces County, Texas; and the rights of any third party owner of any portion of the mineral estate and the rights of any lessee or other person claiming an interest in oil, gas and other minerals under oil, gas and mineral leases or other documents;
  - (4) Any titles or rights asserted by anyone, including, but not limited to, person, the public, corporations, governments or other entities,
    - (a) to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
    - (b) to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
    - (c) to filled-in lands, or artificial islands, or
    - (d) to statutory water rights, including riparian rights, or
    - (e) to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area, and
  - (5) Any and all zoning ordinances and utility district assessments, if any, applicable to and enforceable against the above described Property.
- B.** Grantor and Grantee agree and hereby stipulate that the Property is and shall be subject to the following covenant as a covenant running with the Property and binding upon Grantee, its legal representatives, successors and assigns, and shall be for the benefit of and enforceable by Grantor, its legal representatives,

successors and assigns in and to any portion of the land lying south of the road known as the Joe Fulton International Trade Corridor and being part of Tracts I and II conveyed to Grantor by that certain Special Warranty Deed effectively dated March 19, 2013, recorded under Nueces County Clerk's File No.: 2013010971 of the Deed Records of Nueces County, Texas (the "Grantor's Land"):

For so long as polyethylene terephthalate ("PET") is being produced in commercial quantities by a plant located on Grantor's Land, the Property may not be used for the open storage of commercial quantities of: (1) pet coke, or (2) fine grain sands, aggregates, or any other dry bulk materials, commodities or substances consisting of grains of which ninety percent (90%) or more by weight are less than one-quarter millimeter (1/4 mm) in size (the "Restricted Materials"). Notwithstanding the forgoing, this restriction shall not prevent: (i) the use of Restricted Materials to construct, build, maintain, repair, replace or remove any existing or future improvements(s) in, on, under, or over the Property; or (ii) the covered or contained storage of Restricted Materials. The term "Restricted Materials" as used herein, shall not include the soil, dirt, dredge materials, or any other material located upon on the Property at the time of this conveyance or dredge material placed on the Property in the future. This restriction shall run with the land for all purposes regardless if included in any subsequent document concerning the Property or not.

**SPECIAL WARRANTY GRANT:**

Grantor, for the consideration and subject to the above Surface Waiver and Reservations From and Exceptions to Conveyance and Warranty, GRANTS, SELLS AND CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Exceptions to Conveyance and Warranty described above. However, to the extent applicable and without any recourse to Grantor this conveyance is made with full substitution and subrogation of Grantee in and to all covenants and warranties by others heretofore given or made with respect to the Property or any part thereof.

**DISCLAIMER:**

Grantee acknowledges that Grantee has independently and personally inspected the Property. **GRANTOR EXPRESSLY DISCLAIMS AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED MAKING ANY REPRESENTATIONS, WARRANTIES, OR ASSURANCES WITH RESPECT TO THE PROPERTY SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES AS TO MATTERS OF ZONING, MINERALS, TAX CONSEQUENCES, PHYSICAL CONDITION, OCCUPANCY, ENVIRONMENTAL CONDITIONS,**

**OPERATING HISTORY OR PROJECTIONS, VALUATIONS, GOVERNMENTAL APPROVALS OR GOVERNMENTAL REGULATIONS. GRANTEE EXPRESSLY ACKNOWLEDGES THAT WITH RESPECT TO THE PROPERTY GRANTEE HAS RELIED UPON ITS INSPECTIONS THEREOF OR ITS DETERMINATIONS NOT TO INSPECT THE SAME, AND HEREBY ACCEPTS THE PROPERTY IN ITS "AS IS" "WHERE IS" CONDITION, WITH ALL FAULTS, AND WITHOUT REFERENCE TO MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY SPECIFIC PURPOSE. GRANTEE SPECIFICALLY DISCLAIMS RELIANCE ON ANY REPRESENTATIONS. THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR GRANTOR EXECUTING THIS SPECIAL WARRANTY DEED.**

**GENERAL PROVISIONS:**

When the context requires, singular nouns and pronouns include the plural.

This Special Warranty Deed may be executed in multiple counterparts, each of which may be considered an original and all of which together shall constitute one and the same document.

**[Signature Page Immediately Follows]**

Signature Page to Special Warranty Deed

EXECUTED, DELIVERED AND ACCEPTED as of the date set forth above on the first page of this Special Warranty Deed.

**GRANTOR:**

**Mossi & Ghisolfi Logistics Co.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, as \_\_\_\_\_ of Mossi & Ghisolfi Logistics Co., a Delaware corporation, on behalf of such corporation.

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

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

\_\_\_\_\_  
Print or Type Name of Notary

[SEAL]

Attachments:

- Exhibit "A" – Metes and Bounds Legal Description of Tracts A and B
- Exhibit "B" – Survey Depiction of Tracts A and B

**Signature Page to Special Warranty Deed – continued**

EXECUTED, DELIVERED AND ACCEPTED as of the date set forth above on the first page of this Special Warranty Deed.

<p><b><u>GRANTEE:</u></b></p> <p><b>PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS</b>, a navigation district and political subdivision of the State of Texas</p> <p>By: _____ John P. LaRue, Executive Director</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**ACKNOWLEDGMENT**

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF NUECHES     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by John P. LaRue, as Executive Director of PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas, on behalf of said navigational district.

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

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

\_\_\_\_\_  
Print or Type Name of Notary

**AFTER RECORDING RETURN TO:**

Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403

**Exhibit "A"**  
To  
Special Warranty Deed

**Metes and Bounds Legal Description of Tracts A and B**  
(See Attached)



MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMEDA, ZIP 78404  
361 882-5521 ~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

May 8, 2015

**Field Note Description**  
**Tract "A"**

Being a tract situated in Nueces County, Texas, located in the Rincon del Oso Grant, Abstract No. 1, and the W.S. McGregor Survey 583, Abstract No. 1001, and being located on that certain 241.79 acre tract described as Tract II in the deed to M&G Resins USA, LLC recorded under Clerk's File No. 2013010971, of the Official Public Records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod set in the south line of said 241.79 acre tract for the southeast corner of this tract, said point lying in the most northerly right-of-way line of a road right-of-way owned by the Port of Corpus Christi Authority known as the "Fulton Corridor", said point being defined by grid coordinates of X=2,323,233.95, Y=791,100.20;

THENCE along the north right-of-way line of the Fulton Corridor roadway N72°48'23"W a distance of 2722.37 feet to the point of curvature of a curve to the right;

THENCE continuing along said curve to the right whose radius is 1226.76 feet in a northwesterly direction a distance of 100.16 feet to the point of tangency of said curve;

THENCE continuing along the north right-of-way line of the Fulton Corridor, N68°08'28"W a distance of 651.13 feet to a point of curvature of a curve to the right;

THENCE continuing along the north right-of-way line of the Fulton Corridor along said curve to the right whose radius of 1230.00 feet in a northwesterly direction a distance of 229.26 feet to the point of tangency of said curve;

THENCE N57°27'43"W along the north right-of-way line of the Fulton Corridor a distance of 1202.37 feet to a point of curvature of a non-tangent curve to the left;

THENCE along said non-tangent curve to the left whose radius is 1504.05 feet and whose long chord bears N 64°06'12" W with a length of 348.28 feet in a northwesterly direction , a distance of 349.07 feet to the point of intersection with a second non-tangent curve to the left;

THENCE along said non-tangent curve to the left, whose radius if 1350.00 feet and whose long chord bears N 69°03'32" W with a length of 77.91 feet in a northwesterly direction, a distance of 77.92 feet to a point for a corner of this tract;

THENCE with the meanders of the south boundary of the Deed Restricted Tract as follows:

- N85°08'30"E a distance of 28.31';
- S81°55'50"E a distance of 90.84';
- N82°55'41"E a distance of 59.86';
- S74°20'07"E a distance of 49.78';
- N79°34'01"E a distance of 75.47';

MEJ:sab

09028-Field Notes-TractA.doc

S70°28'17"E a distance of 67.05';  
 S84°43'04"E a distance of 101.99';  
 S75°54'37"E a distance of 89.81';  
 S73°47'57"E a distance of 128.18';  
 N61°11'03"E a distance of 27.55';  
 N57°25'39"E a distance of 16.41';  
 S53°02'24"E a distance of 72.42';  
 S74°20'04"E a distance of 49.79';  
 S78°45'08"E a distance of 82.51';  
 N88°40'33"E a distance of 47.51';  
 S61°14'34"E a distance of 58.87';  
 S41°19'58"E a distance of 74.06';  
 S23°18'53"W a distance of 42.51';  
 N51°23'19"W a distance of 50.78';  
 N31°05'53"W a distance of 48.18';  
 S70°10'11"W a distance of 94.21';  
 S19°36'28"W a distance of 43.35';  
 S63°19'03"E a distance of 36.68';  
 S61°04'36"E a distance of 2.97';  
 S57°59'46"E a distance of 193.79';  
 S57°38'06"E a distance of 1127.83';  
 S63°07'07"E a distance of 143.33';  
 S68°16'25"E a distance of 501.85';  
 S80°14'40"E a distance of 16.42';  
 S56°25'53"E a distance of 17.55';  
 S68°26'58"E a distance of 49.50';  
 S84°11'06"E a distance of 26.66';  
 S74°14'41"E a distance of 40.39';  
 S58°46'44"E a distance of 70.63';  
 S68°18'28"E a distance of 81.99';  
 S73°43'00"E a distance of 347.26';  
 S73°37'54"E a distance of 121.88';  
 S73°43'50"E a distance of 188.30';  
 S17°11'37"W a distance of 8.44' to a point for a corner of this tract, said point lying 60.00 feet measure at a right angle from the north right-of-way of the Fulton Corridor;

THENCE S72°48'23"E 60.00 feet north of and parallel to the north right-of-way line of the Fulton Corridor, a distance of 2089.27 feet to a 5/8 inch iron rod set for the northeast corner of this tract;

THENCE S35°39'24"W a distance of 63.26 feet to the POINT OF BEGINNING forming a tract embracing 9.208 acres.



*Murray Bass, Jr.*  
 Murray Bass, Jr., R.P.L.S.

Note: Basis of Bearing and coordinates are State of Texas Lambert Grid, South Zone, NAD 1927

MBJ:sab

09028-Field Notes-TractA.doc

Page 2 of 2

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMEDA, ZIP 78404  
361 882-3321 ~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

May 4, 2015

**Field Note Description**  
**Tract "B"**

Being a tract situated in Nueces County, Texas, located in the Rincon del Oso Grant, Abstract No.1, and being a portion of that certain 241.791 acre tract described as Tract II in the deed to M&G Resins USA, LLC recorded under Clerk's File No. 2013010971, of the Official Public Records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod found at the southeast corner of said 241.791 acre tract for the southeast corner of this tract, said point lying in the north right-of-way line of a road right-of-way owned by the Port of Corpus Christi Authority known as the "Fulton Corridor";

THENCE N 52°57'34" W along that south line of the 241.791 acre tract and the north right-of-way line of the Fulton Corridor a distance of 3077.42 feet to the point of curvature of a curve to the left;

THENCE along said curve to the left whose radius is 1370.00 feet in a northwesterly direction, a distance of 474.56 feet to the point of tangency of said curve;

THENCE continuing along the north right-of-way line of Fulton Corridor and the south boundary of the 241.791 acre tract, N 72°48'23" W a distance of 96.50 feet to a 5/8 inch iron rod set for the southwest corner of this tract;

THENCE N 35°39'24" E across the 241.791 acre tract, a distance of 1622.62 feet to a 5/8 inch iron rods et for the northwest corner of this tract, said point lying in the south boundary of a 75.31 acre tract described as a deed restricted tract in the document recorded under Clerk's File No. 2014033659, Official Public Records of Nueces County, Texas;

THENCE with the south boundary of the deed restricted tract as follows:

- S 70°13'37" E a distance of 617.14 feet to a point;
- S 70°00'18" E a distance of 123.83 feet to a point;
- S 69°53'58" E a distance of 28.99 feet to a point;
- S 65°20'27" E a distance of 8.57 feet to a point;
- S 54°51'28" E a distance of 8.74 feet to a point;
- S 45°16'11" E a distance of 8.71 feet to a point;
- S 34°08'34" E a distance of 8.74 feet to a point;
- S 24°25'18" E a distance of 8.75 feet to a point;
- S 15°35'44" E a distance of 8.66 feet to a point;
- S 07°29'00" E a distance of 562.68 feet to a point;
- S 23°15'59" E a distance of 337.63 feet to a point;
- S 32°12'30" E a distance of 67.56 feet to a point;
- S 65°22'28" E a distance of 542.04 feet to a point;
- S 82°44'43" E a distance of 35.22 feet to a point;
- N 68°05'01" E a distance of 122.24 feet to a point;
- N 60°21'57" E a distance of 100.68 feet to a point;

MBJ:sab

09028-Field Notes-TractB.doc

N 65°19'04" E a distance of 8.86 feet to a point;  
 N 74°59'31" E a distance of 8.68 feet to a point;  
 N 84°46'40" E a distance of 8.76 feet to a point;  
 S 83°19'59" E a distance of 8.79 feet to a point;  
 S 74°11'57" E a distance of 9.09 feet to a point;  
 S 68°54'14" E a distance of 78.18 feet to a point;  
 S 65°44'36" E a distance of 7.83 feet to a point;  
 S 54°51'28" E a distance of 8.74 feet to a point;  
 S 43°38'11" E a distance of 8.97 feet to a point;  
 S 35°31'07" E a distance of 8.44 feet to a point;  
 S 24°25'23" E a distance of 7.96 feet to a point;  
 S 20°53'36" E a distance of 259.18 feet to a point;  
 S 23°47'35" E a distance of 457.73 feet to a point;  
 S 25°55'42" E a distance of 320.16 feet to a point;  
 N 68°27'31" E a distance of 12.50 feet to a point, said point lying in the northeast boundary of the heretofore referenced 241.79 acre tract;

THENCE with the boundary of the 241.791 acre tract, S 21°32'29" E a distance of 530.63 feet to a point;

THENCE S 22°44'00" W a distance of 316.08 feet to a point;

S 52°01'43" W a distance of 444.23 feet to the POINT OF BEGINNING forming a tract embracing 112.18 acres, SAVE and EXCEPT the following 3.591 acre tract described as follows:

Being a 3.591 acre tract of land lying in the Enrique Villarreal Survey, Abstract 1, Nueces County, Texas, same being a portion of a 241.791 acre tract of land described as "Tract II", and recorded in document number 2013010971, Official Public Records of Nueces County, Texas, and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod found with yellow plastic cap stamped "Bass & Welsh Engineering" in the northwest right-of-way line of Joe Fulton Corridor (200 feet wide right-of-way) and the south corner of the aforementioned 241.791 acre tract;

THENCE along a southwest line of the aforementioned 241.791 acre tract, the northeast right-of-way line of the aforementioned Joe Fulton Corridor, N 52°57'34" W a distance of 2413.94 feet to an unmonumented point;

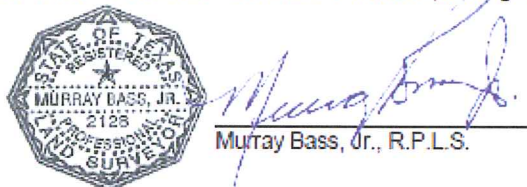
THENCE N 37°02'26" E a distance of 60.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX." for the point of BEGINNING and the south corner of this tract;

THENCE N 52°57'34" W a distance of 416.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/NUERY S.A. TX.", for the west corner of this tract;

THENCE N 37°02'26" E a distance of 376.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX." for the north corner of this tract;

THENCE S 52°57'34" E a distance of 416.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX." for the east corner of this tract;

THENCE S 37°02'26" W a distance of 376.00 feet to the POINT OF BEGINNING, leaving a tract having a net area of 108.589 acres.



Note: Basis of Bearing is State of Texas Lambert Grid, South Zone, NAD 1927

WBU:sab

09028-Field Notes-TractB.doc

**Exhibit "B"**  
To  
Special Warranty Deed

**Survey Depiction of Tracts A and B**  
(See Attached)



**Exhibit "C"**

**Temporary Construction Easement  
(See Attached)**



M&G Tract II  
M&G Laydown Yard for Plant Construction

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**  
(Laydown Yard for Construction to M&G Resins Plant)

STATE OF TEXAS                                   §  
                                                          §  
COUNTY OF NUECES                           §       KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the sum of Ten Dollars (\$10.00) the covenants contained herein and other good and valuable consideration cash in hand paid to **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, a navigation district and political subdivision of the State of Texas (“Authority”), with its main office and place of business located in Nueces County, Texas, whose mailing address is 222 Power Street, Corpus Christi, Texas 78401, the receipt and adequacy which is hereby acknowledged, the said Authority does hereby GRANT unto **Mossi & Ghisolfi Logistics Co.**, a Delaware corporation (“Grantee”), with offices at 450 Gears Road, Suite 240, Houston, Texas 77067, an exclusive temporary workspace easement as described on **Exhibit “A”** attached hereto and as depicted on the survey plats attached hereto as **Exhibit “B”** (the “Temporary Construction Easement”) for the following purpose and use:

For the storage of components as follows: structural steel, instrumentation, piping, and hardware materials; light fabrication; and employee and contractor temporary offices and parking; together with a right of entry and access to and from the Temporary Construction Easement to the Fulton Corridor.

This Temporary Construction Easement Agreement (this “Agreement”) and all of Grantee's rights hereunder shall automatically terminate upon which ever event occurs first (the “Term”): (1) the completion of Grantee’s PET plant located along Fulton Corridor; or (2) eighteen (18) calendar months from the date of execution below. Upon the termination of this Temporary Construction Easement Agreement, Grantee shall have no further rights hereunder, and all improvements on the Temporary Construction Easement and which Authority elects to not have Grantee remove shall become the property of Authority.

The Temporary Construction Easement is subject to (i) “Authority’s Reserved Rights,” (hereinafter defined), (ii) all restrictive covenants, easements, rights-of-way, leases, mineral interests, other matters shown of record in Nueces County, Texas, and (iii) and the following covenants hereby made by Grantee:

1. On the first day of each and every month, during the Term compensate Authority \$34,750.00 in advance for Grantee’s the use of the Temporary Construction Easement for the ensuing month. Failure to pay said consideration by the fifth day of each month shall be a breach of this Agreement.
2. Promptly on the expiration of the Term or upon earlier termination of this Agreement, Grantee shall peaceably and quietly leave, surrender, and yield to Authority, the Temporary Construction Easement, free and clear from all waste,



trash and environmental contamination; and except for base materials, remove all improvements that Authority has not elected to retain; and fully restore and level the surface of said land to, as reasonably practicable, the same condition as same was prior to Grantee's operations in the Temporary Construction Easement and clean up the work space area in a good workmanlike manner, and provide all mats necessary for the use of the work space and access to the Temporary Construction Easement;

3. To the extent caused by Grantee, or anyone acting by through or under Grantee, then Grantee agrees to promptly restore and replace any and all damage done to any fences, roadways, pipelines, tanks, dike walls, utility lines, driveways, and drainage areas of Authority in exercising any of the rights granted herein;
4. Grantee and its successors and assigns hereby assume any and all liability for any damage to property, both real and personal, or injuries to persons (including death) resulting from or arising out of any and all activities relating to use of the Temporary Construction Easement by Grantee, and Grantee and its successors and assigns hereby assume any and all liability for any damage to property, both real and personal, or injuries to persons (including death) resulting from or arising out of any and all activities relating to use of the Temporary Construction Easement by Grantee, its employees, representatives, agents, and contractors and **Grantee shall defend, indemnify and hold harmless Authority and its commissioners, employees, agents and contractors (for the purposes of this Temporary Construction Easement Agreement, the "Indemnified Party" or collectively, the "Indemnified Parties") from and against, and Grantee shall be responsible for, any and all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, costs and expenses (including reasonable attorneys' and experts' fees and expenses), suits, and costs of any settlement or judgment, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (for purposes of this Temporary Construction Easement Agreement, each a "Claim" or collectively, "Claims"), which may be brought or instituted or asserted after the date hereof to the extent arising from or relating to (a) any failure on the part of the Grantee, its owners, officers, directors, managers, employees, or agents (for the purposes of this Temporary Construction Easement Agreement, the "Grantee Parties") to comply with the conditions of this Temporary Construction Easement Agreement following the date hereof, or (b) the sole, joint, concurrent, or comparative negligence of any Grantee Parties following the date hereof in connection with the exercise by Grantee of the rights and privileges granted in this Temporary Construction Easement Agreement (each an "Indemnified Claim"), **EVEN IF THE INDEMNIFIED CLAIM IS CAUSED BY THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PARTIES****

**(BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY); provided, however, that Grantee shall be relieved of its obligation of indemnity (but not its obligation to defend) with respect to the percentage of such Indemnified Claim arising out of or resulting from the joint, concurrent, or comparative negligence of the Grantee Parties. In Claims against any Indemnified Party by or for an employee of any Grantee Party, Grantee's indemnification obligation under this Temporary Construction Easement Agreement shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for such Grantee Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. The indemnification provisions of this Section shall survive the expiration and/or termination of this Agreement, for a period of two (2) years after termination, and thereafter for as long as necessary to resolve any Claim or Indemnified Claim asserted within said four year period.**

5. Grantee shall procure and maintain, at its sole cost and expense, throughout the Term such policies of insurance insuring Authority, as well as Grantee, as are more particularly described below:
  - (a) Throughout the entire Term of this Temporary Construction Easement Agreement Grantee shall procure or cause its contractors and subcontractors to procure and maintain insurance coverage described below with insurance companies acceptable to Authority for work performed related to the construction, repair, operation and maintenance of the Temporary Construction Easement. All costs and deductible amounts will be the responsibility and obligation of the Grantee or its contractors and subcontractors. Prior to commencing any construction related activities on the Temporary Construction Easement, the Grantee must deliver to Authority certificate(s) of insurance, naming Authority as additional insured. The limits set forth below are minimum limits and will not be construed to limit the Grantee's liability hereunder:
  - (b) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee and Employer's Liability insurance with limits of \$1,000,000 per accident for bodily injury or disease.
  - (c) Commercial General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence; and for project specific, an annual aggregate of \$2,000,000. Coverage must include premises/operations, products/completed operations, and sudden and accidental pollution. Authority and its and its commissioners, employees, agents, and contractors shall be included as additional insureds.
  - (d) The Sudden and Accidental Pollution, which may be a separate, standalone policy, but must still meet the \$5,000,000 minimum limit

requirement. If the coverage is written on a claims-made policy form, the coverage must be maintained for two (2) years following the Term or termination of the Temporary Construction Easement.

- (e) In each of the above policies, the Grantee or its contractors and subcontractors agree to waive and will require its insurers to waive any rights of subrogation or recovery either may have against Authority and its and its commissioners, employees, agents, and contractors.
  - (f) Regardless of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for Grantee or its contractors and subcontractors, or the failure of any such insurance company to pay claims that occur, such requirements, insolvency, bankruptcy or failure will not be held to waive any of the provisions hereof.
  - (g) In the event of a loss or claim arising out of or in connection with the construction activities on the Temporary Construction Easement, the Grantee agrees, upon request of Authority, to submit a certified copy of its insurance policies for inspection by Authority.
  - (h) Grantee shall require all of its contractors and subcontractors for work related to the construction activities on the Temporary Construction Easement to provide adequate insurance coverage, all to be endorsed with the Waiver of Subrogation wording referenced in section (e) above; any deficiency in the coverage, policy limits, or endorsements of said contractors and subcontractors, shall be the sole responsibility of the Grantee.
6. Waiver of Subrogation. Authority and Grantee mutually agree that with respect to any loss which is covered by insurance then being carried (or required to be carried) by them respectively, the party hereto obligated to carry or carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, including claims with respect to the negligence of the parties hereto. Authority and Grantee further mutually agree that their respective insurance companies shall have no right of subrogation against the other party hereto on account of such loss.
7. THE TEMPORARY CONSTRUCTION EASEMENT IS GRANTED "AS IS, WHERE IS," IN ITS PRESENT CONDITION, WITH ALL FAULTS, LIMITATIONS AND DEFECTS, HIDDEN AND APPARENT, AND WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO QUALITY, FITNESS OR OTHERWISE. ALL REPRESENTATIONS AND WARRANTIES, OTHER THAN THOSE SET FORTH IN THIS AGREEMENT, EXPRESS OR IMPLIED, ARE EXCLUDED. AUTHORITY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY OTHER REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION

MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO GRANTEE. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, GRANTEE AGREES THAT THE TEMPORARY CONSTRUCTION EASEMENT IS PROVIDED TO GRANTEE ON THIS BASIS, AND GRANTEE AGREES TO ACCEPT AND ASSUME THE TEMPORARY CONSTRUCTION EASEMENT "AS IS, WHERE IS" IN ITS PRESENT CONDITION, WITH ALL FAULTS, LIMITATIONS AND DEFECTS, HIDDEN AND APPARENT, AND WITHOUT ANY GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, AS TO QUALITY, FITNESS OR OTHERWISE.

8. Authority reserves, to the extent such reservation does not unreasonably interfere with Grantee's rights under this Agreement, the following rights: (i) the right, during the Term to enter upon the Property for the purpose of showing the Property to third parties interested in acquiring an easement, lease or other interest in the Property; (ii) the right to grant third party easements and rights of way during the Term; and (iii) the right to enter upon the Property for survey and testing purposes, including but not limited to, the right to conduct and/or observe geotechnical, boundary, environmental, and cultural surveys of the Property (collectively the "Authority's Reserved Rights"). Grantee agrees to reasonably cooperate with the exercise of any of Authority's Reserved Rights to the extent such Authority's Reserved Rights do not interrupt Grantee's normal operations on the Property nor require the relocation or movement of materials, temporary offices, parking areas, or equipment.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 2015.

**[Signature Page Immediately Follows]**

**AUTHORITY:**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
John P. LaRue  
Executive Director

**GRANTEE:**

**Mossi & Ghisolfi Logistics Co.,  
a Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENTS:**

- Exhibit "A" – Legal Description of Temporary Construction Easement
- Exhibit "B" – Survey Plat of Temporary Construction Easement

**Exhibit "A"**

To

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT  
(Laydown Yard for Construction to M&G Resins Plant)**

**Legal Description of Laydown Yard**

**Field Note Description  
Laydown Tract**

Being a tract situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1, and being a portion of that tract described as Tract II in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Company recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas and being more particularly described by metes and bounds as follows:

**BEGINNING** at a point within said Tract II, said point having State of Texas Lambert Grid, South Zone, NAD 1927 coordinates of X=2,326,384.94, Y= 788,853.80 from whence the southmost corner of Tract II bears S50°43'57"W at 235.20 feet;

THENCE N52°45'46"W a distance of 1424.69 feet to a point for a corner of this tract;

THENCE N12°08'39"W a distance of 338.23 feet to a point for a corner of this tract;

THENCE N47°22'57"E a distance of 974.46 feet to a point for a corner of this tract;

THENCE S25°11'39"E a distance of 1445.91 feet to a point for a corner of this tract;

THENCE S06°14'18"W a distance of 58.21 feet to a point for a corner of this tract;

THENCE N52°41'26"W a distance of 61.74 feet to a point for a corner of this tract;

THENCE S64°29'10"W a distance of 27.47 feet to a point for a corner of this tract;

THENCE S28°42'23"E a distance of 37.56 feet to a point for a corner of this tract;

THENCE S65°12'17"E a distance of 22.16 feet to a point for a corner of this tract;

THENCE S39°59'46"W a distance of 23.41 feet to a point for a corner of this tract;

THENCE S80°26'38"W a distance of 94.27 feet to a point for a corner of this tract;

THENCE S43°52'18"W a distance of 46.25 feet to a point for a corner of this tract;

THENCE S03°58'05"E a distance of 21.13 feet to a point for a corner of this tract;

THENCE S57°25'09"W a distance of 32.82 feet to a point for a corner of this tract;

THENCE S05°15'07"E a distance of 38.67 feet to a point for a corner of this tract;  
THENCE S73°18'33"W a distance of 28.61 feet to a point for a corner of this tract;  
THENCE S27°19'17"W a distance of 44.38 feet to a point for a corner of this tract;  
THENCE S78°13'10"E a distance of 73.75 feet to a point for a corner of this tract;  
THENCE N72°18'08"E a distance of 88.32 feet to a point for a corner of this tract;  
THENCE N52°30'01"E a distance of 31.99 feet to a point for a corner of this tract;  
THENCE N01°18'49"E a distance of 41.83 feet to a point for a corner of this tract;  
THENCE N41°10'36"E a distance of 35.03 feet to a point for a corner of this tract;  
THENCE N08°07'46"W a distance of 12.11 feet to a point for a corner of this tract;  
THENCE N68°32'01"E a distance of 14.20 feet to a point for a corner of this tract;  
THENCE S66°39'19"E a distance of 18.02 feet to a point for a corner of this tract;  
THENCE N58°13'06"E a distance of 23.08 feet to a point for a corner of this tract;  
THENCE N04°03'36"E a distance of 16.41 feet to a point for a corner of this tract;  
THENCE S60°28'04"E a distance of 42.91 feet to a point for a corner of this tract;  
THENCE S23°01'06"W a distance of 173.62 feet to a point for a corner of this tract;  
THENCE N62°27'20"W a distance of 40.27 feet to a point for a corner of this tract;  
THENCE S03°14'09"E a distance of 20.02 feet to a point for a corner of this tract;  
THENCE S26°54'08"W a distance of 27.43 feet to a point for a corner of this tract;  
THENCE S69°46'34"W a distance of 24.73 feet to a point for a corner of this tract;  
THENCE N77°46'46"W a distance of 26.50 feet to a point for a corner of this tract;  
THENCE S43°59'26"W a distance of 14.77 feet to a point for a corner of this tract;  
THENCE S18°39'22"W a distance of 22.70 feet to a point for a corner of this tract;  
THENCE S63°19'49"E a distance of 36.68 feet to a point for a corner of this tract;  
THENCE S06°42'46"E a distance of 26.70 feet to a point for a corner of this tract;  
THENCE S37°51'21"W a distance of 16.68 feet to a point for a corner of this tract;

THENCE S24°46'51"E a distance of 23.54 feet to a point for a corner of this tract;

THENCE S53°35'32"E a distance of 18.18 feet to a point for a corner of this tract;

THENCE S22°19'08"W a distance of 92.67 to a point for a corner of this tract to the **POINT OF BEGINNING**, forming a tract embracing 27.84 acres.



**Exhibit "B"**

To  
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT  
(Laydown Yard for Construction to M&G Resins Plant)

**Survey Plat of Temporary Construction Easement**

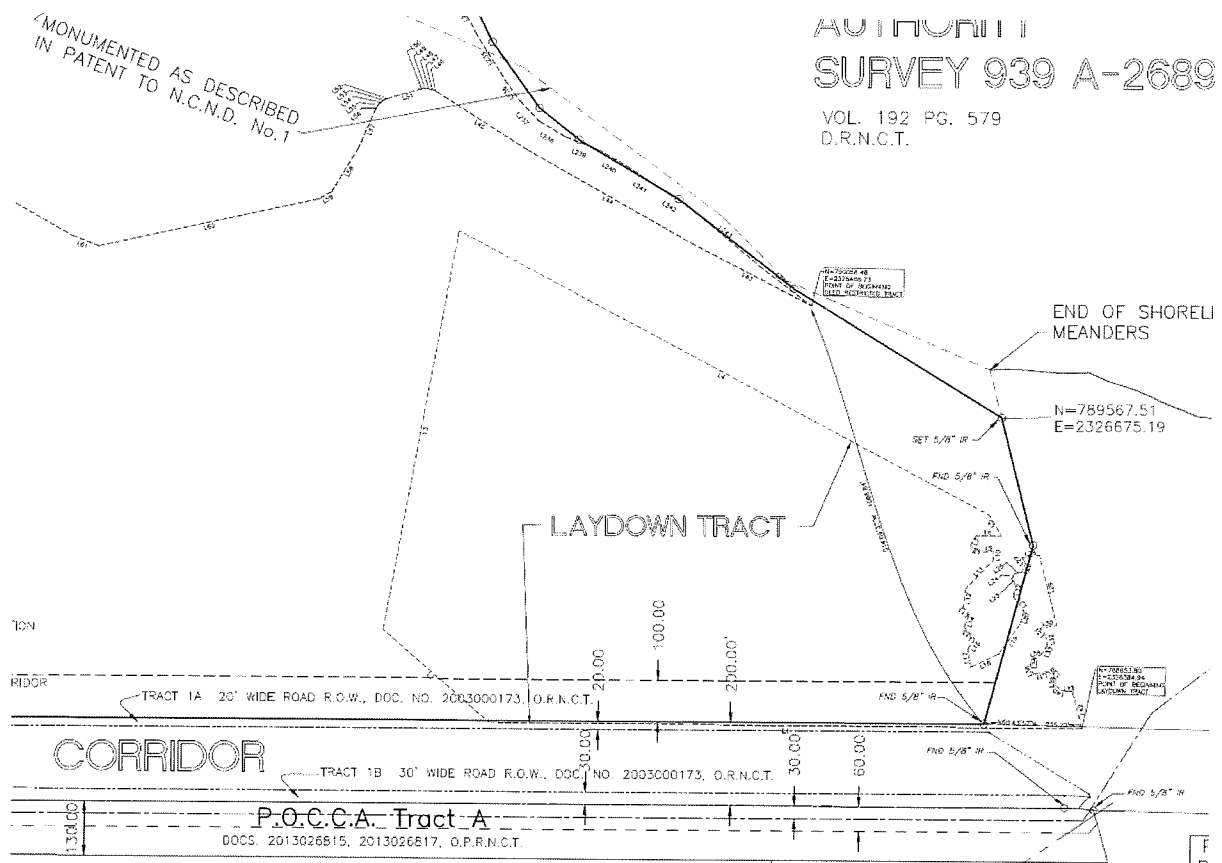


Exhibit "D"

**Driveway, Pipeline and Utility Bank Easement  
(See Attached)**

Exhibit "D"

34

**DRIVEWAY, PIPELINE AND UTILITY BANK EASEMENT**

(M&G LE two 60-foot wide Driveway, Pipeline and Utility Bank Easements – Tract A of Tract II)

This Driveway, Pipeline and Utility Bank Easement (this “Agreement”) dated this the \_\_\_\_ day of \_\_\_\_\_, 2015 (the “Effective Date”), is executed by and between **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, a navigation district and political subdivision of the State of Texas (“Authority”), and (ii) **M&G RESINS USA, LLC**, a Delaware limited liability company, and **Mossi & Ghisolfi logistics Co.**, a Delaware corporation, and their respective successors or assigns (collectively, “M&G”). Authority and M&G are sometimes hereinafter referred to individually as “Party” and collectively as “Parties.”

**RECITALS:**

A. Authority is the owner of that certain tract of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1, and as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by this reference for all purposes (“Authority’s Property”).

B. M&G is the owner of that certain tract of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1, located along a sixty foot (60’) wide strip of Authority’s Property designated as a pipeline corridor which abuts the north side of Joe Fulton International Trade Corridor, Corpus Christi, Texas 78409, which is more particularly described on Exhibit B attached hereto and incorporated herein by this reference for all purposes (the “M&G Property”).

C. Authority has agreed to grant and convey M&G two sixty (60’) wide driveway, pipeline and utility bank easements on, over, within, across and through a portion of the Authority’s Property, used as a pipeline corridor, for the purpose of providing the M&G Property with ingress and egress for driveways, pipelines and utilities across Authority Property to the Joe Fulton International Trade Corridor (“Fulton Road”) as provided under the terms of this Agreement.

**AGREEMENTS:**

NOW, THEREFORE, for and in consideration of the premises set forth above and incorporated herein by this reference, the sum of \$10.00 in hand paid, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged and confessed, and intending to be legally bound, Authority and M&G agree to the following:

1. Grant of Driveway Pipeline and Utility Bank Easement. Authority, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by M&G, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby GRANT, BARGAIN, SELL and CONVEY unto M&G, its successors and assigns, subject to the remaining terms and conditions hereof, the following:

- (a) Easement and Easement Area. Authority hereby grants and conveys to M&G and its successors and assigns, as an appurtenance to the M&G Property, two separate perpetual, non-exclusive, driveway, pipeline and

utility bank easements each being sixty feet (60') in width (each and collectively, the "Easement") for driveways, pipelines, and utilities over, under, and across a portion of the Authority's Property. The exact location of each Easement (collectively, the "Easement Area") is described and depicted as follows:

- (i) Easement #1 – the location and description of the first 60' wide Easement ("Easement #1") is described and depicted on Exhibit "C-1" attached hereto for all purposes.
  - (ii) Easement #2 – as to the second 60' wide Easement ("Easement #2"), this Easement shall not be located closer than 250 feet from Easement #1, and shall be designated by M&G or its successors or assigns at some time in the future. When the exact location of Easement #2 has been designated by M&G or its successors or assigns, then M&G will cause a survey and metes and bounds description of Easement #2 to be prepared by a licensed surveyor. The Parties will then execute and record an amendment to this Agreement which will include a survey plat and metes and bounds description of the exact location of Easement #2.
- (b) Temporary Construction Easement. A temporary, non-exclusive easement (the "Construction Easement") twenty feet (20 feet) in width on each side of the Easement Area, to the extent such area is reasonably available at the time of any construction, repair, alteration, placement or removal of any of the Utilities (as defined below). The Construction Easement, to the extent reasonably available is for the purposes of constructing, repairing, altering, replacing and removing the Utilities (as defined below) from time to time.
- (c) Easement Purpose. The purposes of the Easement are as follows:
- (i) to provide free and uninterrupted pedestrian, vehicle, and large truck traffic to and from (ingress and egress) to the M&G Property from Fulton Road (the "M&G Driveways"); and
  - (ii) to lay, install, construct, inspect, maintain, operate, replace, remove, and repair on, in, under, over and across the Easement Area, as the case may be, any or all of the following: (1) any waterlines and related equipment; (2) wastewater lines and related equipment; (3) storm sewer lines and appurtenances; (4) stream lines; (5) pipe racks and pipe bridges and related equipment; (6) electrical power lines

and related equipment; (7) power poles; (8) cable and fiber optic lines; (9) pipelines of various widths and related equipment; (10) telephone, telegraph and other communications lines and related equipment; and (11) any and all other utility, communication facilities, appurtenances and equipment and installations of every kind and character whatsoever being surface or sub-surface utility lines as may, from time to time, be required to provide any utilities or other services to all or any portion of the M&G Property (collectively, the "Utilities").

All such Utilities must be installed either with (i) at such depth so as to not unreasonably interfere with that portion of the Driscoll Pipeline Corridor located on the Authority's Property; which in no event shall be less than thirty-six inches (36") of burial cover, or (ii) a minimum of twenty-six feet (26') on aerial clearance above Authority's Property and will comply with the Authority's Utility Accommodation Policy. For the purposes of this paragraph the term "Driscoll Pipeline Corridor" means the pipeline corridor created by that certain Designation of Pipeline Corridor with an effective date of July 22, 2002 and recorded under document number 2002056125 of the Official Public Records of Nueces County, Texas.

- (d) Ingress and Egress. M&G's right of ingress and egress to and from the Easement Area shall be confined to the Easement Area and M&G, except as otherwise provided for herein, shall not have the right to cross Authority's Property outside the Easement Area, store materials or equipment thereon or to conduct any of its operations thereon, unless the prior consent of the Authority is obtained in writing, which consent will not be unreasonably withheld. Except in the case of an emergency, M&G agrees to notify the Authority not less than forty-eight (48) hours prior to its employees, agents or contractors entering upon the easement for construction, maintenance, repairs or other operations.

2. Authority Reserved Rights. THERE IS EXPRESSLY RESERVED unto Authority and Authority's successors and assigns, the right to use fully all of the land (surface and subsurface) encompassed by the Easement Area for any purpose not inconsistent with the rights granted hereunder to M&G, its successors and assigns. Authority's reserved rights include, but are not limited to, the right to use the Easement Area, to build fences (so long as does not block or unreasonably interfere with M&G's rights herein), ditches, water lines, sewer lines, pipelines, gas lines, electric lines, streets, roadways, other utility lines over or across the Easement Area. Authority shall have the right to use and enjoy the surface and subsurface of the Easement Area hereinabove described provided such use and enjoyment shall not unreasonably interfere with the use thereof by M&G for the purposes for which said Easement is granted. Authority also reserves the right to grant other easements crossing the Easement Area, provided that any such easement cross is at not less than a forty-five (45) degree angle. Authority further reserves the right, after the expiration of two years, to use the surface of the Construction Easement for any purpose

whatsoever, even if such use will prevent M&G's future use of the Construction Easement or any portion thereof.

3. Compliance with Legal Requirements. The Utilities Work (as hereinafter defined in this Section 3) shall be performed and the Utilities and all equipment and facilities located on the Easement Area shall be operated, used, tested, inspected and otherwise dealt with in strict accordance with the following (the "Legal Requirements"): any and all judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority (as hereinafter defined in this Section 3) including, without limitation, the rules and regulations of the U. S. Department of Transportation, relating to pipeline safety which are applicable to any of M&G's activities permitted hereunder, the Utilities (including, without limitation, the ownership, use, operation, testing and inspecting of the Utilities), the Utilities Work, or any other activity or undertaking relating to any of the foregoing, and which require M&G or any person or entity under the control of M&G to take any action or prohibit M&G or any person or entity under the control of M&G from taking any action. For purposes hereof, the term "Utilities Work" shall mean and refer to the construction, repair, maintenance, removal, or replacement of the Utilities and related equipment and facilities, or any one or more of the foregoing; and the term "Governmental Authority" shall mean and refer to any and all courts, boards, agencies, commissions, offices or authorities of any and every nature whatsoever of any branch (executive, legislative, judicial or otherwise) of any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence having jurisdiction over the Utilities (or any related appurtenances) or the Utilities Work.

4. "As-Built" Drawings. M&G agrees to submit to Authority two sets (one to be reproducible) of pre-construction drawings of the M&G Driveways and Utilities for review and approval, which shall not be unreasonably withheld. M&G also agrees to submit to Authority two sets (one to be reproducible) of complete information, including descriptions, drawings, sketches, marked prints and similar data, indicating the "as-built" condition and location, including profiles, of the Utilities and all fixtures located or to be located anywhere on the Easement Area signed and sealed by a State of Texas Registered Professional Land Surveyor. M&G shall update the "as-built" drawings to reflect each relocation, adjustment, revision, removal or other change to all or any portion or portions of the Utilities and fixtures or the addition of any equipment to the Easement Area occurring subsequent to the initial construction of the Utilities and not reflected on the original "as-built" drawings delivered to Authority pursuant to this Section 4. Copies (at least one of which shall be reproducible) of "as-built" drawings, in plan and profile, updated pursuant to the immediately preceding sentence shall be delivered to Authority within ninety (90) days after the completion of the Utilities Work or other matter resulting in the updating of such drawings.

5. Maintenance of Easement Area.

- (a) M&G or any subsequent owner of the M&G Property shall maintain the Easement Area in a condition sufficient to permit safe passage upon, over, and across it at all times.
- (b) Any and all costs for the installation, repair, maintenance and improvement of the M&G Driveway, Utilities, and Easement Area shall be the sole responsibility of M&G.

6. Character of Easement. This Agreement is irrevocable, shall run with and burden the Easement Area and the Construction Easement, as set for the herein, and be appurtenant and a benefit to the M&G Property, and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Each owner, by acceptance of a deed conveying title to the Easement Area or the Authority's Property shall for himself and his successor and assigns be deemed to accept such deed upon and subject to each and all of the provisions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired said interest.

7. Equitable Right of Enforcement. Any unreasonable interference or unreasonable threatened interference with the Easement Area or any portion of the Easement Area may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting such interference and commanding compliance with its terms, which restraining orders and injunctions will be obtainable upon proof of the existence of such interference or threatened interference, and without the necessity of proof of inadequacy of legal remedies or irreparable harm; provided, however, this is not to be an election of remedies or a waiver of any other rights or remedies available at law or equity.

8. No Public Dedication. In no event and under no circumstances of any kind or nature whatsoever shall the Easement granted be deemed to be a gift or dedication of any portion of the Easement Area for the benefit of the general public or to any governmental entity.

9. Title Exceptions. The Easement is further made subject to any restrictions, covenants, easements, rights-of-way, encumbrances, and mineral or royalty reservations or interests affecting the Authority's Property and appearing of record in the real property records of Nueces County, Texas, to the extent that said items and matters are in effect and validly enforceable against the Easement.

10. Warranty of Title. Subject to the matters set forth in Section 9, Authority warrants that it has title to the Easement Area, that it has lawful right and authority to grant to M&G the Easement, and that it will forever warrant and defend the Easement unto M&G and its successors and assigns against the claims of all persons claiming by, through, or under the Authority, but not otherwise.

11. Exhibits. All Exhibits attached hereto are hereby incorporated herein by this reference and made a part hereof for all purposes.

12. Amendment. The provisions of this Agreement may be amended, modified, enlarged, or otherwise changed in whole or in part by the unanimous written consent and agreement of all of the current owners of the Easement Area and the M&G Property as of the date of such amendment, which amendment shall be properly recorded in the real property records of Nueces County, Texas as a condition to its effectiveness.

13. Governing Law. **THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS**

**RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.**

14. Severability/Interpretation. In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Whenever required by the context, as used in this Agreement, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa.

15. Notices. Any notice required or permitted under this Agreement shall be in writing with a statement therein to the effect that notice is given pursuant to this Agreement and the same shall be served (i) by hand delivery, (ii) by overnight courier service guaranteeing next business day delivery, (iii) via facsimile transmission to the facsimile number listed below, or (iv) by depositing same in the United States mail, registered or certified mail, return receipt requested, postage prepaid. Notice shall be deemed given and received if and when actually received (if not by mail), or on the date of delivery as shown on the return receipt (if by mail). Notices to the Authority and to M&G shall be sent to the following address (unless and until change of address information is sent to the other Party):

If to M&G: M&G Resins USA, LLC  
Attn.: Andre Meyer  
450 Gears Road, Suite 240  
Houston, Texas 77067  
Phone: 281-874-8076  
Fax: 281-716-4640  
Email: Andre.S.Meyer@gruppomgus.com

With a Copy to: Jason Davis  
Crain, Caton & James, PC  
1401 McKinney Street, 17<sup>th</sup> Floor  
Houston, Texas 77010  
Phone: 713-752-8679  
Email: jdavis@craincaton.com

If to Authority: Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403  
Fax: 361-881-5155

Either Party may designate by Notice given to the other Party a new address, facsimile number or person to which Notices hereunder shall thereafter be sent.



16. Counterparts. This Agreement may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

*[Next page is the signature page]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

**Authority:**

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
JOHN P. LARUE, Executive Director

**M&G:**

**Mossi & Ghisolfi Logistics Co.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**M&G RESINS USA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENTS:**

- Exhibit "A" – Legal Description of Authority’s Property
- Exhibit "B" – Legal Description of M&G’s Property (save and except Port Tracts A and B)
- Exhibit "C-1" – Legal Description and Survey Plat of Easement #1 of the Easement Area

ACKNOWLEDGMENTS

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF NUECHES     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by John P. Larue, as Executive Director of PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas, on behalf of said navigational district.

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

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

\_\_\_\_\_  
Print or Type Name of Notary

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, as \_\_\_\_\_ of M&G RESINS USA, LLC, a Delaware limited liability company, on behalf of such company.

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

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

\_\_\_\_\_  
Print or Type Name of Notary



**EXHIBIT A**

**Authority's Property - Legal Description**

**(See Attached)**

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nmw@aol.com](mailto:nmw@aol.com)

3054 S. ALAMEDA, ZIP 78404  
361 882-5521 ~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

May 8, 2015

**Field Note Description**  
**Tract "A"**

Being a tract situated in Nueces County, Texas, located in the Rincon del Oso Grant, Abstract No.1, and the W.S. McGregor Survey 583, Abstract No. 1001, and being located on that certain 241.79 acre tract described as Tract II in the deed to M&G Resins USA, LLC recorded under Clerk's File No. 2013010971, of the Official Public Records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod set in the south line of said 241.79 acre tract for the southeast corner of this tract, said point lying in the most northerly right-of-way line of a road right-of-way owned by the Port of Corpus Christi Authority known as the "Fulton Corridor", said point being defined by grid coordinates of X=2,323,233.95, Y=791,100.20;

THENCE along the north right-of-way line of the Fulton Corridor roadway N72°48'23"W a distance of 2722.37 feet to the point of curvature of a curve to the right;

THENCE continuing along said curve to the right whose radius is 1226.76 feet in a northwesterly direction a distance of 100.16 feet to the point of tangency of said curve;

THENCE continuing along the north right-of-way line of the Fulton Corridor, N68°08'28"W a distance of 651.13 feet to a point of curvature of a curve to the right;

THENCE continuing along the north right-of-way line of the Fulton Corridor along said curve to the right whose radius of 1230.00 feet in a northwesterly direction a distance of 229.26 feet to the point of tangency of said curve;

THENCE N57°27'43"W along the north right-of-way line of the Fulton Corridor a distance of 1202.37 feet to a point of curvature of a non-tangent curve to the left;

THENCE along said non-tangent curve to the left whose radius is 1504.05 feet and whose long chord bears N 64°06'12" W with a length of 348.28 feet in a northwesterly direction , a distance of 349.07 feet to the point of intersection with a second non-tangent curve to the left;

THENCE along said non-tangent curve to the left, whose radius if 1350.00 feet and whose long chord bears N 69°03'32" W with a length of 77.91 feet in a northwesterly direction, a distance of 77.92 feet to a point for a corner of this tract;

THENCE with the meanders of the south boundary of the Deed Restricted Tract as follows:

- N85°08'30"E a distance of 28.31';
- S81°55'50"E a distance of 90.84';
- N82°55'41"E a distance of 59.86';
- S74°20'07"E a distance of 49.78';
- N79°34'01"E a distance of 75.47';

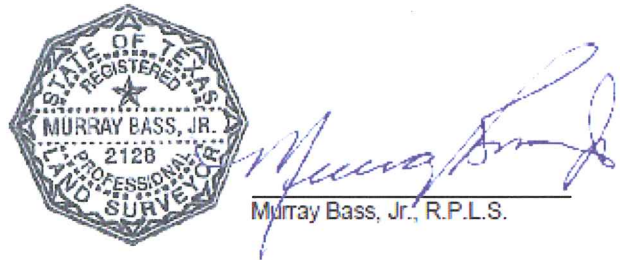
MBJ:sab

09028-Field Notes-TractA.doc

S70°28'17"E a distance of 67.05';  
 S84°43'04"E a distance of 101.99';  
 S75°54'37"E a distance of 89.81';  
 S73°47'57"E a distance of 128.18';  
 N61°11'03"E a distance of 27.55';  
 N57°25'39"E a distance of 16.41';  
 S53°02'24"E a distance of 72.42';  
 S74°20'04"E a distance of 49.79';  
 S78°45'08"E a distance of 82.51';  
 N88°40'33"E a distance of 47.51';  
 S61°14'34"E a distance of 58.87';  
 S41°19'58"E a distance of 74.06';  
 S23°18'53"W a distance of 42.51';  
 N51°23'19"W a distance of 50.78';  
 N31°05'53"W a distance of 48.18';  
 S70°10'11"W a distance of 94.21';  
 S19°36'28"W a distance of 43.35';  
 S63°19'03"E a distance of 36.68';  
 S61°04'36"E a distance of 2.97';  
 S57°59'46"E a distance of 193.79';  
 S57°38'06"E a distance of 1127.83';  
 S63°07'07"E a distance of 143.33';  
 S68°16'25"E a distance of 501.85';  
 S80°14'40"E a distance of 16.42';  
 S56°25'53"E a distance of 17.55';  
 S68°26'58"E a distance of 49.50';  
 S84°11'06"E a distance of 26.66';  
 S74°14'41"E a distance of 40.39';  
 S58°46'44"E a distance of 70.63';  
 S68°18'28"E a distance of 81.99';  
 S73°43'00"E a distance of 347.26';  
 S73°37'54"E a distance of 121.88';  
 S73°43'50"E a distance of 188.30';  
 S17°11'37"W a distance of 8.44' to a point for a corner of this tract, said point lying 60.00 feet  
 measure at a right angle from the north right-of-way of the Fulton Corridor;

THENCE S72°48'23"E 60.00 feet north of and parallel to the north right-of-way line of the Fulton Corridor, a  
 distance of 2089.27 feet to a 5/8 inch iron rod set for the northeast corner of this tract;

THENCE S35°39'24"W a distance of 63.26 feet to the POINT OF BEGINNING forming a tract embracing  
 9.208 acres.



Note: Basis of Bearing and coordinates are State of Texas Lambert Grid, South Zone, NAD 1927

MBJ:sab

08028-Field Notes-TractA.doc

Page 2 of 2

**EXHIBIT B**

**M&G's Property - Legal Description**

**(See Attached)**



**EXHIBIT B**

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMEDA, ZIP 7840  
361 882-5521 ~ FAX 361 882-120  
e-mail: [marravjr@aol.co](mailto:marravjr@aol.co)

**BASS & WELSH ENGINEERING**

TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

October 9, 2012

**Field Note Description  
Tract II**

Being a tract situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No.1 and being a portion of that 1,783.33 acre tract described in the deed recorded in Volume 146 at Page 228 of the Deed Records of Nueces County, Texas and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod set in the north boundary of a 20.00 foot wide road right-of-way tract designated 1-A, and the document recorded under Clerk's File No. 2003000173, Official Records of Nueces County, Texas said point lying in the west boundary of a 2,694.93 acre tract patented to the Nueces County Navigation District No. 1 by the State of Texas known as Survey 939 and being recorded in Volume 192, Page 579 of the Deed Records of Nueces County, Texas for the northeast corner of this tract;

THENCE N 52°57'34" W along the north boundary of the 20.00 foot wide road right-of-way tract, a distance of 3,077.43 feet to a 5/8 inch iron rod set for the point of curvature of a curve to the left;

THENCE continuing along the north line of the 20.00 foot wide road right-of-way tract on said curve to the left in a westerly direction;

THENCE on said curve to the left whose radius is 1370.00 feet in a westerly direction a distance of 474.56 feet to a 5/8 inch iron rod set for the point of tangency of said curve;

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract, N 72°48'23" W a distance of 2818.87 feet to the point of curvature of a curve to the right;

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract on said curve to the right whose radius is 1226.76 feet in a westerly direction, a distance of 100.16 feet to a 5/8 inch iron rod set for the point of tangency of said curve;

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract N 68°08'28" W a distance of 651.13 feet to a 5/8 inch iron rod set for the point of curvature of a curve to the right;

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract on said curve to the right, whose radius is 1230.00 feet in a westerly direction, a distance of 229.26 feet to the point of tangency of said curve;

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract N 57°27'43" W a distance of 1202.37 feet to the point of curvature of a curve to the left;

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract on said curve to the left whose radius is 1504.05 feet in a westerly direction, a distance of 349.06 feet to the point of compound curvature with a curve to the left;

**EXHIBIT B – continued**

THENCE continuing along the north boundary of the 20.00 foot wide road right-of-way tract on said curve to the left, whose radius is 1350.00 feet, a distance of 77.92 feet to a 5/8 inch iron rod set for the westmost point in the 20.00 foot wide road right-of-way tract, said point lying at the intersection of the north boundary of the 20.00 foot wide road right-of-way tract and the north boundary of the right-of-way for the Fulton Corridor as described in the deed to the Port of Corpus Christi Authority, recorded under Clerk's File No. 835874;

THENCE along said north right-of-way line of the Fulton Corridor N 70°41'51" W a distance of 659.95 feet to a 5/8 inch iron rod set for a corner of the Fulton Corridor right-of-way and a corner of this tract;

THENCE continuing along the north boundary of the right-of-way of the Fulton Corridor N 79°41'07" W a distance of 120.06 feet to a 5/8 inch iron rod set for an angle point in the right-of-way and a corner of this tract;

THENCE continuing along the north boundary of the right-of-way of the Fulton Corridor N 82°11'26" W a distance of 29.89 feet to a 5/8 inch iron rod set at the intersection of the north boundary of the Fulton Corridor with the south bank of the Nueces River;

THENCE with the meanders of the south bank of the Nueces River in a generally east direction is as follows:

- S 86°55'54" E a distance of 281.82 feet;
- S 89°58'28" E a distance of 296.47 feet;
- S 82°24'26" E a distance of 189.44 feet;
- S 77°02'26" E a distance of 209.67 feet;
- S 68°06'03" E a distance of 204.01 feet;
- S 54°31'04" E a distance of 118.74 feet;
- S 54°12'51" E a distance of 153.27 feet;
- S 51°08'16" E a distance of 193.98 feet;
- S 34°57'24" E a distance of 157.04 feet;
- S 52°58'57" E a distance of 114.52 feet;
- S 46°59'17" E a distance of 360.02 feet;
- S 71°54'55" E a distance of 99.04 feet;
- S 60°20'27" E a distance of 142.70 feet;
- S 49°44'35" E a distance of 47.53 feet;
- S 65°33'32" E a distance of 411.25 feet;
- S 71°02'40" E a distance of 203.43 feet;
- S 80°09'07" E a distance of 107.94 feet;
- S 68°39'16" E a distance of 324.52 feet;
- S 77°44'59" E a distance of 307.24 feet;
- N 79°20'09" E a distance of 272.53 feet;
- N 66°33'45" E a distance of 423.89 feet;
- N 52°17'56" E a distance of 311.15 feet;
- N 30°28'04" E a distance of 117.14 feet;
- N 31°19'47" E a distance of 397.71 feet;
- N 23°56'54" E a distance of 250.66 feet;
- N 36°13'03" E a distance of 177.09 feet;
- N 49°13'28" E a distance of 196.77 feet;
- N 73°15'17" E a distance of 196.23 feet;
- S 88°11'53" E a distance of 126.14 feet;
- S 77°50'16" E a distance of 102.68 feet;
- S 32°18'31" E a distance of 98.82 feet;
- S 76°26'50" E a distance of 88.58 feet;
- S 59°53'15" E a distance of 178.37 feet;
- S 60°44'05" E a distance of 184.03 feet;
- S 60°44'51" E a distance of 114.61 feet;
- S 84°32'54" E a distance of 91.24 feet;
- S 51°06'27" E a distance of 71.24 feet;
- S 71°22'10" E a distance of 144.14 feet;
- N 84°02'21" E a distance of 74.70 feet;
- S 77°18'21" E a distance of 322.62 feet;
- S 73°07'56" E a distance of 155.23 feet;

MBJ:sab

**EXHIBIT B – continued**

S 64°37'23" E a distance of 146.56 feet;  
 S 76°27'20" E a distance of 340.69 feet;  
 S 65°02'12" E a distance of 410.24 feet;  
 S 65°17'04" E a distance of 145.02 feet;  
 S 13°03'57" E a distance of 56.98 feet;  
 S 16°26'24" W a distance of 51.99 feet;  
 S 43°01'53" E a distance of 48.88 feet;  
 S 21°48'39" W a distance of 66.65 feet;  
 S 10°57'17" E a distance of 109.80 feet;  
 S 49°51'50" E a distance of 127.98 feet;  
 S 29°49'34" E a distance of 112.59 feet;  
 S 17°20'35" E a distance of 76.53 feet;  
 S 33°18'42" E a distance of 167.85 feet;  
 S 46°06'09" E a distance of 100.82 feet;  
 S 45°18'30" E a distance of 124.17 feet;  
 S 60°02'39" E a distance of 72.77 feet;  
 N 69°04'22" E a distance of 107.33 feet;  
 N 2°42'50" E a distance of 91.21 feet;  
 N 32°09'05" E a distance of 18.12 feet;  
 N 89°46'38" E a distance of 26.88 feet;  
 S 62°50'32" E a distance of 88.84 feet;  
 S 80°59'10" E a distance of 118.29 feet;  
 N 73°29'55" E a distance of 98.06 feet;  
 S 68°31'45" E a distance of 75.39 feet;  
 S 30°51'43" E a distance of 82.74 feet;  
 S 36°12'08"W a distance of 102.65 feet;  
 S 26°29'13"W a distance of 208.85 feet;  
 S 10°37'32"W a distance of 194.94 feet;  
 S 1°04'42"W a distance of 194.45 feet;  
 S 14°48'10" E a distance of 121.78 feet;  
 S 22°35'49" E a distance of 278.59 feet;  
 S 15°37'03" E a distance of 351.08 feet;  
 S 21°32'29" E a distance of 587.66 feet;  
 S 22°44'00"W a distance of 316.08 feet;

THENCE S 52°01'43"W a distance of 444.23 feet to the POINT OF BEGINNING, forming a tract embracing 241.79 acres of land, more or less



*Murray Bass, Jr.*  
 Murray Bass, Jr., P.E., R.P.L.S.

Note: Basis of Bearing is State of Texas Lambert Grid, South Zone, NAD 1927

**SAVE AND EXCEPT THE FOLLOWING TRACTS A and B**

# SAVE AND EXCEPT TRACT A:

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMEDA, ZIP 78404  
361 882-5521 ~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

May 8, 2015

## Field Note Description Tract "A"

Being a tract situated in Nueces County, Texas, located in the Rincon del Oso Grant, Abstract No.1, and the W.S. McGregor Survey 583, Abstract No. 1001, and being located on that certain 241.79 acre tract described as Tract II in the deed to M&G Resins USA, LLC recorded under Clerk's File No. 2013010971, of the Official Public Records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod set in the south line of said 241.79 acre tract for the southeast corner of this tract, said point lying in the most northerly right-of-way line of a road right-of-way owned by the Port of Corpus Christi Authority known as the "Fulton Corridor", said point being defined by grid coordinates of X=2,323,233.95, Y=791,100.20;

THENCE along the north right-of-way line of the Fulton Corridor roadway N72°48'23"W a distance of 2722.37 feet to the point of curvature of a curve to the right;

THENCE continuing along said curve to the right whose radius is 1226.76 feet in a northwesterly direction a distance of 100.16 feet to the point of tangency of said curve;

THENCE continuing along the north right-of-way line of the Fulton Corridor, N68°08'28"W a distance of 651.13 feet to a point of curvature of a curve to the right;

THENCE continuing along the north right-of-way line of the Fulton Corridor along said curve to the right whose radius of 1230.00 feet in a northwesterly direction a distance of 229.26 feet to the point of tangency of said curve;

THENCE N57°27'43"W along the north right-of-way line of the Fulton Corridor a distance of 1202.37 feet to a point of curvature of a non-tangent curve to the left;

THENCE along said non-tangent curve to the left whose radius is 1504.05 feet and whose long chord bears N 64°06'12" W with a length of 348.28 feet in a northwesterly direction , a distance of 349.07 feet to the point of intersection with a second non-tangent curve to the left;

THENCE along said non-tangent curve to the left, whose radius if 1350.00 feet and whose long chord bears N 69°03'32" W with a length of 77.91 feet in a northwesterly direction, a distance of 77.92 feet to a point for a corner of this tract;

THENCE with the meanders of the south boundary of the Deed Restricted Tract as follows:

- N85°08'30"E a distance of 28.31';
- S81°55'50"E a distance of 90.84';
- N82°55'41"E a distance of 59.86';
- S74°20'07"E a distance of 49.78';
- N79°34'01"E a distance of 75.47';

MBJ:sab

09028-Field Notes-TractA.doc

Page 1 of 2

S70°28'17"E a distance of 67.05';  
 S84°43'04"E a distance of 101.99';  
 S75°54'37"E a distance of 89.81';  
 S73°47'57"E a distance of 128.18';  
 N61°11'03"E a distance of 27.55';  
 N57°25'39"E a distance of 16.41';  
 S53°02'24"E a distance of 72.42';  
 S74°20'04"E a distance of 49.79';  
 S78°45'08"E a distance of 82.51';  
 N88°40'33"E a distance of 47.51';  
 S61°14'34"E a distance of 58.87';  
 S41°19'58"E a distance of 74.06';  
 S23°18'53"W a distance of 42.51';  
 N51°23'19"W a distance of 50.78';  
 N31°05'53"W a distance of 48.18';  
 S70°10'11"W a distance of 94.21';  
 S19°36'28"W a distance of 43.35';  
 S63°19'03"E a distance of 36.68';  
 S61°04'36"E a distance of 2.97';  
 S57°59'46"E a distance of 193.79';  
 S57°38'06"E a distance of 1127.83';  
 S63°07'07"E a distance of 143.33';  
 S68°16'25"E a distance of 501.85';  
 S80°14'40"E a distance of 16.42';  
 S56°25'53"E a distance of 17.55';  
 S68°26'58"E a distance of 49.50';  
 S84°11'06"E a distance of 26.66';  
 S74°14'41"E a distance of 40.39';  
 S58°46'44"E a distance of 70.63';  
 S68°18'28"E a distance of 81.99';  
 S73°43'00"E a distance of 347.26';  
 S73°37'54"E a distance of 121.88';  
 S73°43'50"E a distance of 188.30';  
 S17°11'37"W a distance of 8.44' to a point for a corner of this tract, said point lying 60.00 feet  
 measure at a right angle from the north right-of-way of the Fulton Corridor;

THENCE S72°48'23"E 60.00 feet north of and parallel to the north right-of-way line of the Fulton Corridor, a distance of 2089.27 feet to a 5/8 inch iron rod set for the northeast corner of this tract;

THENCE S35°39'24"W a distance of 63.26 feet to the POINT OF BEGINNING forming a tract embracing 9.208 acres.



*Murray Bass, Jr.*  
 Murray Bass, Jr., R.P.L.S.

Note: Basis of Bearing and coordinates are State of Texas Lambert Grid, South Zone, NAD 1927

MBJ:sab

09028-Field Notes-TractA.doc

# SAVE AND EXCEPT TRACT B:

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMPDA, ZIP 78404  
361 882-5521 ~ FAX 361 882-1263  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

May 4, 2015

### Field Note Description Tract "B"

Being a tract situated in Nueces County, Texas, located in the Rincon del Oso Grant, Abstract No.1, and being a portion of that certain 241.791 acre tract described as Tract II in the deed to M&G Resins USA, LLC recorded under Clerk's File No. 2013010971, of the Official Public Records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found at the southeast corner of said 241.791 acre tract for the southeast corner of this tract, said point lying in the north right-of-way line of a road right-of-way owned by the Port of Corpus Christi Authority known as the "Fulton Corridor";

THENCE N 52°57'34" W along that south line of the 241.791 acre tract and the north right-of-way line of the Fulton Corridor a distance of 3077.42 feet to the point of curvature of a curve to the left;

THENCE along said curve to the left whose radius is 1370.00 feet in a northwesterly direction, a distance of 474.56 feet to the point of tangency of said curve;

THENCE continuing along the north right-of-way line of Fulton Corridor and the south boundary of the 241.791 acre tract, N 72°48'23" W a distance of 96.50 feet to a 5/8 inch iron rod set for the southwest corner of this tract;

THENCE N 35°39'24" E across the 241.791 acre tract, a distance of 1622.62 feet to a 5/8 inch iron rods et for the northwest corner of this tract, said point lying in the south boundary of a 75.31 acre tract described as a deed restricted tract in the document recorded under Clerk's File No. 2014033659, Official Public Records of Nueces County, Texas;

THENCE with the south boundary of the deed restricted tract as follows:

- S 70°13'37" E a distance of 617.14 feet to a point;
- S 70°00'18" E a distance of 123.83 feet to a point;
- S 69°53'58" E a distance of 28.99 feet to a point;
- S 65°20'27" E a distance of 8.57 feet to a point;
- S 54°51'28" E a distance of 8.74 feet to a point;
- S 45°16'11" E a distance of 8.71 feet to a point;
- S 34°08'34" E a distance of 8.74 feet to a point;
- S 24°25'18" E a distance of 8.75 feet to a point;
- S 15°35'44" E a distance of 8.66 feet to a point;
- S 07°29'00" E a distance of 562.68 feet to a point;
- S 23°15'59" E a distance of 337.63 feet to a point;
- S 32°12'30" E a distance of 67.56 feet to a point;
- S 65°22'28" E a distance of 542.04 feet to a point;
- S 82°44'43" E a distance of 35.22 feet to a point;
- N 68°05'01" E a distance of 122.24 feet to a point;
- N 60°21'57" E a distance of 100.68 feet to a point;

MBJ:sab

09028-Field Notes-TractB.doc

N 65°19'04" E a distance of 8.86 feet to a point;  
 N 74°59'31" E a distance of 8.68 feet to a point;  
 N 84°46'40" E a distance of 8.76 feet to a point;  
 S 83°19'59" E a distance of 8.79 feet to a point;  
 S 74°11'57" E a distance of 9.09 feet to a point;  
 S 68°54'14" E a distance of 78.18 feet to a point;  
 S 65°44'36" E a distance of 7.83 feet to a point;  
 S 54°51'28" E a distance of 8.74 feet to a point;  
 S 43°38'11" E a distance of 8.97 feet to a point;  
 S 35°31'07" E a distance of 8.44 feet to a point;  
 S 24°25'23" E a distance of 7.96 feet to a point;  
 S 20°53'36" E a distance of 259.18 feet to a point;  
 S 23°47'35" E a distance of 457.73 feet to a point;  
 S 25°55'42" E a distance of 320.16 feet to a point;  
 N 68°27'31" E a distance of 12.50 feet to a point, said point lying in the northeast boundary of the heretofore referenced 241.79 acre tract;

THENCE with the boundary of the 241.791 acre tract, S 21°32'29" E a distance of 530.63 feet to a point;

THENCE S 22°44'00" W a distance of 316.08 feet to a point;

S 52°01'43" W a distance of 444.23 feet to the POINT OF BEGINNING forming a tract embracing 112.18 acres, SAVE and EXCEPT the following 3.591 acre tract described as follows:

Being a 3.591 acre tract of land lying in the Enrique Villarreal Survey, Abstract 1, Nueces County, Texas, same being a portion of a 241.791 acre tract of land described as "Tract II", and recorded in document number 2013010971, Official Public Records of Nueces County, Texas, and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod found with yellow plastic cap stamped "Bass & Welsh Engineering" in the northwest right-of-way line of Joe Fulton Corridor (200 feet wide right-of-way) and the south corner of the aforementioned 241.791 acre tract;

THENCE along a southwest line of the aforementioned 241.791 acre tract, the northeast right-of-way line of the aforementioned Joe Fulton Corridor, N 52°57'34" W a distance of 2413.94 feet to an unmonumented point;

THENCE N 37°02'26" E a distance of 60.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX." for the point of BEGINNING and the south corner of this tract;

THENCE N 52°57'34" W a distance of 416.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX.", for the west corner of this tract;

THENCE N 37°02'26" E a distance of 376.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX." for the north corner of this tract;

THENCE S 52°57'34" E a distance of 416.00 feet to a 1/2 inch iron rod set with plastic cap stamped "CDS/MUERY S.A. TX." for the east corner of this tract;

THENCE S 37°02'26" W a distance of 376.00 feet to the POINT OF BEGINNING, leaving a tract having a net area of 108.589 acres.



*Murray Bass, Jr.*  
 Murray Bass, Jr., R.P.L.S.

Note: Basis of Bearing is State of Texas Lambert Grid, South Zone, NAD 1927

MBJ:sab

09028-Field Notes-TractB.doc

Exhibit C-1

**Legal Description and Survey Plat of Easement #1 of the Easement Area**

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMEDA, ZIP 78404  
361 882-5521 ~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

May 21, 2015

**Field Note Description**  
**Driveway, Pipeline, & Utility Bank Easement**

Being a tract situated in Nueces County, Texas, located in the Rincon del Oso Grant, Abstract No. 1, and being located over and across a portion of that certain 241.79 acre tract described as Tract II in the deed to M&G Resins USA, LLC recorded under Clerk's File No. 2013010971, of the Official Public Records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

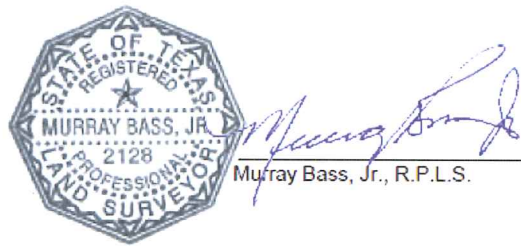
**BEGINNING** at a point in the north right-of way line of a roadway owned by the Port of Corpus Christi Authority, said point having coordinates of X=2,323,233.95 and Y=791,100.20;

THENCE N72°48'23"W along the north boundary of the Port of Corpus Christi Roadway a distance of 63.26 feet to a point for the southwest corner of this tract;

THENCE N35°39'24"E a distance of 63.26 feet to a point for the northwest corner of this tract;

THENCE S72°48'23"E 60.0 feet north of and parallel to the existing roadway a distance of 63.26 feet to a point for the northeast corner of this tract;

THENCE S35°39'24"W a distance of 63.26 feet to the **POINT OF BEGINNING** forming a tract embracing 0.087 acres.

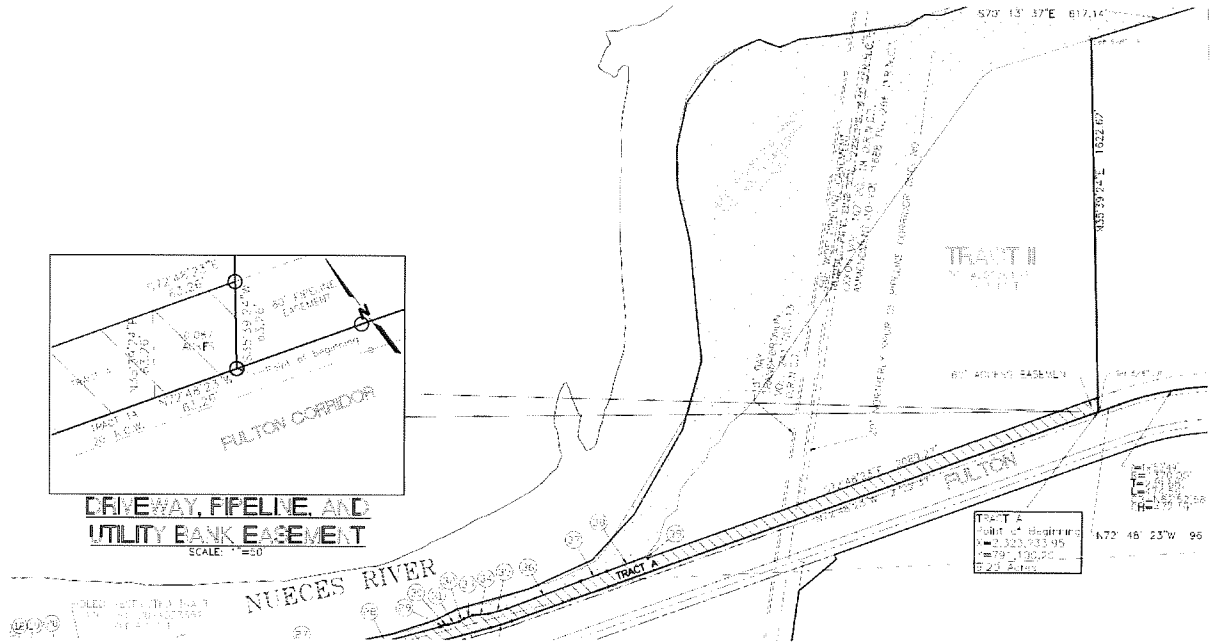


Note: Basis of Bearing and coordinates are State of Texas Lambert Grid, South Zone, NAD 1927



Exhibit C-1

Survey Plat of 60' Easement Area - Easement #1



**Exhibit "E"**

**Surface Site Lease and Option Agreement  
(See Attached)**

A handwritten signature in black ink, appearing to be "Roe", located in the bottom right corner of the page.

SURFACE SITE LEASE AND OPTION AGREEMENT

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

THIS Surface Site Lease and Option Agreement (this “**Agreement**”), is made effective as of the 19th day of May, 2015 (the “**Effective Date**”), and is entered into by and between M&G Resins USA, LLC, a Delaware limited partnership or is assigns (“**M&G**” or “**Landlord**”), and Port of Corpus Christi Authority of Nueces County, Texas, a navigation district operating under Article XVI, Section 59 of the Texas Constitution (the “**Authority**” or “**Tenant**”).

M&G and Authority each herein called a “Party” and together the “Parties”. This Agreement includes all Exhibits hereto.

RECITALS:

1. M&G is the owner of that certain 89.26-acre tract of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1, which is more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference for all purposes (the “**M&G Property**”).

2. M&G intends to construct a new PET and PTA processing facility and plant on the M&G Property (the “**M&G Facility**”).

3. The Port is the owner of the 36.151 acre tract of land located adjacent to the M&G Property (the “**Port Property**”).

4. The Authority desires the right to use and occupy a 2.525 acre tract of land located within the M&G Property and adjacent to the Port Property according to the terms of this Agreement.

5. The Authority desires the option to purchase both the 2.525 acre tract (defined as the Presmies below) together with the adjacent approximately 5.691 acres, more or less, located within the M&G Property and along the Viola Channel (being defined as the Waterfront Front in Article XVIII below).

6. In consideration of the Authority’s obligation contained herein, to pay rent, and of the other terms, covenants, and conditions, hereof, M&G hereby demises and allows the Authority, and the Authority hereby accepts from M&G the Premises (hereinafter defined), TO HAVE AND TO HOLD all and singular, said Premises, together with the rights, privileges, and appurtenances thereto belonging, unto said for the term described herein.

ARTICLE I. PREMISES

A. The Premises. The surface site premises consist solely of approximately 2.525 acres of land (the “**Premises**”) being located within the M&G Property as depicted and described by metes and bounds on the survey plat attached hereto as Exhibit “B” (the “**Survey**”) attached

hereto for all purposes. The Premises shall consist of equipment and facilities to operate a dock for the Port Property.

B. Condition of Premises. THE PREMISES ARE LEASED “AS IS, WHERE IS,” IN THEIR PRESENT CONDITION, WITH ALL FAULTS, LIMITATIONS AND DEFECTS, HIDDEN AND APPARENT, AND WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO QUALITY, FITNESS OR OTHERWISE. ALL REPRESENTATIONS AND WARRANTIES OTHER THAN THOSE SET FORTH IN THIS SECTION AND SECTION VII(G), EXPRESS OR IMPLIED, ARE EXCLUDED. LANDLORD DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY OTHER REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO TENANT. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION AND SECTION VII (G), TENANT AGREES THAT THE PREMISES ARE PROVIDED TO TENANT ON THIS BASIS, AND TENANT AGREES TO ACCEPT AND ASSUMES THE PREMISES “AS IS, WHERE IS” IN THEIR PRESENT CONDITION, WITH ALL FAULTS, LIMITATIONS AND DEFECTS, HIDDEN AND APPARENT, AND WITHOUT ANY GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, AS TO QUALITY, FITNESS OR OTHERWISE.

#### ARTICLE II. TERM OF LEASE

A. Commencement Date and Lease Term. The Commencement Date of this Agreement shall be the Effective Date on page 1 of this Agreement. The term of this Agreement (the “**Term**”) shall begin on the Commencement Date and shall continue until **December 31, 2020** (the “**Termination Date**”), unless terminated prior thereto pursuant to the terms and conditions of this Agreement.

B. Surrender. Promptly on the expiration of the Term or upon earlier termination of this Agreement, Authority shall peaceably and quietly leave, surrender, and yield to M&G the Premises.

#### ARTICLE III. RENT

A. Rent. Authority’s sole obligation to pay rent under this Agreement shall be the payment of the sum of Ten and No/100 Dollars (\$10.00), due annually during the Term in advance.

B. Relationship. It is understood and agreed that M&G and Authority shall in no event by virtue of this Agreement be construed or held to be partners, joint venturers, or associates of the other in the conduct of each party’s business, nor shall M&G be liable for any debts incurred by Authority in the conduct of the Authority’s business; but it is understood and agreed that the relationship is and at all times shall remain that of M&G as the land owner (i.e., like a landlord) and Authority as a surface user (i.e., a tenant).

ARTICLE IV. PROPERTY TAXES

A. Authority's Obligation. Authority will, at Authority's own cost and expense, bear, pay, and discharge, prior to delinquency, the full amount of (i) any and all personal property taxes – state, county, municipal, school district and special, and any penalties in connection therewith – or charges in lieu of taxes, levied or assessed on all personal property used on or in connection with its operations on the Premises and (ii) any and all real estate taxes – state, county, municipal, school district and special, and any penalties in connection therewith – assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special, or charges in lieu of taxes (all of which items (i) and (ii) are hereinafter sometimes collectively referred to as “**Impositions**”), which shall, pursuant to present or future law or otherwise, prior to or during the term hereby granted, have been or may be levied, charged, assessed, or imposed upon, or grown or become due and payable out of or for, or become or have become a lien on the Premises.

ARTICLE V. INSURANCE, INDEMNITY, AND LIABILITY

A. Indemnification. To the extent allowed by law, Authority agrees to and shall indemnify and hold M&G harmless from and against any and all claims, liabilities, losses, damages, expenses of every kind or character, causes of action (including court costs and reasonable attorneys' fees) arising from and relating to (i) Authority's occupation of the Premises, use of the Premises, conduct of its business or any other activity permitted or suffered by Authority in and about the Premises, (ii) any default, breach, violation, or nonperformance of this Agreement or any of its terms, covenants, and conditions and (iii) any act, omission, or negligence of Authority, or any officer, agent, employee, customer, subtenant, contractor, subcontractor, assignee or invitee of Authority, including without limitation any act, omission, or negligence resulting in injury or death. In connection with the foregoing, Authority, upon notice from M&G, shall defend any claim at Authority's expense by counsel reasonably satisfactory to M&G. Authority, as a material part of the consideration to M&G, hereby assumes and waives all claims against M&G for all risk of damage to property or injury to persons in, upon, or about the Premises from any cause other than those arising from any act, or omission, or negligence, gross negligence or intentional wrongdoing of M&G's and of M&G's officers, agents, employees, customers, contractors, subcontractors, assignees or invitees. . Authority shall give prompt notice to M&G in case of casualty or accidents in or about the Premises. Additionally, Authority shall indemnify and hold M&G harmless from and against any penalty, damage, or charge incurred or imposed by reason of any violation of law, statute, ordinance or governmental rule, regulation, or requirement now or hereafter in force, by Authority, or any officer, agent, employee, guest, customer, subtenant, assignee, or invitee of Authority.

B. Insurance. Authority shall procure and maintain, at its sole cost and expense, throughout the Term such policies of insurance insuring M&G, as well as Authority, as are more particularly described below:

- (1) Throughout the entire Term of this Lease Authority shall procure or cause its contractors and subcontractors to procure and maintain insurance coverage described below with insurance companies acceptable to M&G

for work performed related to the construction, repair, operation and maintenance of the Premises. All costs and deductible amounts will be the responsibility and obligation of the Authority or its contractors and subcontractors. Prior to commencing any activities related to the construction of any facilities on the Premises, the Authority must deliver to M&G certificate(s) of insurance, naming M&G as additional insured. The limits set forth below are minimum limits and will not be construed to limit the Authority's liability hereunder:

- a) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee and Employer's Liability insurance with limits of \$1,000,000 per accident for bodily injury or disease.
- b) Commercial General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence; and for project specific, an annual aggregate of \$2,000,000. Coverage must include premises/operations, products/completed operations, and sudden and accidental pollution. M&G and its Affiliates (hereinafter defined), and its and their respective directors, officers, partners, members, shareholders, employees, agents, and contractors shall be included as additional insureds.
- c) The Sudden and Accidental Pollution, which may be a separate, standalone policy, but must still meet the \$5,000,000 minimum limit requirement. If the coverage is written on a claims-made policy form, the coverage must be maintained for two (2) years following the Term or termination of the Lease.
- d) In each of the above policies, the Authority or its contractors and subcontractors agree to waive and will require its insurers to waive any rights of subrogation or recovery either may have against M&G and its Affiliates.
- e) Regardless of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Authority or its contractors and subcontractors, or the failure of any such insurance company to pay claims that occur, such requirements, insolvency, bankruptcy or failure will not be held to waive any of the provisions hereof.
- f) In the event of a loss or claim arising out of or in connection with the construction on the Premises, the Authority agrees, upon request of M&G, to submit a certified copy of its insurance policies for inspection by M&G.

- g) The Authority shall require all of its contractors and subcontractors for work related to the construction on the Premises to provide adequate insurance coverage, all to be endorsed with the Waiver of Subrogation wording referenced in Section (d) above; any deficiency in the coverage, policy limits, or endorsements of said contractors and subcontractors, shall be the sole responsibility of the Authority.
  
- h) The term “Affiliate(s)” as used herein means, with respect to M&G, any individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, firm, association, joint stock company, trust, unincorporated organization, governmental body, or other entity (collectively, a “Person”) that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with M&G. The term “control” (including the terms “controlled by” and “under common control with”), as used in the previous sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of M&G or such Person, as applicable, whether through ownership of voting stock, ownership interest or securities, by contract, agreement or otherwise.

C. Waiver of Subrogation. M&G and Authority mutually agree that with respect to any loss which is covered by insurance then being carried (or required to be carried) by them respectively, the party hereto obligated to carry or carrying such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss, including claims with respect to the negligence of the parties hereto. M&G and Authority further mutually agree that their respective insurance companies shall have no right of subrogation against the other party hereto on account of such loss.

D. M&G Not Liable for Authority’s Facilities. Authority agrees to use and occupy the Premises at its own risk, and M&G shall have no responsibility or liability for any loss of or damage to fixtures, facilities, or other property of Authority or the Authority’s employees, invitees, or customers, unless caused by M&G, M&G’s officers, agents, employees, customers, contractors, subcontractors, assignees or invitees.

## ARTICLE VI. UTILITIES

Authority shall, at its sole cost and expense, be responsible for all costs and expenses for the connection of all utility services to the Premises, including, but not limited to, the payment of any and all utility deposits. Authority shall pay all charges for electricity, water, gas and all other utilities furnished to the Premises. M&G shall not be liable for any interruption in utility services. No interruption shall be construed as either a constructive or actual eviction of Authority, nor work an abatement of rent, nor relieve Authority from fulfilling any term, covenant, or condition contained in this Agreement.

ARTICLE VII. TENANT'S USE OF PREMISES

A. Permitted Use. During the Term, Authority shall use and occupy the Premises only for the purpose of constructing, operating, repairing, and maintaining dock and waterfront facilities (collectively, the "**Facilities**"). Authority shall, at Authority's sole cost and expense, provide any required fencing, lighting, and security.

B. Permits and Licenses. Authority shall obtain and maintain, at its sole cost and expense, all permits and licenses required for the transaction of its business on the Premises. Authority shall not violate any applicable law, ordinance or governmental regulation now in force or which may hereafter be in force pertaining to the Premises.

C. Prohibited Uses. The Premises may not be used for the open storage of commercial quantities of: (1) pet coke, or (2) fine grain sands, aggregates, or any other dry bulk materials, commodities or substances consisting of grains of which ninety percent (90%) or more by weight are less than one-quarter millimeter (1/4 mm) in size (the "**Restricted Materials**"). Notwithstanding the forgoing, this restriction shall not prevent: (i) the use of Restricted Materials to construct, build, maintain, repair, replace or remove any existing or future improvements(s) in, on, under, or over the Premises; or (ii) the covered or contained storage of Restricted Materials. The term "Restricted Materials" as used herein, shall not include the soil, dirt, dredge materials, or any other material located upon on the Property at the time of this Agreement or dredge material placed on the Premises in the future so long as legally permitted. Authority shall keep the Premises free from waste and nuisance at all times. Authority shall keep the Premises clean throughout.

D. Compliance with Law. Authority shall, at all times during the term of this Agreement, at Authority's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations, and requirements now or hereafter enacted or promulgated, of every governmental authority and municipality, and of any agency thereof, having jurisdiction over the Premises or Authority's use of the Premises, relating to the Premises, or the appurtenances to the Premises, or the franchises and privileges connected therewith, whether or not such laws, rules, orders, ordinances, regulations, or requirements so involved shall necessitate improvements, interference with use and enjoyment of the Premises, replacements, or repairs, extraordinary as well as ordinary, and Authority shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations, or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations, or requirements can be said to be within the present contemplation of the parties hereto.

E. Alterations and Fixtures. Prior to the installation of any additional fixtures or equipment (collectively, "**Authority Improvements**") on the Premises by Authority, Authority shall submit to M&G its proposed final plans, specifications, and working drawings ("**Authority's Plans**") for the construction and installation of the Authority Improvements. M&G shall have fifteen (15) business days after receipt of same to give its approval. Said approval shall not be unreasonably withheld. If not expressly given or withheld within said fifteen (15) business day period, said approval shall be deemed given. If M&G reasonably disapproves the Authority's Plans and delivers written objections to Authority before the expiration of said fifteen (15) business



day period along with proposals for the solution of M&G's objections, the parties shall confer on such matters and agree on final plans.

F. Quiet Enjoyment. Authority, on payment of the rent and observing, keeping, and performing all of the terms and provisions of this Agreement on its part to be observed, kept, and performed, shall lawfully, peaceably, and quietly have, hold, occupy, and enjoy the Premises during the Term without hindrance or ejection by any persons lawfully claiming under M&G; but it is understood and agreed that this covenant and any and all other covenants of M&G contained in this Agreement shall be binding upon M&G and its successors only with respect to breaches occurring during its and their respective ownership of M&G's interest hereunder.

G. Mechanics' Liens. Authority covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed upon or against the Premises or against the Authority's surface site use interest in the Premises and, in case of any such lien attaching, to pay and remove the same immediately. Authority has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Authority, operation of law, or otherwise, to attach to or be placed upon the Premises, and any and all liens and encumbrances created by Authority shall attach only to Authority's interest in the Premises. If any such liens so attach and Authority fails to pay and remove the same within ten (10) days, M&G, at its election, may pay and satisfy the same and in such event the sums so paid by M&G, with interest from the date of payment at the rate of ten (10) percent for such unpaid amounts owed M&G by Authority until such amounts are paid, shall be deemed to be additional rent due and payable by Authority at once without notice or demand. Authority shall at all times indemnify M&G against and hold it harmless with respect to any loss, cost, fee, charge, expense, lien, or liability of any nature occurring or accruing by virtue of any such work, labor, service, or material performed or furnished for, to, or on behalf of Authority.

#### ARTICLE VIII. MAINTENANCE AND REPAIR

A. General Provision. Subject to the provisions of Articles IX and X below, Authority shall at all times during the Term of this Agreement maintain the Premises, in good order, condition and repair, ordinary wear and tear excepted, and in such condition as may be required by law and by the terms of the insurance policies furnished pursuant to Article V of this Agreement. Authority agrees to maintain the Premises in a safe, sanitary, sightly and secure condition and not to cause or permit any waste of the Premises. Any repairs to and maintenance of the Premises shall be at Authority's sole cost and expense. Authority shall have the right at any time and from time to time during the term of this Agreement to make such repairs, replacements, renewals, additions, betterments, changes and alterations to the Premises as Authority shall deem necessary in connection with the requirements of and the conduct of its business, provided that the nature of Authority's business and the use set forth in Section VII(A) hereof is not adversely impacted, changed or altered thereby.

#### ARTICLE IX. CASUALTY

If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty, this Agreement shall continue in full force and effect and Authority shall, promptly and diligently, after any such damage or destruction and at its own cost and expense, repair, replace

or restore such damaged part as it deems practical. Notwithstanding the foregoing sentence, Authority shall have an affirmative duty to immediately correct and eliminate any unsafe or illegal condition caused by fire or casualty and comply with Article VII hereof. Authority expressly waives the provisions of any present or future law relating to such damage or destruction and agrees that the provisions of this Agreement shall control the rights of M&G and Authority. Rent shall not abate hereunder by reason of any damage to or destruction of the Premises or any part thereof by fire or any other casualty.

**ARTICLE X. CONDEMNATION**

A. Termination Option. In the event that all or any portion of the Premises should be appropriated or taken by any public or quasi-public authority (except for the Authority or any one acting by, through or under the Authority) under the power of eminent domain, the lease of the Premises may be terminated by Authority by the delivery of thirty (30) days' prior written notice of such election, said notice being delivered prior to the date title vests pursuant to such taking or acquisition; the termination shall be effective as of the date title vests pursuant to such taking or acquisition, and all rentals shall be paid up to that date. If any event the Authority exercises condemnation or eminent domain as to the Premises or the Waterfront Property, then this Agreement shall automatically terminate.

B. Surface Site Use after Condemnation. In the event that all or any portion of the Premises should be appropriated or taken by any public or quasi-public authority under the power of eminent domain and the lease of the Premises is not terminated by Authority, the annual rent payable hereunder during the unexpired portion of this Agreement shall not be affected.

**ARTICLE XI. DEFAULT AND REMEDIES FOR DEFAULT**

A. Events of Default by Tenant. The following shall be deemed to be events of default by Authority under this Agreement:

- (i) Authority shall fail to pay when due any installment of rent or any other payment required pursuant to this Agreement and fails to cure such failure within thirty (30) days after the receipt of written notice by M&G; provided,;
- (ii) Authority shall abandon any substantial portion of the Premises;
- (iii) Authority shall fail to comply with any term, covenant, or condition of this Agreement, or any other document or instrument entered into between M&G and Authority concerning the Premises (collectively, the "**Project Agreements**"), and fail to cure such failure within thirty (30) days after the receipt of written notice by M&G to Authority specifying wherein Authority has failed to perform such obligation; provided, however, if such default is not capable of being cured within such thirty (30) days, then Authority shall not be in default hereunder so long as Authority commences the cure of such default within such thirty (30) day period and diligently pursues the cure thereof thereafter (but no longer than 180 days);

- (iv) Authority shall file a petition or be adjudged bankrupt or insolvent under any federal or state law; or a receiver or trustee shall be appointed for all or substantially all of the assets of Authority; or Authority shall make a fraudulent transfer to creditors or shall make an assignment for the benefit of creditors; or
- (v) Authority shall do or permit to be done any act which results in a lien being filed against the Premises or any part thereof and does not discharge of record or bond against said lien within thirty (30) days following written notice by M&G to Authority of the filing thereof.

B. Default by Authority. In the event of a default, enumerated in Section A above, by Authority and in addition to all other remedies now or hereinafter provided herein or by law, M&G may at any time elect to terminate the lease of the Premises on account of such default. Further, in the event of a default, enumerated in Section A above, by Authority, M&G may pursue any and available remedies available under law and equity and under the Project Agreements.

C. Default by M&G. M&G shall not be in default unless M&G fails to perform obligations required of M&G within a reasonable time, but in no event later than thirty (30) days after written notice by Authority to M&G, specifying wherein M&G has failed to perform such obligation; provided, however, that if the nature of M&G's obligation is such that more than thirty (30) days are required for performance, then M&G shall not be in default if M&G commences performance within such thirty (30) day period and thereafter diligently prosecutes completion of same (but in no event longer than 180 days).

D. Opportunity for Mortgagee to Cure M&G Default. After receiving written notice from the holder of a deed of trust that such deed of trust which includes as a part of its mortgaged property the Premises, Authority shall, so long as such deed of trust is outstanding, give to such holder the same notice and opportunity to correct any default on the part of M&G as is required to be given to M&G under the Project Agreements, and shall be given in the manner specified in notice from such holder to Authority, but such notice may be given by Authority to M&G and such holder concurrently. Authority shall not be liable for failure to give such notice to such holder, but if Authority fails to notify such holder of a default under this Agreement, the time within which such holder shall have the right to cure such default shall not commence to run until such holder shall have been notified by Authority of such default on the part of M&G.

E. Attornment by Authority. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by M&G covering the Premises or in the event of conveyance in lieu of foreclosure, Authority shall attorn to the purchaser (including M&G's mortgagee) upon any such foreclosure, sale, or conveyance in lieu of foreclosure and shall recognize such purchaser as Authority's landlord under this Agreement or, at the option of such purchaser, Authority will execute a new surface site agreement with such purchaser on the same terms and conditions as are contained in this Agreement.

**ARTICLE XII. TRANSFERS AND LIENS**

A. Financing Subordination. This Agreement and the rights of Authority hereunder are subject and subordinate to any mortgage or deed of trust, together with all renewals, modifications, consolidations, replacements, and extensions thereof, which may now or hereafter encumber the Premises or any part thereof. Authority agrees to execute such further documents as may be necessary for subordinating this Agreement to any mortgage or deed of trust, and further agrees to execute any other document of attornment and non-disturbance required by M&G's mortgagees. Authority hereby irrevocably constitutes and appoints M&G as Authority's attorney-in-fact to execute any such instrument for and on behalf of Authority, giving and granting unto said attorney full power and authority to do everything in Authority's name, place, and stead therein as fully and effectually to all intents and purposes as Authority might or could do if personally present, hereby ratifying all that said attorney shall lawfully do or cause to be done by virtue of these presents. This power of attorney is coupled with an interest, and therefore shall survive the dissolution or termination of Authority.

B. Assignment and Subletting. Authority may assign this Agreement or sublet the Premises only with the prior written consent of M&G. Authority acknowledges that this Agreement is personal to Authority for the use specified herein, and that M&G may withhold its consent arbitrarily and for any reason whatsoever, and may further condition any consent on any change in the terms, covenants, or conditions hereof.

**ARTICLE XIII. ACCESS TO PREMISES**

M&G shall have the right to enter upon the Premises, subject to Authority and United States Coast Guard security protocols, at all reasonable hours for the purpose of inspection, making repairs to the Premises or making repairs, alterations, or additions to any adjacent premises, or curing any default of Authority hereunder that M&G elects to cure, but without any obligation upon M&G to cure such default. In the event that M&G is required to enter upon the Premises at a time other than Authority's business hours, M&G will give Authority advance notice of the date, time, and anticipated length of the planned entry. M&G shall not be liable to Authority for any expense, loss, or damage from any such entry. No entry by M&G permitted under the terms of this Agreement shall be deemed a breach by M&G of Authority's right to quiet enjoyment of the Premises, as set forth in Section G of Article VII.

ARTICLE XIV – Intentionally Deleted.

**ARTICLE XV. ENVIRONMENTAL MATTERS**

From and after the Commencement Date, Authority shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under, about, or affecting the Premises; provided, however, Authority shall not be liable for any conditions existing prior to the Commencement Date.

A. Authority hereby assumes all liability and obligation relating to or arising from or as a result of a spill, release, leak, discharge, emission, disposal, contamination or pollution that occurs during the Term of this Agreement on, at, under or from the Premises, and Authority

assumes all liability and obligation for third party claims for personal injury, property damage or breach of contract, which personal injury, property damage or breach of contract occurs during the Term of this Agreement and was related to or arose from Authority's use of the Premises during the Term of this Agreement.

B. Authority, TO THE EXTENT CAUSED BY AUTHORITY, ASSUMES ALL LIABILITIES AND OBLIGATIONS WITH RESPECT TO, RELATING TO OR ARISING DURING THE TERM OF THIS AGREEMENT FROM THE PREMISES, OR THE OCCUPANCY, OPERATION OR USE THEREOF, WHETHER SUCH LIABILITIES AND OBLIGATIONS ARE TO A GOVERNMENTAL BODY OR ANY OTHER PERSON, FIRM OR ENTITY, WHETHER BASED IN WHOLE OR IN PART ON STRICT LIABILITY, WILLFUL OR INTENTIONAL MISCONDUCT, OR ORDINARY OR GROSS NEGLIGENCE, AND WHETHER KNOWN OR UNKNOWN, CURRENT OR FUTURE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED, OR DUE OR TO BECOME DUE.

C. Definition. For purposes of this Article XV, "Environmental Law" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and any other similar federal, state or local environmental laws, ordinances, rules or regulations in effect as of the date of this Lease and as such may be changed from time to time thereafter.

#### ARTICLE XVI. SURRENDER

Subject to the provisions of Article II(B), Authority shall, upon any termination or expiration of this Agreement, will and truly surrender, quit and deliver up the Premises free and clear from all waste, trash and environmental contamination, without fraud or delay and in good order, condition, and repair, free and clear of all permitted lettings and occupancies, free and clear of all liens and encumbrances other than those existing on the date of this Agreement and those, if any, created by M&G, without any payment or allowance by M&G on account of or for any improvements erected or maintained on the Premises during the term of this Agreement, or for the contents thereof or appurtenances thereto. The requirements of this Article XVI shall not apply in the event Authority exercises its option to purchase the Premises in accordance with the terms of the this Agreement.

#### ARTICLE XVII. INTERPRETATION, NOTICES, AND MISCELLANEOUS

A. Applicable Law. All payments coming due or obligations to be performed pursuant hereto shall be paid or performed in Corpus Christi, Nueces County, Texas, and this Agreement shall be construed, interpreted, and enforced in accordance with the laws of the state of Texas.

B. Successors and Assigns. The terms, covenants, and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors and assigns (subject to the restrictions on transfers contained in Article XII), except as otherwise herein expressly provided.

C. Force Majeure. In the event that either M&G or Authority is delayed, hindered, or prevented from performing any action required herein, then either M&G or Authority, as case may be, shall not be liable or responsible if the delay is due to strike, riot, plague, pestilence, act of God, shortage of labor or materials, war, governmental laws, regulations, or other restrictions or any other causes of any kind which are beyond the reasonable control of M&G or Authority, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

D. Partial Invalidity. Any provision of this Agreement which shall prove to be illegal, invalid, or unenforceable under present or future laws shall in no way affect, impair, or invalidate any other provision hereof, and this Agreement shall be interpreted as if it had been entered into without such an illegal, invalid, or unenforceable provision.

E. Waiver. The waiver by M&G of any remedy for the breach of term, covenant, or condition shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance of rent hereunder by M&G shall not be deemed to be a waiver of any preceding default by Authority of any term, covenant, or condition of this Agreement, other than failure of Authority to provide the particular rent payments so accepted, regardless of M&G's knowledge of such preceding default at the time of acceptance of such rent.

F. Notices. All notices or requests required by or provided for in this Agreement must be in writing and must be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested. Notices by mail shall be deemed received upon mailing in accordance with the foregoing requirement. Notices shall be sent to the address designated after the signature blocks herein or at any other address specified in writing by the parties hereto.

G. Entire Agreement. This Agreement, together with the exhibits described below which are attached hereto and incorporated herein for all purposes, sets forth all agreements between M&G and Authority relative to the Premises. All prior negotiations and agreements are merged herein, and no subsequent agreement relative to the subject matter hereof or modification of this Agreement shall be binding unless reduced to a writing signed by both parties hereto. The following exhibits have been attached to and incorporated into this Agreement:

- EXHIBIT "A" – Legal Description of the M&G Property (89.26 acres)
- EXHIBIT "B" – Survey Plat with metes and bounds descriptions of Premises (2.525 acres) and Waterfront Property
- EXHIBIT "C" – Form of Special Warranty Deed
- EXHIBIT "D" – Option Property Fill Specifications
- EXHIBIT "E" – Letter of Intended Use

H. Counterparts. This Agreement may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

G. As-Built Plans. Notwithstanding anything herein to the contrary, Authority shall construct the Facilities within the Premises. Authority shall, within sixty (60) days of completion of construction of the Facilities provide to M&G final “as-built” plan and profile drawings of the Facilities together with true and correct survey showing all the exact location and any agreed upon deviations from the originally submitted design and location.

ARTICLE XVIII. RIGHT TO PURCHASE

A. Grant of Option to Purchase the Premises. In consideration of the Option Fee (defined below), M&G grants to the Authority an option to purchase (the “**Option**”) the Premises and the “Waterfront Property” (hereinafter defined) (collectively, the “**Option Property**”) on and subject to the terms and conditions set forth in this Article XVIII. The Option is only exercisable as to all of the Option Property. The Option will be exercised at any time on or after March 31, 2020. If the Option has not been exercised prior to the close of business on December 31, 2020, the Option shall automatically expire and not be exercisable thereafter, and shall be of no further force or effect.

- a. The term “**Waterfront Property**” shall mean the real property more particularly described and depicted in the Survey attached hereto as Exhibit B.

Notwithstanding any other term or provision of this Agreement providing for the termination of this Agreement, or the breach of any of the Project Agreements by Authority, shall not terminate or otherwise affect Authority’s option to purchase Option Property under the terms of this Article.

B. Right to Survey Option Property. During the term of this Option, Authority shall have the right to enter upon the Option Property for survey and testing purposes, including but not limited to, the right to conduct and/or observe geotechnical, boundary, environmental, and cultural surveys of the Property. Any entry upon the Waterfront Property for such purposes shall be coordinated in advance with M&G.

C. Subordination by M&G Lienholders. M&G agrees to obtain, as soon as reasonably possible, from the current holder of the first lien deed of trust applicable to the “Option Property” (hereinafter defined) and from any other holder of a lien against the Option Property (collectively the “Lienholders”), a subordination agreement subordinating the liens of the Lienholders to Authority’s Option to purchase the Option Property or such other agreement by the Lienholders that Authority’s Option to purchase the Option Property will not be terminated by a subsequent foreclosure of the Lienholders liens and will be released at the closing on the Option Property.

D. Option Fee. In order to perfect the grant of the Option, Authority shall pay to M&G the amount of \$100,000.00 (the “**Option Fee**”) immediately upon the Effective Date of this Agreement. The Option Fee is in addition to and separate from the Purchase Price of the Option Property. The Option Fee shall be immediately non-refundable but shall be applied toward the purchase price of the Option Property at closing on the Option Property by Authority.

E. Term of Option. If the Option Fee is paid to and received by M&G, then the Option shall commence on the Effective Date of this Agreement and shall automatically expire and terminate on December 31, 2020 (the “**Option Term**”).

F. Option Purchase Price. The purchase price for the Option shall be the sum of the amount of \$135,000.00 per acre of the Premises, and \$150,000.00 per acre of the Waterfront Property. The number of acres contained in the Premises and in the Waterfront Property for purposes of calculating the Option Purchase Price shall be the number of acres shown on the Survey (the “**Purchase Price**”), without any adjustments or offsets.

G. Exercise of the Option. In order to exercise the Option, Authority must (1) pay the Option Fee to M&G on the Effective Date of this Agreement; and (2) at any time during the Option Term provide at least 45 days written notice to M&G of Authority’s election to purchase the Option Property subject to the Closing Conditions (defined below). If Authority fails to pay the Option Fee, then the Option herein is automatically terminated and becomes null and void for all purposes.

H. Closing of Purchase: The closing (the “**Closing**”) of the sale of the Option Property to Authority pursuant to the Option shall occur in the offices of the title company of San Jacinto Title Services with an address of 520 Lawrence Street, Corpus Christi, Texas 78401-0024 (the “**Title Company**”) on a date that is no later than the Term of this Agreement. At the Closing, the following shall occur (collectively, the “**Closing Conditions**”):

1. M&G will execute and deliver a Special Warranty Deed substantially in the form attached hereto as **Exhibit “C”** conveying the surface estate only to the Option Property to Authority free of all liens and encumbrances other than all other matters of record and subject to the following deed restrictions and reservations.
2. Authority to pay for the standard premium of the owner’s title insurance policy and any endorsements.
3. M&G will fill in the large excavation on the Waterfront Property prior to Closing in accordance with the Option Property Fill Specifications attached hereto as **Exhibit “D”**
4. Authority to pay any broker fees of commission, if any.
5. The Closing shall take place once M&G satisfies and causes the Option Property to be released from the Lienholders’ liens covering the M&G Property;

NEXT PAGE IS THE SIGNATURE PAGE.

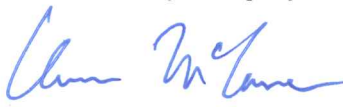


**SIGNATURE PAGE**  
**TO**  
**SURFACE SITE LEASE AND OPTION AGREEMENT**  
(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

EXECUTED this 8<sup>th</sup> day of MAY 2015.

M&G:

M&G RESINS USA, LLC,  
a Delaware limited liability company

By:   
Kevin R. McCarren, Vice President, Finance

M&G's Address for Notice:

M&G Resins USA, LLC  
Attn.: Andre Meyer  
450 Gears Road, Suite 240  
Houston, Texas 77067  
Phone: 281-874-8076  
Email: Andre.S.Meyer@gruppomgus.com

With a Copy to:

Jason Davis  
Crain, Caton & James, PC  
1401 McKinney Street, 17<sup>th</sup> Floor  
Houston, Texas 77010  
Phone: 713-752-8679  
Email: jdavis@craincaton.com

**SIGNATURE PAGE  
TO  
SURFACE SITE LEASE AND OPTION AGREEMENT**

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

AUTHORITY:

Port Of Corpus Christi Authority  
Of Nueces County, Texas

By:

  
\_\_\_\_\_  
John P. LaRue  
Executive Director

Date: may 19, 2015

Authority Address for Notice:  
Port of Corpus Christi Authority  
Attention: Executive Director  
P.O. Box 1541, Corpus Christi, Texas 78403

LIST OF ATTACHMENTS/ EXHIBITS:

- EXHIBIT “A” – Legal Description of the M&G Property (89.26 acres)
- EXHIBIT “B” – Survey Plat with metes and bounds descriptions of Premises (2.525 acres) and Waterfront Property
- EXHIBIT “C” – Form of Special Warranty Deed
- EXHIBIT “D” – Option Property Fill Specifications
- EXHIBIT “E” – Letter of Intended Use

**EXHIBIT "A"**

TO

**SURFACE SITE LEASE AND OPTION AGREEMENT**

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

**Legal Description of the M&G Property**  
(See attached Metes & Bounds Description)

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3034 S. ALAMEDA, ZIP 78404  
361 882-5521 ~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

June 14, 2013

**Field Note Description**  
**Remainder Tract**

Being a tract situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1 and being the remainder of that 168.22 acre tract described as Tract 1 in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Corporation recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas after the deduction of the heretofore described tracts "A", "B" and "C" and being more particularly described by metes and bounds as follows:

**BEGINNING** at a point in the east boundary of the 168.22 acre tract, said point being the southeast corner of the heretofore described Tract "B";

**THENCE** S 21°16'36" W along the east line of the 168.22 acre tract a distance of 190.10 to a 5/8 inch iron rod found for an intermediate corner of the 168.22 acre and an intermediate corner of this tract;

**THENCE** S 36°55'06" W continuing along the east boundary of the 168.22 acre tract a distance of 289.15 feet to a 5/8 inch iron rod set for the most northeasterly corner of the heretofore described Tract "C" for a corner of this tract;

**THENCE** along the north boundary of the heretofore described Tract "C" as follows:

- N 53°05'36" W a distance of 185.52 feet;
- S 36°54'24" W a distance of 124.49 feet;
- S 82°01'19" W a distance of 125.52 feet;
- N 69°42'22" W a distance of 77.83 feet;
- N 53°06'22" W a distance of 551.60 feet to a point;

**THENCE** S 37°02'26" W a distance of 201.05 feet to a point;

**THENCE** N 52°57'34" W a distance of 128.53 feet to a point;

**THENCE** S 36°53'26" W a distance of 114.09 feet to the most westerly corner of Tract "C" for a corner of this tract, said point lying in the south boundary of the 168.22 acre tract and the north bulkhead line of the Port of Corpus Christi;

**THENCE** N 53°06'25" W a distance of 4332.21 feet to the southwest corner of the 168.22 acres for the southwest corner of this tract;

**THENCE** N 45°36'41" E with west line of the 168.22 acre tract a distance of 160.84 feet to a 5/8 inch iron rod found for an intermediate corner of the 168.22 acres and a corner of this tract;

**THENCE** continuing along the west boundary of the 168.22 acres, N 0°10'50" E a distance of 196.10 feet to a 5/8 inch iron rod found for an intermediate corner of the 168.22 acres and a corner of this tract;

MBJ:sab

09028-Field Note Desc-Remainder.doc

Page 1 of 2

**Exhibit "A"**

EXHIBIT "A" (cont.)

TO

SURFACE SITE LEASE AND OPTION AGREEMENT

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

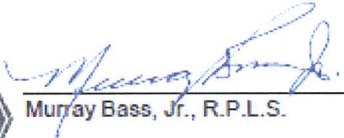
THENCE continuing along the west line of the 168.22 acres N 44°54'24" E a distance of 69.83 feet to the southwest corner of the heretofore described Tract "B" for the northwest corner of this tract;;

THENCE S 53°06'25" E along the south line of Tract "B" a distance of 2074.76 feet to a point for a corner of Tract "B" and an interior corner of this tract;

THENCE N 35°39'01" E along the boundary of Tract "B" a distance of 645.67 feet to an interior corner of Tract "B" and a corner of this tract;

THENCE continuing along the boundary of Tract "B" S 52°57'34" E a distance of 3333.27 feet to the POINT OF BEGINNING, forming a tract embracing 89.26 acres.



  
Murray Bass, Jr., R.P.L.S.

Note: Basis of Bearing is State of Texas, Lambert Grid, South Zone, NAD 1927

**EXHIBIT "B"**

TO

**SURFACE SITE LEASE AND OPTION AGREEMENT**

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

Survey Plat with metes and bounds descriptions of  
Premises (2.525 acres) and Waterfront Property ( 5.691 acres)

(See Attached)

**Exhibit "B"**

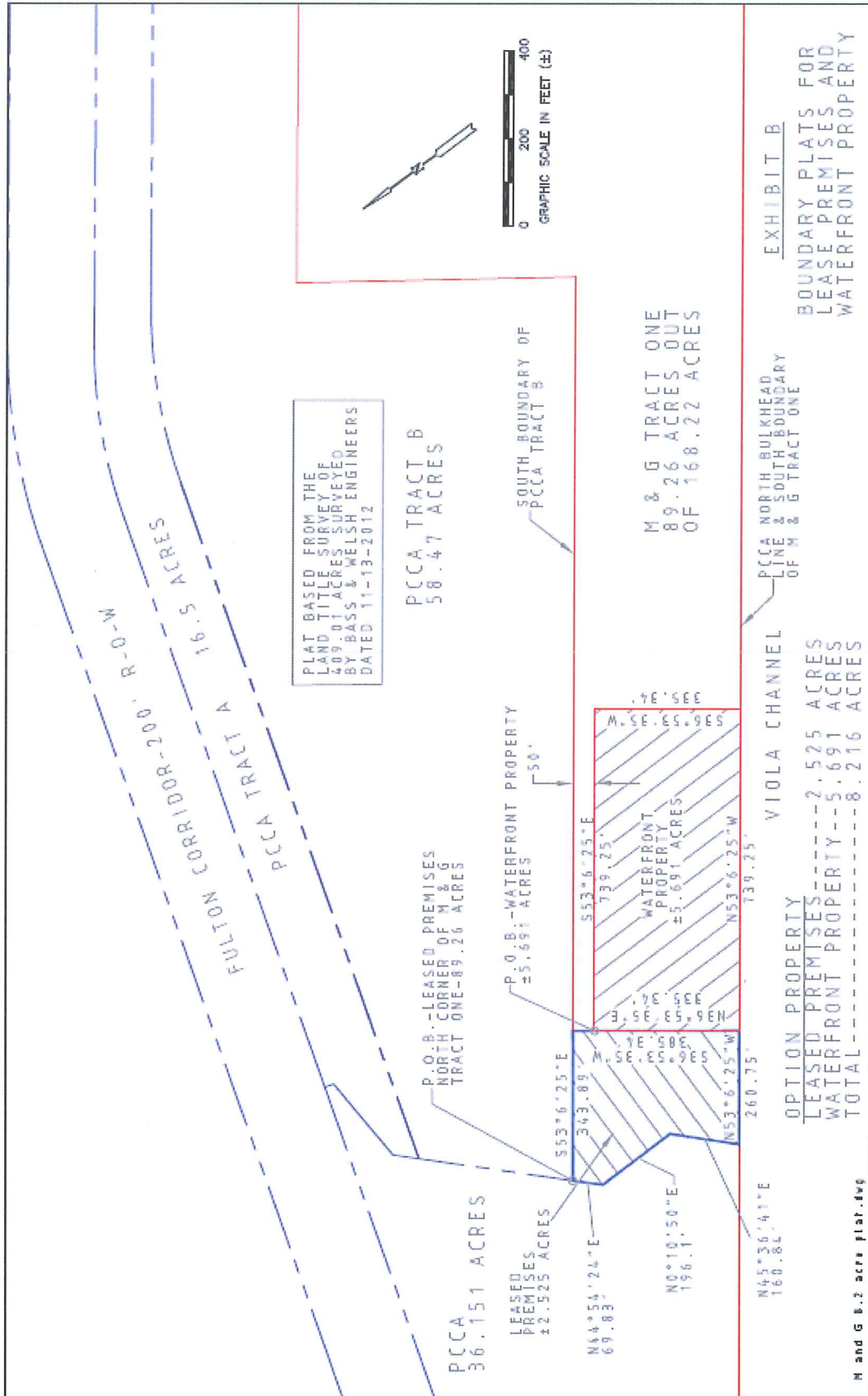


Exhibit "B" (cont.)

**Exhibit B-1  
METES & BOUNDS DESCRIPTION  
FOR LEASED PREMISES  
2.525 ACRES**

May 2015

STATE OF TEXAS  
COUNTY OF NUECES

Being a 2.525 acre tract of land situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1 and being a part of that 168.22 acre tract described as Tract 1 in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Corporation recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas, further described by metes and bounds as follows:

BEGINNING at a point (P.O.B.) on the North corner of M & G Resins, USA Tract One (89.26 acres) said point also being the North corner of subject tract,

THENCE, South 53° 6' 25" East along the South boundary of PCCA Tract B (refer to Exhibit B - Plat) for a distance of 343.89' to the East corner,

THENCE, South 36° 53' 35" West for a distance of 385.34' to the South corner, said corner being on the PCCA North Bulkhead Line and South boundary of the aforementioned M & G Tract One,

THENCE, North 53° 6' 25" West along said North Bulkhead Line and M & G Tract One South boundary for a distance of 260.75' to a point on the West boundary of M & G Tract One (89.26 acres),

THENCE, the following calls are along West boundary of M & G Tract One and East boundary of PCCA 36.151 acre tract recorded in Doc. #2009037666 O.R.N.C.T.

North 45° 36' 41" East, 160.84'

North 0° 10' 50" East, 196.1'

North 44° 54' 24" East, for a distance of 69.83' to P.O.B. containing 2.525 acres of land, more or less.

Note: Description and map derived from office records and not from a ground survey.

**Exhibit "B-1"**

**Exhibit B-2**  
**METES & BOUNDS DESCRIPTION**  
**FOR WATERFRONT PROPERTY**  
5.691 ACRES

May 2015

STATE OF TEXAS  
COUNTY OF NUECES

Being a 5.691 acre tract of land situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1 and being a part of that 168.22 acre tract described as Tract 1 in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Corporation recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas, further described by metes and bounds as follows:

COMMENCING at a point on the North corner of the aforementioned 89.26 acre Tract One (M & G Resins, USA)

THENCE, South 53° 6' 25" East for a distance of 343.89',

THENCE, South 36° 53' 35" West for a distance of 50' to the P.O.B.

THENCE, South 53° 6' 25" East along a line 50' South of and parallel to the aforementioned South boundary of PCCA Tract B for a distance of 739.25' to the East corner.

THENCE, South 36° 53' 35" West for a distance of 335.34' to the South corner, said corner being on the PCCA North Bulkhead Line and South boundary of the aforementioned M & G Tract One,

THENCE, North 53° 6' 25" West along said North Bulkhead Line and M & G Tract One South boundary for a distance of 739.25' to the West corner, same being the South corner of the aforementioned 2.525 acre lease premises tract,

THENCE along East boundary of said 2.525 acre lease premises tract, North 36° 53' 35" East for a distance of 335.34' to P.O.B. containing 5.691 acres of land, more or less.

Note: Description and map derived from office records and not from a ground survey.



**EXHIBIT "C"**

**TO**

**SURFACE SITE LEASE AND OPTION AGREEMENT**

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

**Form of Special Warranty Deed**

(See Attached)

**SPECIAL WARRANTY DEED**

(M&G Tract I – conveyance of 2.525 Acre Tract and Waterfront Tract)

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER**

**DATE:** \_\_\_\_\_, 20\_\_\_\_\_

**GRANTOR:** M&G Resins USA, LLC, a Delaware limited liability company

**GRANTOR’S ADDRESS:** 450 Gears Road, Suite 240  
Houston, Texas 77067

**GRANTEE:** PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas

**GRANTEE’S ADDRESS:** Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403

**CONSIDERATION:** The sum of \$10.00 and other good and valuable consideration paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged.

**LAND:** The surface estate only in and to the following described tracts of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1 (collectively, the “Land”):

The land described as Tracts A and B on **EXHIBIT “A”** attached hereto and made a part hereof for all purposes (the “Land”), and as depicted on **EXHIBIT “B”** attached hereto.

**SURFACE WAIVER:**

Grantor releases and relinquishes (such release and relinquishment being herein called the "Surface Waiver") unto Grantees, as a part of this conveyance, all of Grantor's right to use the surface of the Property and any portion of the Property within the zone which is two hundred fifty feet (250') of the surface of the Property or such to greater depth as is necessary to avoid surface subsidence (the "Surface") for exploring, drilling for, mining and producing the Oil, Gas and Other Minerals, including releasing and relinquishing the

**Exhibit “C” (cont.)**

right of ingress and egress in, over, under and across the Surface of the Land for such purposes and releasing and relinquishing such Surface from operations in connection with mining, quarrying, exploring, drilling, testing, treating, processing, refining, producing, storing, transporting, completing, operation and/or developing of any of the Oil, Gas and Other Minerals or the erection of surface structures incident to such activities.

Provided, however, such Surface Waiver shall not include, and Grantor shall have and hereby reserve for Grantor and Grantor's heirs, successors and assigns, the right to:

(1) conduct operations in connection with the surveying, mining, quarrying, exploring, drilling, testing, treating, processing, refining, producing, storing, transporting, completing, operation and/or developing of any of the Oil, Gas and Other Minerals by operations which Grantors may conduct on any adjoining or nearby property outside the boundaries of the Property, and/or by the use of directional wells or other operations drilling at surface locations outside the boundaries of the Property, provided that any such drilling or operations are done at a minimum of two hundred fifty feet (250') below the surface of the Property, no drilling, operations, or any activities associated therewith is performed on the Land and in any event in such a manner as to not interfere with Grantees' peaceful enjoyment of the Property;

(2) execute oil, gas and mineral leases covering the Property or any portions thereof, but subject to, and recognizing the Surface Waiver;

(3) execute and deliver pooling or unitizing leases and agreements, and amendments and supplements thereto, covering the Property or any part thereof, together with other property in the vicinity of the Property, for the purpose of surveying, mining, quarrying, exploring, drilling, testing, treating, processing, refining, producing, storing, transporting, completing, operating, and/or developing of any of the Oil, Gas and Other Minerals but subject to and recognizing the Surface Waiver; and

(4) execute and deliver oil, gas and mineral leases, and/or amendments thereto, permitting the lessee therein and its heirs, legal representatives, successors and assigns to pool or unitize the Property or any part thereof with other property in the vicinity of the Property; provided that such leases, amendments, supplements, pooling and unitization leases and agreements are subject to the above provisions relating to Surface Waiver.

**PROPERTY:**

The Land, together with and including all of the Grantors' right, title and interest in and to the rights and appurtenances in any way belonging or appurtenant to the Land, without any representations or warranties, except for the special warranty as to title, including, without limitation: (i) any improvements on the Land; (ii) strips and gores, if any, adjacent or contiguous to the Land; (iii) any land lying in or under the bed of any street, alley, road, creek or stream running through, abutting or

adjacent to the Land; (iv) easements, rights of ingress and egress and reversionary interests benefitting or serving the Land; and all of Grantor's right, title and interest in and to any claims or causes of action it may have or that could be asserted against third parties arising out of any injury or damage to the Land accruing or occurring prior to the date of this Deed; and the full right and power to maintain an action against any such third party (but not in the name of Grantor), and to settle, compromise, or reassign any such claim and cause of action, and to give a release in full discharge of liability of the same (collectively the "Property").

**THIS CONVEYANCE IS MADE AND ACCEPTED SUBJECT TO THE FOLLOWING "RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY":**

- A. This conveyance and the special warranty of title are made and accepted subject to the following matters to the extent that such are presently in force and effect and affect the Property:
- (1) All easements, rights-of-way and restrictive covenants, if any, of record with the County Clerk of Nueces County, Texas, and all easements which may be apparent by inspection of the surface;
  - (2) All real property taxes and special assessments affecting the Property for the year 2015, which having been prorated, are hereby fully assumed by Grantee. Further, Grantee hereby assumes and accepts the Property subject to any tax assessments or roll back taxes that cover the Property and which arise from Grantee's use of the Property, which such additional taxes shall be the obligation of Grantee;
  - (3) All prior mineral estate reservations and conveyances (including prior assignments or reservations of royalty interests) by Grantor and by Grantor's predecessors in title as shown by the records of the County Clerk of Nueces County, Texas; and the rights of any third party owner of any portion of the mineral estate and the rights of any lessee or other person claiming an interest in oil, gas and other minerals under oil, gas and mineral leases or other documents;
  - (4) Any titles or rights asserted by anyone, including, but not limited to, person, the public, corporations, governments or other entities,
    - (a) to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
    - (b) to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
    - (c) to filled-in lands, or artificial islands, or
    - (d) to statutory water rights, including riparian rights, or
    - (e) to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area, and
  - (5) Any and all zoning ordinances and utility district assessments, if any, applicable to and enforceable against the above described Property.
- B. Grantor and Grantee agree and hereby stipulate that the Property is and shall be subject to the following covenant as a covenant running with the Property and

**Exhibit "C" (cont.)**

binding upon Grantee, its legal representatives, successors and assigns, and shall be for the benefit of and enforceable by Grantor, its legal representatives, successors and assigns in and to any portion of the land lying south of the road known as the Joe Fulton International Trade Corridor and being part of Tracts I and II conveyed to Grantor by that certain Special Warranty Deed effectively dated March 19, 2013, recorded under Nueces County Clerk's File No.: 2013010971 of the Deed Records of Nueces County, Texas (the "Grantor's Land"):

For so long as polyethylene terephthalate ("PET") is being produced in commercial quantities by a plant located on Grantor's Land, the Property may not be used for the open storage of commercial quantities of: (1) pet coke, or (2) fine grain sands, aggregates, or any other dry bulk materials, commodities or substances consisting of grains of which ninety percent (90%) or more by weight are less than one-quarter millimeter (1/4 mm) in size (the "Restricted Materials"). Notwithstanding the forgoing, this restriction shall not prevent: (i) the use of Restricted Materials to construct, build, maintain, repair, replace or remove any existing or future improvements(s) in, on, under, or over the Property; or (ii) the covered or contained storage of Restricted Materials. The term "Restricted Materials" as used herein, shall not include the soil, dirt, dredge materials, or any other material located upon on the Property at the time of this conveyance or dredge material placed on the Property in the future. This restriction shall run with the land for all purposes regardless if included in any subsequent document concerning the Property or not.

**SPECIAL WARRANTY GRANT:**

Grantor, for the consideration and subject to the above Surface Waiver and Reservations From and Exceptions to Conveyance and Warranty, GRANTS, SELLS AND CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Exceptions to Conveyance and Warranty described above. However, to the extent applicable and without any recourse to Grantor this conveyance is made with full substitution and subrogation of Grantee in and to all covenants and warranties by others heretofore given or made with respect to the Property or any part thereof.

**DISCLAIMER:**

Grantee acknowledges that Grantee has independently and personally inspected the Property. **GRANTOR EXPRESSLY DISCLAIMS AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED MAKING ANY REPRESENTATIONS, WARRANTIES, OR ASSURANCES WITH RESPECT TO THE PROPERTY SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS OR WARRANTIES AS TO MATTERS OF ZONING, MINERALS, TAX CONSEQUENCES, PHYSICAL CONDITION, OCCUPANCY, ENVIRONMENTAL CONDITIONS,**

**Exhibit "C" (cont.)**

OPERATING HISTORY OR PROJECTIONS, VALUATIONS, GOVERNMENTAL APPROVALS OR GOVERNMENTAL REGULATIONS. GRANTEE EXPRESSLY ACKNOWLEDGES THAT WITH RESPECT TO THE PROPERTY GRANTEE HAS RELIED UPON ITS INSPECTIONS THEREOF OR ITS DETERMINATIONS NOT TO INSPECT THE SAME, AND HEREBY ACCEPTS THE PROPERTY IN ITS "AS IS" "WHERE IS" CONDITION, WITH ALL FAULTS, AND WITHOUT REFERENCE TO MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY SPECIFIC PURPOSE. GRANTEE SPECIFICALLY DISCLAIMS RELIANCE ON ANY REPRESENTATIONS. **THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR GRANTOR EXECUTING THIS SPECIAL WARRANTY DEED.**

**GENERAL PROVISIONS:**

When the context requires, singular nouns and pronouns include the plural.

This Special Warranty Deed may be executed in multiple counterparts, each of which may be considered an original and all of which together shall constitute one and the same document.

**[Signature Page Immediately Follows]**

**Signature Page to Special Warranty Deed**

EXECUTED, DELIVERED AND ACCEPTED as of the date set forth above on the first page of this Special Warranty Deed.

<p><b><u>GRANTOR:</u></b></p> <p><b>M &amp; G Resins USA, LLC,</b> a Delaware limited liability company</p> <p>By: _____ Name: _____ Title: _____</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------

ACKNOWLEDGMENT

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of M&G Resins USA, LLC, a Delaware limited liability company, on behalf of such company.

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

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

\_\_\_\_\_  
Print or Type Name of Notary

[SEAL]

- Attachments:
- Exhibit "A" – Metes and Bounds Legal Description of Tracts A and B
  - Exhibit "B" – Survey Depiction of Tracts A and B

**Signature Page to Special Warranty Deed – continued**

EXECUTED, DELIVERED AND ACCEPTED as of the date set forth above on the first page of this Special Warranty Deed.

<p><b><u>GRANTEE:</u></b></p> <p><b>PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS</b>, a navigation district and political subdivision of the State of Texas</p> <p>By: _____ John P. LaRue, Executive Director</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ACKNOWLEDGMENT

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF NUECHES     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by John P. LaRue, as Executive Director of PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas, on behalf of said navigational district.

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

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

\_\_\_\_\_  
Print or Type Name of Notary

**AFTER RECORDING RETURN TO:**

Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403



**Exhibit "A"**

To

Special Warranty Deed

(To be Attached at time of execution)

**EXHIBIT "D"**

TO

**SURFACE SITE LEASE AND OPTION AGREEMENT**

(M&G Resins USA grant to Port of Corpus Christi – Surface Use of 2.525 acre tract with Waterfront Option)

**Option Property Fill Specifications**

**(See Attached)**

**Exhibit "D"**

**SECTION 31 23 00.00 20**

**EXCAVATION AND FILL**

**PART 1 - GENERAL**

**1.01 REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

ASTM INTERNATIONAL (ASTM)

- |                   |                                                                                                                      |
|-------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>ASTM C117</b>  | (2013) Standard Test Method for Materials Finer than 75-um (No. 200) Sieve in Mineral Aggregates by Washing          |
| <b>ASTM C40</b>   | (2011) Standard Test Method for Organic Impurities in Fine Aggregates for Concrete                                   |
| <b>ASTM D4318</b> | (2010) Liquid Limit, Plastic Limit, and Plasticity Index of Soils                                                    |
| <b>ASTM D698</b>  | (2012) Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/cu. ft. (600 kN-m/cu. m.)) |

TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT)

- |             |                                                                                                                   |
|-------------|-------------------------------------------------------------------------------------------------------------------|
| <b>216</b>  | (2004) Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges. Proof Rolling. |
| <b>5261</b> | (2004) Special Specification 5261 - Geogrid Base Reinforcement                                                    |

**1.02 DEFINITIONS**

- A. Capillary Water Barrier

**Exhibit "D"**

A layer of clean, poorly graded crushed rock, stone, or natural sand or gravel having a high porosity which is placed beneath a building slab with or without a vapor barrier to cut off the capillary flow of pore water to the area immediately below a slab.

**B. Degree of Compaction**

Degree of compaction is expressed as a percentage of the maximum density obtained by the test procedure presented in [ASTM D698](#), for general soil types, abbreviated as percent laboratory maximum density.

**C. Pile Supported Structure**

As used herein, a structure where both the foundation and floor slab are pile supported.

**1.03 SUBMITTALS**

The following shall be submitted in accordance with Section [01 33 00 SUBMITTAL PROCEDURES](#):

**SD-01 Preconstruction Submittals**

Shoring and Sheeting Plan

Dewatering work plan

Submit 15 days prior to starting work.

**SD-06 Test Reports**

Fill and backfill test

Density tests

Moisture Content Tests

Submit copies of all laboratory and field test reports within 24 hours of the completion of the test.

**1.04 DELIVERY, STORAGE, AND HANDLING**

Perform in a manner to prevent contamination or segregation of materials.

**1.05 QUALITY ASSURANCE**

**A. Shoring and Sheeting Plan**

Submit drawings and calculations, certified by a registered professional Engineer in the state of Texas, describing the methods for shoring and sheeting of excavations where required. Drawings shall include material sizes and types, arrangement of members, and the sequence and method of installation and removal. Calculations shall include data and references used.

**B. Dewatering Work Plan**

Submit procedures for accomplishing dewatering work where required.

**C. Utilities**

Movement of construction machinery and equipment over pipes and utilities during construction shall be at the Contractor's risk. Perform work adjacent to utilities as indicated in accordance with procedures outlined by utility company. Excavation made with power-driven equipment is not permitted within two feet of known utility or subsurface construction. For work immediately adjacent to or for excavations exposing a utility or other buried obstruction, excavate by hand. Prior to excavation, inform the utility company of these operations to avoid any unsafe practice. Start hand excavation on each side of the indicated obstruction and continue until the obstruction is uncovered or until clearance for the new grade is assured. Support uncovered lines or other existing work affected by the contract excavation until approval for backfill is granted by the Owner. Report damage to utility lines or subsurface construction immediately to the Owner.

**PART 2 - PRODUCTS**

**2.01 SOIL MATERIALS**

**A. Satisfactory Materials**

Soil shall be free of debris, roots, wood, scrap material, vegetation, refuse, soft unsound particles, and deleterious or objectionable material.

**B. Backfill and Fill Material**

The backfill materials behind the sheet pile wall and the flexible base shall be as specified on Contract drawings. The material shall be free of debris, roots, wood, scrap material, vegetation, refuse, soft unsound particles, and deleterious, or objectionable materials.

C. Select Fill

Contractor shall furnish material that is clean, non-organic soils containing no more than 20% fines (material passing the No. 200 sieve) as determined by **ASTM C117**. The material shall be free of deleterious substances, organic impurities (**ASTM C40**), and elongated or flat particles which are susceptible to degradation. The select material shall have the following properties:

1. Maximum liquid limit of 35% when tested in accordance with **ASTM D4318**
2. Maximum plasticity index of 12, when tested in accordance with **ASTM D4318**.
3. Maximum particle size of 3/4 inch.

2.02 UTILITY BEDDING MATERIAL

Refer to individual specifications and contract drawings for each utility.

2.03 GEOGRID FILTER FABRIC

Filter fabric shall be Tensar TX-7 Geogrid, or Engineer approved equal.

**PART 3 - EXECUTION**

3.01 PROTECTION

A. Shoring and Sheeting

Provide shoring bracing and sheeting where indicated. The shoring and sheeting shall be designed by Contractor's Engineer licensed in the state of Texas. Contractor shall submit the signed and sealed copy of design to Owner for review.

B. Drainage and Dewatering

Provide for the collection and disposal of surface and subsurface water encountered during construction.

1. Drainage

So that construction operations progress successfully, completely drain construction site during periods of construction to keep soil materials sufficiently dry. The Contractor shall establish/construct storm drainage features (ponds/basins) as needed at the earliest stages of site

development, and throughout construction grade the construction area to provide positive surface water runoff away from the construction activity and/or provide temporary ditches, swales, and other drainage features and equipment as required to maintain dry soils, prevent erosion and undermining of foundations. It is the responsibility of the Contractor to assess the soil and ground water conditions presented by the plans and specifications and to employ necessary measures to permit construction to proceed. Excavated slopes and backfill surfaces shall be protected to prevent erosion and sloughing. Excavation shall be performed so that the site, the area immediately surrounding the site, and the area affecting operations at the site shall be continually and effectively drained.

2. Dewatering

Groundwater flowing toward or into excavations shall be controlled to prevent sloughing of excavation slopes and walls, boils, uplift and heave in the excavation and to eliminate interference with orderly progress of construction. Drains, sumps, ditches or trenches will not be permitted within 3 feet of the foundation of any structure. Control measures shall be taken by the time the excavation reaches the water level in order to maintain the integrity of the in situ material.

Operate dewatering system continuously until construction work below existing water levels is complete.

C. Underground Utilities

Location of the existing utilities indicated is approximate. The Contractor shall physically verify the location and elevation of the existing utilities indicated prior to starting construction. The Contractor shall scan the construction site with electromagnetic and sonic equipment and mark the surface of the ground where existing underground utilities are discovered.

D. Machinery and Equipment

Movement of construction machinery and equipment over pipes during construction shall be at the Contractor's risk. Repair, or remove and provide new pipe for existing or newly installed pipe that has been displaced or damaged.

3.02 SURFACE PREPARATION

A. Clearing and Grubbing

Unless indicated otherwise, remove trees, stumps, logs, shrubs, brush and vegetation and other items that would interfere with construction operations

**Exhibit "D"**

within the construction limits of each building and structure line. Remove stumps entirely. Grub out matted roots and roots over 2 inches in diameter to at least 18 inches below existing surface.

**B. Unsuitable Material**

Remove vegetation, debris, decayed vegetable matter, sod, mulch, and rubbish underneath paved areas or concrete slabs.

**3.03 EXCAVATION**

Excavate to contours, elevation, and dimensions indicated in contract drawings. Reuse excavated materials that meet the specified requirements for the material type required at the intended location. Keep excavations free from water. Excavate soil disturbed or weakened by Contractor's operations, soils softened or made unsuitable for subsequent construction due to exposure to weather. Excavations below indicated depths will not be permitted except to remove unsatisfactory material. Unsatisfactory material encountered below the grades shown shall be removed as directed. Refill in accordance with project contract drawings.

**A. Excavated Materials**

Satisfactory excavated material required for fill or backfill shall be placed in the proper section of the permanent work required or shall be separately stockpiled if it cannot be readily placed. Satisfactory material in excess of that required for the permanent work and all unsatisfactory material shall be disposed of as specified in Paragraph "DISPOSITION OF SURPLUS MATERIAL."

**B. Final Grade of Surfaces to Support Concrete**

Excavation to final grade shall not be made until just before concrete is to be placed as indicated on Contract drawings. Approximately level surfaces shall be roughened, and sloped surfaces shall be cut as indicated into rough steps or benches to provide a satisfactory bond. All surfaces shall be protected from erosion resulting from ponding or flow of water.

**3.04 SUBGRADE PREPARATION**

It is important that any existing organic and compressible soils be removed and the exposed subgrade is properly prepared prior to pavement installation. After all surface organics, soils and deleterious materials have been removed to the desired subgrade elevation; the upper 8-inches of the exposed raw subgrade shall be proofrolled.

Any soft areas identified shall be corrected by performing the following soft area remediation procedure. Any soft areas identified during proofrolling operations will

**Exhibit "D"**



require that the limits of the soft area and extending out 2-feet in all directions be removed to an additional 1-foot below the proposed top of subgrade elevation. Excavation of this additional 1-foot of material shall be accomplished with a smooth mouthed bucket to minimize disturbance of the subgrade soils. Once removal operations are complete a layer of Tensar Geogrid BX1200 or TX5 shall be placed on the exposed smooth relatively undisturbed subgrade soils prior to placing 1-foot of crushed limestone base material compacted to a minimum density of 95-percent of the maximum dry unit weight, as determined by a standard Proctor test (ASTM D698), and within 1 ½-percent of the optimum moisture content.

A. Proof Rolling

Proof rolling shall be performed in accordance with Texas Department of Transportation Standard Specification Item 216; "PROOF ROLLING", which specifies equipment to be a pneumatic tire roller with minimum weight of 25 tons and maximum weight of 50 tons. The roller shall meet the requirements of Section 210.2.D, "Pneumatic Tire Rollers." The contact pressure shall be on the order of 150 psi for a pneumatic tire roller that weighs between 25 to 50 tons. A pneumatic tire roller weighing between 25 to 50 tons is a "Heavy Pneumatic." If no soft clay areas are encountered then the subgrade soils shall be compacted to a minimum of 95-percent of the maximum dry density, as determined by the standard Proctor (ASTM D698), and at, or above the optimum moisture content. Proof rolling shall not be performed within 5 feet of the bulkhead steel sheet piles.

3.05 GEOGRID FILTER FABRIC

Once the subgrade soils have been properly prepared, and all soft areas have been properly remediated, a single layer of Tensar TX-7 geogrid shall be placed in accordance with the manufacturer's recommendations on top of 12-inches of properly prepared raw subgrade soils or previously placed crushed limestone base material in remediated soft areas except under ACB Revetment. Refer to TXDOT Special Specification 5261 for geogrid placement.

3.06 FILLING AND BACKFILLING

Fill and backfill to contours, elevations, and dimensions indicated in the contract drawings.

3.07 COMPACTION

Compaction shall be in accordance with the contract drawings.

A. Structures and Concrete Slabs

Compact top 12 inches of subgrades to 95 percent of the maximum dry density according to the Standard Proctor Test (ASTM D698). Compact fill and backfill material to 95 percent of ASTM D698.

**Exhibit "D"**

B. Adjacent Area

Compact areas within 5 feet of structures to 95 percent of **ASTM D698**.

3.08 FINISH OPERATIONS

A. Grading

Finish grades as indicated within one-tenth of one foot. Grade areas to drain water away from structures. Maintain areas free of trash and debris. For existing grades that will remain but which were disturbed by Contractor's operations, grade as directed.

B. Protection of Surfaces

Protect newly backfilled and graded areas from traffic, erosion, and settlements that may occur. Repair or reestablish damaged grades, elevations, or slopes.

3.09 DISPOSAL OF SURPLUS MATERIAL

Remove from Owner's property brush, refuse, stumps, roots, and timber. All surplus soil material shall be placed within the disposal area on the contract drawings as indicated by the Owner to build the levees.

3.10 FIELD QUALITY CONTROL

A. Testing

Testing shall be performed by Owner's testing agency at the frequency specified on the contract drawings.

1. **Density Tests and Moisture Content Tests**

Refer to contract drawings.

**PART 4 - MEASUREMENT & PAYMENT**

(Not used)

**END OF SECTION**

**Exhibit "D"**



# PORTCORPUSCHRISTI

May \_\_\_\_, 2015

M&G Resins USA, LLC  
450 Gears Road, Suite 240  
Houston, Texas 77067  
Attn.: Andre Meyer

RE: **M & G Resins sale of 2.525 acre and Waterfront Tracts to Port of Corpus Christi Authority**  
Surface Site Lease and Option Agreement effectively dated May \_\_\_\_, 2015 (the "Contract"), by and between M & G Resins USA, LLC, as seller ("M&G"), and Port of Corpus Christi Authority of Nueces County, Texas, as buyer ("Authority"), relating to the lease, option and purchase and sale of two tracts of land, being a 2.525 acre tract (Tract A), and a 5.47 acre tract (Tract B – Waterfront Tract) each located along the south side of the Joe Fulton International Corridor in the North Tule Lake Area of Corpus Christi, Nueces County, and as more particularly described in the Contract (the "Property")

Dear Andre:

The purpose of this letter is to document for M&G’s insurers the following:

1. As of the date of this letter the Authority does not have any definite plans for the Property, except for continued use of the Property for constructing, operating, repairing, and maintaining dock and waterfront facilities, and the possibly for continued use of the Property as a dredge material placement area;
2. The Authority is not in the position to foresee what use that its successors or assignees may ultimately decide to use the Property for; and
3. Except for the restrictions as set forth in the Contract, the Authority has no agreement with M&G regarding the use to which the Property will be put once acquired by the Authority.

Nothing in this Letter Agreement shall be used to restrict, limit, or otherwise interfere with the future development, improvement, use, or non-use of the Property.

Very truly yours,

**Authority:**

**PORT OF CORPUS CHRISTI AUTHORITY OF  
NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
JOHN P. LARUE, Executive Director

**Exhibit “E”**

003934/000005  
142 - 1509571V1



**Exhibit "F"**

**First Amendment to Lease Agreement  
(See Attached)**

A handwritten signature or set of initials, possibly "Rae", written in black ink in the bottom right corner of the page.

**FIRST AMENDMENT TO LEASE AGREEMENT**

Port of Corpus Christi to M&G Resins – Tract B  
0.994 acre Truck Access Tract

This Amendment to Lease Agreement (this “*Amendment*”) is made effective as of the 19 day of May, 2015 (the “*Amendment Date*”), by and between the **Port of Corpus Christi Authority of Nueces County, Texas**, a navigation district operating under Article XVI, Section 59 of the Texas Constitution (hereinafter called “*Authority*”), and **M&G Resins USA, LLC** or its assigns (hereinafter called “*M&G*”), a Delaware limited liability company (PCCA and M&G each herein called a “*Party*” and together the “*Parties*”). This Amendment includes all Exhibits hereto.

**Recitals:**

**WHEREAS**, Authority and M&G entered into that certain Lease Agreement dated June 28, 2013 (the “*Original Lease Agreement*”), a copy of which is attached hereto as **Attachment One**; and

**WHEREAS**, capitalized terms in this Amendment shall have the meanings ascribed to those terms under the provisions of the Original Lease Agreement, except as provided herein; and

**WHEREAS**, M&G desires and the Authority agrees to increase the Leased Premises by a total of 0.994 acres for the uses allowed under the Original Lease Agreement and for truck access to Tract B; and

**WHEREAS**, in accordance with the requirements of Section 18.15 of the Original Lease Agreement, the Parties have agreed to increase the Leased Premises in accordance with the terms of this Amendment.

**Agreements:**

**NOW THEREFORE**, for and in consideration of the premises set forth above and incorporated herein by this reference, the sum of \$10.00 in hand paid, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged and confessed, and intending to be legally bound, Authority and M&G agree to the following:

1. Increase to Leased Premises by 0.994 acres. As of the Amendment Date the Leased Premises shall include the additional 0.994 acre tract as more particularly depicted and described on the survey plat with metes and bounds description attached hereto as **Exhibit “A”** incorporated by this reference for all purposes (the “*Truck Access Tract*”). M&G shall be allowed to use the Truck Access Tract for all uses allowed under Section 4.01 of the Original Lease Agreement, including without limitation that right to provide truck access, egress, and parking for all purposes.

- 2. Effectiveness. Effective as of the Amendment Date, the changes contained in this Amendment shall be made to the Original Easement Agreement without the need for any further action by the Parties.
- 3. This Amendment shall be binding on the successors and assigns of the Parties.
- 4. General Terms. This Amendment may be executed in multiple counterparts, each of which will be considered to be an original. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. The Parties may provide signatures to this Amendment by facsimile or Adobe “.pdf” file and such facsimile or Adobe “.pdf” file signatures shall be deemed to be the same as original signatures.

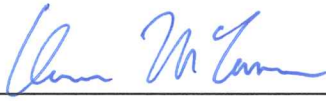
IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized officers as of the dates provided below each signature, to be effective, however, for all purposes, as of the 19 day of May, 2015.

**AUTHORITY:** **Port Of Corpus Christi Authority  
Of Nueces County, Texas**

By:   
John P. LaRue  
Executive Director

Date: May 19, 2015

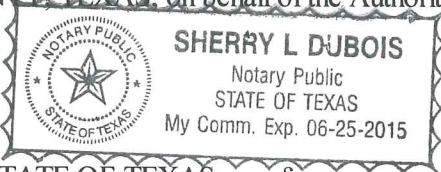
**M&G:** **M&G Resins USA LLC**

By:   
Kevin R. McCarren  
Vice President, Finance

Date: May 8, 2015

THE STATE OF TEXAS §  
§  
COUNTY OF NUECES §

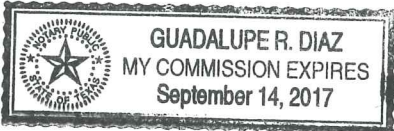
This instrument was acknowledged before me on the 19<sup>th</sup> day of May, 2015, by John P. LaRue, Executive Director of the PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, on behalf of the Authority.



Sherry L. Dubois  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 8 of May, 2015, by Kevin R. McCarren, Vice President, Finance of M&G RESINS USA, LLC, a Delaware limited liability company, on behalf of the company.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

ATTACHMENTS:

- Attachment One** – Original Lease Agreement
- Exhibit "A"** – Survey Plat with Metes and Bounds description of the 0.994 Truck Access Track

AFTER RECORDING RETURN TO:

Jason Davis  
Crain, Caton & James, PC  
1401 McKinney Street, Suite 1700  
Houston, Texas 77010

**Attachment One**

Original Lease Agreement  
(See Attached)



**LEASE AGREEMENT**

Between

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**  
*("Authority")*

And

**M&G RESINS USA, LLC**  
**a Delaware limited liability company**  
*("Lessee")*

June 28, 2013

TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS .....	1
SECTION 1.01. CERTAIN DEFINITIONS.....	1
SECTION 1.02. OTHER DEFINITIONS.....	4
SECTION 1.03. TERMINOLOGY.....	4
ARTICLE 2 – LEASE OF PREMISES; TERM.....	4
SECTION 2.01. LEASED PREMISES .....	4
SECTION 2.02. TERM .....	5
SECTION 2.03. HOLDING OVER.....	5
SECTION 2.04. EQUIPMENT .....	5
SECTION 2.05. CONDITION OF LEASED PREMISES .....	6
ARTICLE 3 - RENT .....	6
SECTION 3.01. RENT DURING THE CONSTRUCTION PERIOD .....	6
SECTION 3.02. VARIABLE MONTHLY RENT AFTER THE CONSTRUCTION PERIOD .....	6
SECTION 3.03. MINIMUM GUARANTEED THROUGHPUT AND MINIMUM RAILCAR COUNT FOR OPERATIONAL LEASE YEARS 1-14.....	8
SECTION 3.04. MINIMUM ANNUAL RENT AFTER OPERATIONAL LEASE YEARS 1-14.....	9
SECTION 3.05. MINIMUM ANNUAL RENT SHORTFALLS.....	12
SECTION 3.06. EQUALIZATION VALUE OF THE LEASED PREMISES.....	12
SECTION 3.07. LATE PAYMENT PENALTIES .....	14
SECTION 3.08. PLACE OF PAYMENT .....	15
SECTION 3.09. UTILITIES AND TAXES.....	15
ARTICLE 4 – USE OF LEASED PREMISES .....	16
SECTION 4.01. USE .....	16
SECTION 4.02. ENVIRONMENTAL REPRESENTATIONS, RESTRICTIONS AND ENVIRONMENTAL INDEMNITY .....	17
SECTION 4.03. UNDERGROUND STORAGE TANKS .....	20
SECTION 4.04. PERMITTED USE; CONTINUOUS OPERATION .....	20
SECTION 4.05. USE BY AUTHORITY .....	21
ARTICLE 5 – IMPROVEMENTS OR ALTERATIONS AND MAINTENANCE.....	21
SECTION 5.01. PERMANENT IMPROVEMENTS .....	21
SECTION 5.02. MAINTENANCE AND RETURN OF LEASED PREMISES.....	22
SECTION 5.03. APPROVAL OF ALTERATIONS AND IMPROVEMENTS .....	22
SECTION 5.04. NO LIENS .....	23
SECTION 5.05. LABORERS AND MATERIALS.....	23
SECTION 5.06. STORM SEWERS/RAILROAD SPUR TRACKS.....	23
SECTION 5.07. BUILDING CODE .....	23
SECTION 5.08. PERMITS .....	23
SECTION 5.09. OWNERSHIP OR REMOVAL OF ALTERATIONS, MODIFICATIONS OR IMPROVEMENTS BY LESSEE 24	24
SECTION 5.10. SIGNS .....	24
SECTION 5.11. FLOODPLAIN .....	25
SECTION 5.12. SIDE YARD LIMITS.....	25
ARTICLE 6 – RAIL RIGHT AND RELATED RIGHTS .....	25

SECTION 6.01. RAIL RIGHT AND CONNECTION POINTS.....25

SECTION 6.02. RAIL RIGHT EASEMENT AND CONSTRUCTION OBLIGATIONS.....26

ARTICLE 7 – SUBLETTING, ASSIGNMENT OR TRANSFER.....27

SECTION 7.01. SUBLEASE OR TRANSFER.....27

SECTION 7.02. CONDITIONS.....27

ARTICLE 8.....28

SECTION 8.01. EVENT OF DEFAULT.....28

SECTION 8.02. REMEDIES OF LANDLORD.....29

SECTION 8.03. NO WAIVER.....30

SECTION 8.04. DEFAULT BY AUTHORITY.....30

ARTICLE 9 – WAIVER OF LANDLORD’S LIEN.....31

SECTION 9.01. WAIVER OF LANDLORD’S LIEN.....31

SECTION 9.02. HOLDER OF SECURITY.....31

ARTICLE 10 – ENCUMBRANCES BY LESSEE.....32

SECTION 10.01. DEFINITIONS.....32

SECTION 10.02. RIGHT TO ENCUMBER.....32

SECTION 10.03. NOTICE TO AUTHORITY.....32

SECTION 10.04. DEFAULT NOTICE.....33

SECTION 10.05. NOTICE TO LEASEHOLD MORTGAGEE.....33

SECTION 10.06. PROCEDURE ON DEFAULT.....34

SECTION 10.07. NEW LEASE AGREEMENT.....36

SECTION 10.08. NEW LEASE AGREEMENT PRIORITIES.....37

SECTION 10.09. LEASEHOLD MORTGAGE NEED NOT CURE SPECIFIED DEFAULTS.....37

SECTION 10.10. TAKINGS.....37

SECTION 10.11. CASUALTY LOSS.....37

SECTION 10.12. LEGAL PROCEEDINGS.....38

SECTION 10.13. NO MERGER.....38

SECTION 10.14. SECURITY DEPOSIT.....38

SECTION 10.15. NOTICES.....38

SECTION 10.16. ERRONEOUS PAYMENTS.....39

ARTICLE 11 - INDEMNITY.....39

SECTION 11.01. INDEMNIFICATION BY LESSEE.....39

SECTION 11.02. NOTICE OF CLAIMS.....40

ARTICLE 12 - INSURANCE.....40

SECTION 12.01. INSURANCE.....40

SECTION 12.02. WAIVER OF SUBROGATION.....42

ARTICLE 13 – PROPERTY LOSS.....43

SECTION 13.01. OBLIGATION TO RESTORE.....43

SECTION 13.02. DAMAGE NEAR END OF TERM.....43

SECTION 13.03. NOTICE OF DAMAGE.....43

ARTICLE 14 - CONDEMNATION.....44

SECTION 14.01. TOTAL TAKING.....44

SECTION 14.02. PARTIAL TAKING.....44

SECTION 14.03. VOLUNTARY CONVEYANCE.....44

SECTION 14.04. CONDEMNATION AWARD.....44

SECTION 14.05. NOTICE OF PROPOSED TAKING.....44

ARTICLE 15 – QUIET ENJOYMENT..... 45

ARTICLE 16 – DISPUTE RESOLUTION AND MEDIATION..... 45

SECTION 16.01. DISPUTE RESOLUTION..... 45

SECTION 16.02. MEDIATION..... 45

ARTICLE 17 – GENERAL PROVISIONS ..... 46

SECTION 17.01. COMPLIANCE WITH AUTHORITY’S TARIFF..... 46

SECTION 17.02. INSPECTION ..... 46

SECTION 17.03. NO PARTNERSHIP OR THIRD PARTY BENEFICIARIES ..... 46

SECTION 17.04. PAYMENTS AND NOTICES..... 46

SECTION 17.05. ESTOPPEL CERTIFICATE..... 47

SECTION 17.06. ABATEMENT ..... 47

SECTION 17.07. ABANDONED PROPERTY..... 47

ARTICLE 18 - MISCELLANEOUS..... 47

SECTION 18.01. PARTIES BOUND ..... 47

SECTION 18.02. APPLICABLE LAW ..... 47

SECTION 18.03. SEVERABILITY..... 48

SECTION 18.04. TIME OF ESSENCE ..... 48

SECTION 18.05. RIGHTS AND REMEDIES CUMULATIVE..... 48

SECTION 18.06. ATTORNEYS’ FEES..... 48

SECTION 18.07. CAPTIONS ..... 48

SECTION 18.08. PUBLIC DISCLOSURE..... 48

SECTION 18.09. BROKERS ..... 49

SECTION 18.10. AUTHORITY ..... 49

SECTION 18.11. RECORDING ..... 49

SECTION 18.12. INTERPRETATION ..... 49

SECTION 18.13. *FORCE MAJEURE* ..... 50

SECTION 18.14. CONTRACTUAL RELATIONSHIP ..... 50

SECTION 18.15. ENTIRE AGREEMENT ..... 50

**ATTACHMENTS:**

- Exhibit “A” – Legal Description of Tract B and Survey
- Exhibit “B” – Direct Rail Service Connection Points
- Exhibit “C” – Concrete Culvert Crossing

LEASE AGREEMENT

This LEASE AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, pursuant to authorization by its Port Commissioners (hereinafter called "Authority"), and M&G RESINS USA, LLC, a Delaware Limited Liability Company with a permit to do business in Texas, whose principal address is 27610 Huntington Road, Apple Grove, West Virginia 25502, (hereinafter called "Lessee"). This Lease Agreement together with all renewals, extensions, and modifications is referred to herein as the "Lease Agreement", or the "Lease".

RECITALS:

(a) Authority, as purchaser, and Lessee, as seller, entered into a Purchase, Leaseback and Construction Agreement dated June 20, 2013 (the "Purchase Agreement"), under which Authority agreed to purchase from Lessee three tracts of land designated in the Purchase Agreement as Tract A, Tract B, and Tract C.

(b) On the closing of the Purchase Agreement, Authority acquired Tract A, Tract B, and Tract C from Lessee in accordance with the terms of the Purchase Agreement.

(c) Tract B contains approximately 58.47 acres of land, more or less, in Nueces County, Texas, and it is more particularly described and depicted in Exhibit A attached hereto ("Tract B").

(d) Contemporaneously with the closing of the Purchase Agreement, Authority and Lessee entered into this Lease Agreement pursuant to which the Authority will lease Tract B back to Lessee as contemplated by the Purchase Agreement. This Lease is the Tract B Lease Agreement described in the Purchase Agreement.

(e) If it is successful in obtaining the necessary permits, Lessee will construct a PET Plant and a PTA Plant on Lessee's property adjacent to the Leased Premises, and will construct related roads, railroad beds and trackage, rail loading and unloading facilities on the Leased Premises, and may construct other facilities on the Leased Premises as described in Section 4.01 of this Lease.

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. Certain Definitions

As used in this Lease, each of the following terms shall have the meaning set forth or referred to in this Section:

“*Affiliate*” means, with respect to Lessee, any other business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Lessee. For purposes of this definition, “control” means (1) the beneficial ownership of fifty percent (50%) or more of the outstanding voting ownership interests of another Person, or (2) the ability to direct the day-to-day management and long-term policies of another Person, whether by contract or otherwise.

“*Applicable Laws*” means all applicable limitations, restrictions, conditions, standards, prohibitions and requirements of any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Leased Premises, including but not limited to all applicable zoning ordinances and building codes, flood disaster laws and health laws and regulations.

“*Authority’s Contractor*” means the short line common carrier railroad company under contract with the Authority to provide terminal switching services on and railroad facility maintenance of the Authority’s terminal railroad in the Inner Harbor of the Port of Corpus Christi.

“*Business Day*” means any day other than Saturday or Sunday or any other day on which banks in Texas are permitted or required to be closed.

“*Cargo*” means the PET/PTA Cargo and the Other Cargo.

“*Commencement Date*” means the first day after the end of the Construction Period. For example, if the Construction Period ends on May 31, 2016, the Commencement Date would be June 1, 2016.

“*Completion Date*” means the first to occur of the following dates: (1) the date on which Lessee commences production of PET in commercial quantities at the PET Plant, (2) the date on which Lessee commences production of PTA in commercial quantities at the PTA Plant, or (3) the day before the third anniversary of the Effective Date.

“*Construction Period*” means the period beginning on the Effective Date and ending on the last day of the calendar month in which the Completion Date occurs.

“*CPI*” means the Consumer Price Index for All Urban Consumers (CPI-U), Not Seasonally Adjusted, for the U.S. City average – all items 1982-84=100 (Unadjusted), published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or to publish statistics concerning the purchasing power of the consumer dollar during the Term of this Lease, then any successor index shall replace CPI for the remainder of the Term, however, should CPI cease to exist without a known successor, then the remaining CPI adjustments called for in this Lease will be made by using the most nearly comparable statistics published by a recognized financial authority, as shall be mutually agreed by the Parties.

“**Exempt Cargo**” means any materials or substances used (i) to operate or maintain the PET Plant or the PTA Plant, or (ii) to package products manufactured in the PET Plant or the PTA Plant, such as spare parts, tires, equipment, machinery, furniture, scrap metal, scrap materials, water (treated and untreated), lumber, and packaging materials. Exempt Cargo shall not include raw materials or substances (i.e. feedstock) which are consumed or used in a manufacturing, processing, refining, or power generation activity on or adjacent to the Leased Premises.

“**Extension Term**” means either the First Extension Term or the Second Extension Term, as the case may be, as those terms are defined in Section 2.02(b)

“**Minimum Guaranteed Throughput**” is defined in Section 3.03(a).

“**Minimum Railcar Count**” is defined in Section 3.03(a).

“**Operational Lease Year**” means the twelve-month period beginning on the Commencement Date and each twelve-month period thereafter during the Term of this Lease.

“**Operational Period**” means the period beginning on the Commencement Date and ending on the last day of the Term of the Lease.

“**Other Cargo**” means liquid bulk petroleum and any other cargo except PET/PTA Cargo and Exempt Cargo.

“**Parties**” means Authority and Lessee.

“**Party**” means Authority or Lessee, as the case may be.

“**Person**” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other business entity.

“**PET**” means polyethylene terephthalate.

“**PET/PTA Cargo**” means PET, PTA, feedstock materials from which PET or PTA is manufactured, and all products manufactured in the PET Plant or the PTA Plant.

“**PET/PTA Rental Rate**” means, for each calendar month, the PET/PTA Rental Rate for such calendar month as determined in accordance with Section 3.02(a)(1).

“**PET Plant**” means the polyethylene terephthalate manufacturing facility constructed by Lessee on Lessee’s property adjacent to the Leased Premises.

“*PPF*” means the Producer Price Index for Port and Harbor Operations (not seasonally adjusted) published by the Bureau of Labor Statistics of the U.S. Department of Labor in the *PPI Detailed Report*.

“*PTA*” means purified terephthalic acid.

“**PTA Plant**” means the purified terephthalic acid manufacturing facility constructed by Lessee on Lessee’s property adjacent to the Leased Premises.

“*Railcar Rental Rate*” means, for each calendar month, the Railcar Rental Rate for such calendar month as determined in accordance with Section 3.02(a)(3).

“*RCAF-U*” means the Railroad Cost Adjustment Factor (Unadjusted) calculated and published quarterly by the Association of American Railroads.

“*Term*” has the meaning set forth in Section 2.02.

“*Variable Monthly Rent*” means the rent payable to Authority pursuant to Section 3.02.

**Section 1.02. Other Definitions**

Capitalized terms in this Lease which are not defined in Section 1.01 are defined in the text of this Lease, including those certain environmental terms defined and used in Section 6.02 and some specific indemnification and insurance terms defined and used in Article 11.

**Section 1.03. Terminology**

The terms defined in Section 1.01 or in the text of this Lease shall apply throughout this Lease. All references in this Lease to “Section” or “Article” shall refer to a section or article of this Lease, unless otherwise expressly stated. All references to “Exhibits” shall mean the exhibits attached to this Lease. All such Exhibits and any other attachments to this Lease are incorporated in this Lease by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to this Lease in its entirety. As used in this Lease, the term “including” shall mean “including but not limited to.” The headings of Articles and Sections in and Exhibits to this Lease shall be for convenience only and shall not affect the interpretation hereof.

**ARTICLE 2  
LEASE OF PREMISES; TERM**

**Section 2.01. Leased Premises**

Effective as of the Effective Date, Authority hereby leases to Lessee and Lessee hereby leases from Authority, upon the terms and conditions of this Lease, Tract B and all Authority owned improvements situated thereon (hereinafter called the “*Leased Premises*”).



**Section 2.02. Term**

(a) The term of this Lease ("*Term*") shall commence of the Effective Date and shall end on the last day of the Initial Term, unless otherwise extended or terminated in accordance with the terms hereof. The "*Initial Term*" shall begin on the Effective Date and end at 11:59 p.m., Central Time, on the day before the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date.

(b) Lessee shall have the right and option to extend the Term of this Lease for two (2) additional periods of ten (10) years each as provided in this Section 2.02(b) (the "*First Extension Period*" and the "*Second Extension Period*", respectively). The First Extension Period and the Second Extension Period shall automatically occur unless Lessee gives written notice to Authority at least one hundred fifty (150) days prior to the end of the then effective Term, stating that Lessee does not elect to extend the Term for an additional ten-year period (the "*Termination of Extension Notice*"). Lessee's Termination of Extension Notice must, to be effective, be sent by certified mail to Authority at the address provided in Section 17.04 and must be postmarked no later than the latest date provided in this section for giving such notice. Notwithstanding anything to the contrary contained in this Lease, this Lease shall not be automatically extended and Lessee shall be deemed to have given a Termination of Extension Notice, if on the date which is one hundred fifty (150) days prior to the end of the then effective Term (i) Lessee is in default of any material obligation in this Lease; or (ii) Lessee is aware of such default and any notice of such default has been provided, and any applicable grace period provided in this Lease Agreement in performing any of the terms of this Lease Agreement, has expired, and in such event this Lease shall terminate at the end of the then effective Term. Except as provided in the preceding sentence, if Lessee does not send the Termination of Extension Notice, then this Lease shall continue in full force and effect under all the terms and conditions set forth herein.

(c) Authority and Lessee hereby acknowledge and agree that it is the express intent of both Parties that this Lease Agreement constitutes a lease of the Leased Premises under the laws of the State of Texas and it in no way constitutes a sale of the Leased Premises for any purpose.

**Section 2.03. Holding Over**

If Lessee holds over beyond the Term of this Lease without the written consent of Authority, Lessee is deemed to be occupying the Leased Premises as a tenant at sufferance. During any holdover period, Lessee will pay two (2) times the monthly rent being charged Lessee in the month prior to the commencement of Lessee's holding over, and Lessee will be subject to all other terms of this Lease Agreement applicable to a tenant at sufferance.

**Section 2.04. Equipment**

All machines, appliances, furniture, equipment, and other items of tangible personal property on the Leased Premises (collectively, the "*Lessee's Equipment*") will be owned or leased by Lessee, unless subject to any third party service agreements. Lessee shall remove or cause to be removed all of the Lessee's Equipment within thirty days (30) after the expiration or

termination of this Lease. Any items of the Lessee's Equipment that are not removed by Lessee within thirty days (30) after the expiration or termination of this Lease shall be considered abandoned and shall thereupon become the property of the Authority, without cost to the Authority and without any payment to Lessee.

**Section 2.05. Condition of Leased Premises**

Lessee has inspected the Leased Premises and has conducted any environmental assessment surveys it desired, and on the date this Lease Agreement is made Lessee accepts the Leased Premises "As Is, Where Is, With All Faults" and in the condition it existed on that date, as reasonably suited and fit for Lessee's intended uses of the Leased Premises. Lessee acknowledges that Authority has made no express warranties with regard to the Leased Premises, and to the maximum extent permitted by applicable law, Authority hereby disclaims, and Lessee waives the benefit of, any and all implied warranties, including implied warranties of habitability, or fitness or suitability for Lessee's intended uses of the Leased Premises.

**ARTICLE 3  
RENT**

**Section 3.01. Rent During the Construction Period**

(a) Lessee agrees to pay Authority at its offices in Corpus Christi, Texas, rent in the amount of One Dollar (\$1.00) for the Construction Period. There shall be no Variable Monthly Rent during the Construction Period.

(b) Lessee shall notify Authority in writing of the date on which Lessee (i) commences production of PET in commercial quantities at the PET Plant, or (ii) commences production of PTA in commercial quantities at the PTA Plant, whichever is first to occur, if that date occurs before the third anniversary of the Effective Date.

**Section 3.02. Variable Monthly Rent after the Construction Period**

(a) After the Construction Period, Lessee agrees to pay to Authority a variable monthly rent (the "**Variable Monthly Rent**") for the Leased Premises for each calendar month of the Operational Period. The Variable Monthly Rent for each calendar month in the Operational Period shall equal the sum of the following amounts:

(1) An amount equal to the product of (A) the quantity (by weight) of all PET/PTA Cargo transported to or from the Leased Premises during such month by railcar, truck or other means of ground transportation, multiplied by (B) the PET/PTA Rental Rate for such calendar month. The "**PET/PTA Rental Rate**" for each calendar month in the first five Operational Lease Years shall be forty-five cents (\$0.45) per Metric Ton. The "**PET/PTA Rental Rate**" for each calendar month in each Operational Lease Year after the first five Operational Lease Years shall equal the product of (i) forty-five cents (\$0.45), multiplied by

(ii) a fraction, the numerator of which is the PPI for the first calendar month of such Operational Lease Year, and the denominator of which is the PPI for the first calendar month of the first Operational Lease Year. For example, the PET/PTA Rental Rate for each calendar month of the sixth Operational Lease Year would be the product of forty-five cents (\$0.45) per Metric Ton, multiplied by a fraction, the numerator of which is the PPI for the first calendar month of the sixth Operational Year and the denominator of which is the PPI for the first calendar month of the first Operational Year.

(2) An amount equal to the product of (A) the quantity (by weights or measurements, as appropriate) of all Other Cargo transported to or from the Leased Premises during such month by railcar, truck or other means of ground transportation, multiplied by (B) Fifty Percent (50%) of the Authority's then-current wharfage rate for the same cargo, as published in the Authority's Tariff on the first day of such calendar month.

(3) An amount equal to the product of (A) the number of railcars transporting Cargo to or from the Leased Premises during such month, multiplied by (B) the Railcar Rental Rate for such month. The "**Railcar Rental Rate**" for each calendar month in the first Operational Lease Year is Fifty Dollars (\$50) per railcar. The "**Railcar Rental Rate**" for each calendar month in each Operational Lease Year after the first Operational Lease Year shall equal the product of (i) Fifty Dollars (\$50), multiplied by (ii) a fraction, the numerator of which is the PPI for the first calendar month of such Operational Lease Year, and the denominator of which is the PPI for the first calendar month of the first Operational Lease Year. For example, the Railcar Rental Rate for each calendar month of the second Operational Lease Year would be the product of Fifty Dollars (\$50) per railcar, multiplied by a fraction, the numerator of which is the PPI for the first calendar month of the second Operational Lease Year, and the denominator of which is the PPI for the first calendar month of the first Operational Lease Year.

(4) An amount equal to the product of (A) the number of railcars transporting Cargo to or from the Leased Premises during such month, multiplied by (B) the Switching Rental Rate (as calculated from time to time in accordance with this subsection) in effect during such month, LESS any portion of this amount which is paid or payable by any of the Class I Railroads or the short line railroad serving the Port of Corpus Christi. The initial Switching Rental Rate for purposes of this Lease Agreement is Twenty-Nine Dollars and Ten Cents (\$29.10) per railcar. Every July 1<sup>st</sup> during the Term of this Lease, commencing on July 1, 2013, the Switching Rental Rate will be adjusted to reflect the annual percentage increase or decrease in the RCAF-U since the preceding July 1<sup>st</sup>. For example, the initial Switching Rental Rate is \$29.10 per railcar, so the initial Switching Rental Rate (i.e., \$29.10 per railcar) would be adjusted on July 1, 2013, to reflect the percentage increase or decrease in the RCAF-U since July 1, 2012. The RCAF-U as of July 1<sup>st</sup> of any calendar year shall equal the RCAF-U for the third quarter of such calendar year.

(b) The total amount of Variable Monthly Rent actually paid to the Authority by Lessee pursuant to Section 3.02(a) for any Operational Lease Year is referred in this Lease as the “*Actual Annual Variable Rent*” for such Operational Lease Year.

(c) The Variable Monthly Rent for each calendar month shall be due and payable on or before the last day of the following calendar month. Lessee must report in writing monthly to Authority (i) the quantity (by weight) of all PET/PTA Cargo transported to or from the Leased Premises during the prior month by railcar, truck or other means of ground transportation, (ii) the quantity (by weights or measurements, as appropriate) of all Other Cargo transported to or from the Leased Premises during the prior month by railcar, truck or other means of ground transportation, and (iii) the number of railcars transporting Cargo to or from the Leased Premises during the prior month. Lessee shall keep and maintain a complete and accurate set of books and records showing all of the foregoing information in order that the Authority may ascertain therefrom what rentals are due to the Authority from Lessee hereunder, and such books and records shall be subject to the inspection of the Authority, its agents and attorneys, at reasonable times during normal hours of business operations (9:00 a.m. to 5:00 p.m.).

**Section 3.03. Minimum Guaranteed Throughput and Minimum Railcar Count for Operational Lease Years 1-14**

(a) The minimum number of Metric Tons of Cargo that must be transported to or from the Leased Premises by railcar, truck, or other means of ground transportation during each of the first fourteen Operational Lease Years (the “*Minimum Guaranteed Throughput*”) and the minimum number of railcars that must transport Cargo to or from the Leased Premises during each of the first fourteen Operational Lease Years (the “*Minimum Railcar Count*”) shall be as follows:

<i>Minimum Guaranteed Throughput and Minimum Railcar Count For the First Fourteen Operational Lease Years</i>		
<b>First Fourteen Operational Lease Years</b>	<b>Minimum Guaranteed Throughput of Cargo</b>	<b>Minimum Railcar Count</b>
1-2	1,200,000 Metric Tons of Cargo per year	12,000 rail cars per year
3-4	1,300,000 Metric Tons of Cargo per year	13,000 rail cars per year
5-14	1,350,000 Metric Tons of Cargo per year	14,000 rail cars per year

(b) If the Minimum Guaranteed Throughput of Cargo for any Operational Lease Year exceeds the actual number of Metric Tons of Cargo that is transported to or from the Leased Premises by railcar, truck, or other means of ground transportation during such Operational

Lease Year (the “*Actual Cargo Throughput*”), then Lessee shall make a tonnage deficit rental payment to Authority for such Operational Lease Year in an amount equal to the product of (A) the number of Metric Tons by which the Minimum Guaranteed Throughput exceeds the Actual Cargo Throughput for such Operational Lease Year, multiplied by (B) the PET/PTA Rental Rate for such Operational Lease Year. Lessee shall pay the tonnage deficit rental payment for any Operational Lease Year to the Authority within sixty (60) days after the end of such Operational Lease Year.

(c) If the Minimum Railcar Count for any Operational Lease Year exceeds the actual number of railcars transporting Cargo to or from the Leased Premises during such Operational Lease Year (the “*Actual Railcar Count*”), then Lessee shall make a railcar deficit rental payment to Authority for such Operational Lease Year in an amount equal to the product of (A) the number of railcars by which the Minimum Railcar Count exceeds the Actual Railcar Count for such Operational Lease Year, multiplied by (B) the Railcar Rental Rate for such Operational Lease Year. Lessee shall pay the railcar deficit rental payment for any Operational Lease Year to the Authority within sixty (60) days after the end of such Operational Lease Year.

(d) If, after making a tonnage deficit rental payment and/or a railcar deficit rental payment pursuant to this Section, Lessee determines there was an error in its calculations, Lessee will notify the Authority of such discrepancy as soon as it is known and either Lessee will pay the deficiency to the Authority, or the Authority will refund the overpayment to Lessee, within thirty (30) days after the date on which Lessee notifies the Authority of such discrepancy.

(e) The Minimum Guaranteed Throughput and the Minimum Railcar Count for any Operational Lease Year shall be reduced by 0.00274% each for each day during such Operational Lease Year (1) that Cargo cannot be transported to or from the Leased Premises by railcar due to an event of *Force Majeure*, and/or (2) that the PET Plant and the PTA Plant cannot operate due to an event of *Force Majeure*.

(f) Shipments of Cargo from year to year shall not be cumulative and excess tonnage or railcars for any single Operational Lease Year shall not carry over into any succeeding Operational Lease Year for the purpose of calculating the Actual Cargo Throughput or the actual number of railcars transporting Cargo to or from the Leased Premises during such Operational Lease Year.

**Section 3.04. Minimum Annual Rent after Operational Lease Years 1-14**

The minimum amount of rent which Lessee must pay to the Authority for the Leased Premises for the fourteenth Operational Lease Year and each Operational Lease Year thereafter during the remaining Term of the Lease (the “*Minimum Annual Rent*”) shall be calculated as follows:

(a) The Minimum Annual Rent for Operational Lease Years 15-30 shall be calculated as follows:

(1) For Operational Lease Year 15, the Minimum Annual Rent shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 15, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1.

(2) For Operational Lease Years 16-20, the Minimum Annual Rent shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 16, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1.

(3) For Operational Lease Years 21-25, the Minimum Annual Rent shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 21, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1.

(4) For Operational Lease Years 26-30, the Minimum Annual Rent shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 26, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1.

(b) If Lessee exercises its right to extend this Lease for the First Extension Period in accordance with Section 2.02(b), the Minimum Annual Rent for Operational Lease Years 31-40 shall be calculated as follows:

(1) If the Equalization Value of the Leased Premises is changed for the First Extension Period in accordance with Section 3.06(b):

(i) the Minimum Annual Rent for Operational Lease Years 31-35 shall equal the product of (A) seven percent (7%) of the new Equalization Value of the Leased Premises, multiplied by (B) the number of acres in the Leased Premises; and

(ii) the Minimum Annual Rent for Operational Lease Years 36-40 shall equal the product of (A) seven percent (7%) of the new Equalization Value of the Leased Premises, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational

Lease Year 36, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 31.

(2) If the Equalization Value of the Leased Premises is not changed for the First Extension Period:

(i) the Minimum Annual Rent for Operational Lease Years 31-35 shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 31, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1; and

(ii) the Minimum Annual Rent for Operational Lease Years 36-40 shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 36, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1.

(c) If Lessee exercises its right to extend this Lease for the Second Extension Period in accordance with Section 2.02(b), the Minimum Annual Rent for Operational Lease Years 41-50 shall be calculated as follows:

(1) If the Equalization Value of the Leased Premises is changed for the Second Extension Period in accordance with Section 3.06(c):

(i) the Minimum Annual Rent for Operational Lease Years 41-45 shall equal the product of (A) seven percent (7%) of the new Equalization Value of the Leased Premises, multiplied by (B) the number of acres in the Leased Premises; and

(ii) the Minimum Annual Rent for Operational Lease Years 46-50 shall equal the product of (A) seven percent (7%) of the new Equalization Value of the Leased Premises, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 46, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 41.

(2) If the Equalization Value of the Leased Premises is not changed for the Second Extension Period but was changed for the First Extension Period in accordance with Section 3.05:

(i) the Minimum Annual Rent for Operational Lease Years 41-45, shall equal the product of (A) seven percent (7%) of the Equalization

Value of the Leased Premises for the First Extension Period, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 41, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 31; and

(ii) the Minimum Annual Rent for Operational Lease Years 46-50, shall equal the product of (A) seven percent (7%) of the Equalization Value of the Leased Premises for the First Extension Period, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 46, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 31.

(3) If the Equalization Value of the Leased Premises is not changed for the Second Extension Period and was not changed for the First Extension Period:

(i) the Minimum Annual Rent for Operational Lease Years 41-45 shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 41, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1; and

(ii) the Minimum Annual Rent for Operational Lease Years 46-50 shall equal the product of (A) seven percent (7%) of \$135,000, multiplied by (B) the number of acres in the Leased Premises, multiplied by (C) a fraction, the numerator of which is the CPI for the first calendar month of Operational Lease Year 46, and the denominator of which is the CPI for the first calendar month of Operational Lease Year 1.

**Section 3.05. Minimum Annual Rent Shortfalls**

If the total amount of Actual Annual Variable Rent for any Operational Lease Year is less than the Minimum Annual Rent for such Operational Lease Year, Lessee shall pay the shortfall amount (i.e., the amount by which the Minimum Annual Rent exceeds the Actual Annual Variable Rent) to Authority as additional rent within sixty (60) days after the end of such Operational Lease Year.

**Section 3.06. Equalization Value of the Leased Premises**

(a) The “*Equalization Value of the Leased Premises*” means the approximate fair market value per acre of the Leased Premises (without any improvements) as determined by or on behalf of the Authority from time to time. The Minimum Annual Rent calculations in Section 3.04 are based, in part, on the Equalization Value of the Leased Premises. The Equalization



Value of the Leased Premises for the Initial Term has been fixed at One Hundred Thirty-Five Thousand Dollars (\$135,000) per acre.

(b) If Lessee exercises its right to extend the Lease for the First Extension Period in accordance with Section 2.02(b), Authority may change the Equalization Value of the Leased Premises with respect to the First Extension Period in accordance with the following procedures:

(1) To change the Equalization Value of the Leased Premises with respect to the First Extension Period, the Authority must give Lessee written notice of the its good faith estimate of the current fair market value per acre of the Leased Premises (exclusive of any Lessee Improvements) at least ninety (90) days prior to the end of the Initial Term. Unless Lessee objects to the Authority's proposed Equalization Value as provided herein, the Equalization Value of the Lease Premises for the First Extension Period shall be Authority's proposed Equalization Value.

(2) If Lessee is not notified of a new Equalization Value at least ninety (90) days before expiration of the Initial Term, it shall be conclusively presumed that Authority has waived its right to change the Equalization Value of the Leased Premises with respect to the First Extension Period.

(3) In the event Lessee does not agree with the Authority's proposed Equalization Value, Lessee shall have the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the proposed Equalization Value, to either (i) terminate this Lease Agreement and surrender the Leased Premises effective at Midnight, Central Time, on the last day of the Initial Term, or (ii) request that the Equalization Value of the Leased Premises for the First Extension Period be determined by appraisal as provided in this subsection.

(4) If Lessee elects to have the Equalization Value of the Leased Premises determined by appraisal, the Authority will select an appraiser who is MIA certified and has greater than ten (10) years' experience appraising land such as the Leased Premises.

(5) The appraiser selected by the Authority will, within sixty (60) days after selection by Authority, determine the Equalization Value of the Leased Premises (exclusive of any Lessee Improvements) for the First Extension Period, and the Equalization Value of the Leased Premises for the First Extension Period shall be the Equalization Value determined by the appraiser, and the appraiser's decision will be final and binding on the Parties to this Lease Agreement.

(c) If Lessee exercises its right to extend the Lease for the Second Extension Period in accordance with Section 2.02(b), Authority may change the Equalization Value of the Leased Premises with respect to the Second Extension Period in accordance with the following procedures:

(1) To change the Equalization Value of the Leased Premises with respect to the Second Extension Period, the Authority must give Lessee written notice of the its good faith estimate of the current fair market value per acre of the Leased Premises (exclusive of any Lessee Improvements) at least ninety (90) days prior to the end of the First Extension Period. Unless Lessee objects to the Authority's proposed Equalization Value as provided herein, the Equalization Value of the Lease Premises for the Second Extension Period shall be Authority's proposed Equalization Value.

(2) If Lessee is not notified of a new Equalization Value at least ninety (90) days before expiration of the Second Extension Period, it shall be conclusively presumed that Authority has waived its right to change the Equalization Value of the Leased Premises with respect to the Second Extension Period.

(3) In the event Lessee does not agree with the Authority's proposed Equalization Value, Lessee shall have the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the proposed Equalization Value, to either (i) terminate this Lease Agreement and surrender the Leased Premises effective at Midnight, Central Time, on the last day of the First Extension Period, or (ii) request that the Equalization Value of the Leased Premises for the Second Extension Period be determined by appraisal as provided in this subsection.

(4) If Lessee elects to have the Equalization Value of the Leased Premises determined by appraisal, the Authority will select an appraiser who is MIA certified and has greater than ten (10) years' experience appraising land such as the Leased Premises.

(5) The appraiser selected by the Authority will, within sixty (60) days after selection by Authority, determine the Equalization Value of the Leased Premises (exclusive of any Lessee Improvements) for the Second Extension Period, and the Equalization Value of the Leased Premises for the Second Extension Period shall be the Equalization Value determined by the appraiser, and the appraiser's decision will be final and binding on the Parties to this Lease Agreement.

**Section 3.07. Late Payment Penalties**

If Lessee should fail to pay Authority any sum to be paid by Lessee to Authority hereunder within thirty (30) days after such payment is due, interest on the unpaid amount shall accrue at a rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is lesser, from the date payment was due until the date payment is made. Authority may also impose a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the unpaid amount, whichever is greater, to defray Authority's administrative costs incurred as a result of Lessee's failure to timely make such payment, the amount of such costs not being readily ascertainable.

Any such late charge shall be in addition to all other rights and remedies available to Authority hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Authority's remedies in any manner. Failure to pay such interest or late charge within thirty (30) days after Lessee's receipt of written demand shall be an event of default hereunder. Following the dishonor of any check presented for payment, Authority shall have the right, at Authority's option, to require all further payments to be made by certified check, money order or wire transfer. For purposes of this Section, any adjustment payment made by Lessee to correct a prior underpayment shall be treated as due on the date such underpayment was due; provided, however, an adjustment payment made by Lessee as the result of an independent audit conducted at Lessee's expense shall not be subject to a late charge as described herein.

**Section 3.08. Place of Payment**

All payments required to be made by Lessee to Authority shall be (i) made by electronic transfer to an account to be designated by Authority, (ii) delivered to the Authority's administrative offices at 222 Power Street, Corpus Christi, Texas, or such other physical address as Authority may designate from time to time, or (iii) mailed to Authority, Attention: Executive Director, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other mailing address as Authority shall designate in writing.

**Section 3.09. Utilities and Taxes**

(a) Security for the Leased Premises, railroad services for the Leased Premises, and servicing of the Leased Premises with water, gas, electricity, telephone, sewage treatment and drainage, and any other utilities or similar services used in or on the Leased Premises will be at Lessee's option and sole expense. Lessee agrees to pay when due all charges for water, gas, electricity, and other utilities used by it on the Leased Premises. Landlord will not furnish any of these services to Lessee except pursuant to a separate written agreement between the Parties.

(b) During the Term of this Lease, Lessee must pay or cause to be paid when due all personal property taxes, assessments, fees or charges imposed on the improvements on the Leased Premises by virtue of Lessee's tenancy or upon Lessee's property on, or Lessee's interest in, the Leased Premises.

(c) Lessee may, at its expense, contest any tax, assessment, fee or charge for which it is responsible under this Section. Except as provided in the following paragraph, Lessee need not pay the tax, assessment, fee or charge while the contest is pending. Except as provided in the following paragraph, Lessee may prevent Authority from paying any tax, assessment, fee or charge that Lessee is contesting under this Section, pending resolution of the contest, by depositing with Authority the full amount of the tax, assessment, fee or charge plus the amount of any penalty that might be imposed for failing to make timely payment and one (1) year of interest at the rate imposed by the entity levying the tax, assessment, fee or charge (the "Tax Protest Deposit"). When the contest is resolved, Lessee must pay the tax, penalty and interest imposed and may use the Tax Protest Deposit to pay any tax, assessment, fee or charge, plus any penalty or interest, due under the final resolution and keep any balance of the Tax Protest

Deposit. If the Tax Protest Deposit is insufficient to pay these amounts, Lessee must immediately pay the balance due to the entity imposing the tax, assessment, fee or charge. In all cases of a tax protest, the Tax Protest Deposit is the money of Lessee and the Authority shall hold the Tax Protest Deposit in escrow for the benefit of Lessee and release the monies as directed by Lessee at any time.

(d) Notwithstanding the provisions of the foregoing paragraph, Authority may pay – or require Lessee to pay – any tax, assessment, fee or charge for which Lessee is responsible under this Section, pending resolution of Lessee’s contest of the tax, assessment, fee or charge, if payment is demanded by a holder of a mortgage on the premises or if failing to pay will subject all or part of the premises to forfeiture or loss.

(e) Any of said taxes, fees or charges that are payable by Lessee for the tax year in which the Term of this Lease begins, as well as during the year in which this Lease Agreement expires or is terminated, shall be apportioned so that Lessee shall pay its proportionate share of the taxes, fees or charges for such periods of time. Lessee may pay such taxes, fees or charges in installments as and when such installments become due. Lessee must deliver to Authority evidence of payment of all taxes, fees or charges, which Lessee is obligated to pay hereunder concurrently with making such payment.

**ARTICLE 4  
USE OF LEASED PREMISES**

**Section 4.01. Use**

(a) The Leased Premises may be used for the following purposes, and for no other purpose, unless written permission for other use is obtained from Authority (which permission shall not be unreasonably delayed, denied or conditioned):

roads, railroad beds and trackage, rail loading and unloading facilities related to the PET Plant or the PTA Plant, desalinization water plant, bulk liquid storage facilities, and general light to heavy industrial uses and activities including transportation and related business activities.

(b) Lessee will not use, occupy or permit the use or occupancy of the Leased Premises for any purpose or in any manner, which is directly or indirectly:

(1) Inconsistent with the requirements of this Section 4.01;

(2) Violative of (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, permits, certificates or ordinances of any governmental authority in any way applicable to Lessee or the Leased Premises, including zoning, environmental and utility conservation matters; (ii) Authority’s Tariffs or Rules and Regulations; (iii) insurance requirements; or (iv) other documents, instruments or agreements relating to the Leased Premises or to which the Leased Premises may be bound or encumbered;

(3) Dangerous to life or property or a public or private nuisance; or

(4) Disruptive to the material activities of any other tenant or occupant of property directly adjacent to the Leased Premises;

(c) Lessee will not bring or permit to remain on the Leased Premises any asbestos, petroleum, explosives or toxic materials except for commercially reasonable amounts of materials used in the ordinary course of Lessee's business, nor commit or permit to remain any waste or damage to the Leased Premises; or

(d) Lessee will not commit, or permit to be committed, any action or circumstance on or about the Leased Premises which, directly or indirectly, would justify any insurance carrier in increasing the rate of or canceling the insurance policies maintained by Lessee or Authority on the Leased Premises or improvements thereon.

(e) Lessee hereby represents and warrants to Authority that Lessee's construction, occupancy, operation or use of the Leased Premises will be and remain in compliance with Applicable Laws in all material respects.

**Section 4.02. Environmental Representations, Restrictions and Environmental Indemnity**

(a) Lessee hereby represents and warrants to Authority:

(1) That Lessee's construction, occupancy, operation or use of the Leased Premises will not violate any of the local, state or federal laws and regulations pertaining to health or the environment (hereinafter sometimes collectively called "**Applicable Environmental Laws**"), including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), 42, U.S.C. Section 9601 et seq; the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. Section 6901 et seq; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq; the Clean Air Act and Amendments of 1990, 42 U.S.C. Section 7401 et seq; the Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq; the Toxic Substances Control Act, 15 U.S.C. Section 2606 ; the Texas Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code; the Texas Clean Air Act, Chapter 382, Texas Health and Safety Code; the Oil Spill Prevention Act of 1991, Chapter 40, Texas Natural Resource Code, and Chapter 26, Texas Water Code; and the Texas Water Quality Act, Chapter 26, Texas Water Code; Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code; Texas Community Right-to-Know Acts, Chapters 505 – 507 Texas Health and Safety Code; and Authority's Tariffs, Rules and Regulations.

(2) That the use which Lessee intends to make of the Leased Premises will not result in the Disposal or other Release of any Hazardous Substance or Solid Waste on or to the Leased Premises--the terms "Hazardous Substance" and "Release" have the

meanings specified in CERCLA, and the terms "Solid Waste" and "Disposal" (or "Disposed") have the meanings specified in RCRA--and, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply to such terms used in this Lease Agreement subsequent to the effective date of such amendment and, further, to the extent the laws of the state of Texas establish a meaning for "Hazardous Substance," "Release," "Solid Waste," or "Disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply to such terms used in this Lease Agreement, and in either of said instances Lessee must immediately cease activities prohibited by Applicable Laws or Applicable Environmental Laws upon the Leased Premises and notify Authority in writing within five (5) day of doing so.

(b) In the event of a Release of any environmental contaminants which exceed permitted levels as defined by any city, state or federal law or regulation, Lessee must immediately stop the Release and cease any prohibited activities which may be resulting in such Release; and immediately notify the proper environmental and safety agencies, federal, state, and local, as well as Authority, in writing, of the date, time, and nature of the Release, including, but not limited to, a description of the environmental contaminants discharge or released, and provide a MSDS (to the extent available) for each of the said environmental contaminants.

(c) Upon receipt from any agency or department of the state of Texas or the federal government, Lessee will immediately furnish Authority written information concerning any citation, notice of violation, enforcement action or penalty regarding any safety or environmental violation sent to Lessee, or any entity consulting or working on the Lessee's behalf relative to or at the Leased Premises. This information must include:

(1) A general description of the conduct that resulted in the citation, notice of violation, enforcement action or penalty; and

(2) The document(s) sent from the agency or department to Lessee, or any entity consulting or working on the Lessee's behalf, which state the citation, violation, enforcement action or penalty.

(d) In the event of a Release, Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Authority takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, **Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Authority, its Port Commissioners, directors, managers, employees, and agents from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal. If any action or proceeding is brought against Authority, its Port Commissioners, directors, managers, employees, and agents based upon any and all such claims, liabilities, losses, damages, costs and expenses, Authority will be represented by its**

**general counsel, or another attorney selected by Authority and approved by Lessee, which approval will not be unreasonably withheld.**

(e) In the event of a Release, Authority accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants described in 29 Code of Federal Regulations. Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. **Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination, and to indemnify, defend and hold harmless Authority, from and against any and all such claims, liabilities, losses, damages, costs and expenses. If any action or proceeding is brought against Authority, its Port Commissioners, directors, managers, employees, and agents based upon any and all such claims, liabilities, losses, damages, costs and expenses, Authority, its Port Commissioners, directors, managers, employees, and agents will be represented by its general counsel, or another attorney selected by Authority and approved by Lessee, which approval will not be unreasonably withheld.**

(f) In claims against Authority, its Port Commissioners, directors, managers, employees, and agents by or for an employee of Lessee, its agents, contractors, owners, invitees, or licensees, the Lessee's indemnification obligation under this Section 4.02 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Lessee, its agents, contractors, owners, invitees, or licensees, under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. If an action for damages is brought by an injured employee of Lessee, a legal beneficiary, or an insurance carrier against Authority, its agents, contractors, owners, invitees, or licensees, to pay damages for the injury or death of such employee under Chapter 417 (Third-Party Liability), Texas Labor Code, that results in a judgment against the Authority, its agents, contractors, owners, invitees, or licensees, or a settlement by Authority, its agents, contractors, owners, invitees, or licensees, Lessee expressly agrees to reimburse and hold harmless Authority, its agents, contractors, owners, invitees, or licensees, for the damages based on such judgment or settlement as provided in this Section 4.02.

(g) Lessee will cooperate with the Authority's Tenant Audit Program (the "**Program**"), which gives Authority the right to conduct a periodic environmental audit of Lessee's operations on the Leased Premises, subject to the limitations described in this subsection. Authority may conduct an environmental audit after giving Lessee at least two (2) days' advance notice (written or oral) of the time and date on which the audit will begin. The audit will consist of a scheduled review of Lessee's operations and activities, a review of Lessee's environmental management programs, and a tour of the Leased Premises. Any audit by Authority shall be during normal business hours and shall not unreasonably interfere with Lessee's plant operations. Authority staff involved in the Program intend to gain an understanding of Lessee's operations and activities and what measures the Lessee is utilizing to

comply with local, state, and federal laws, rules and regulations, this Lease Agreement, and Authority's Tariffs, Rules, and Regulations. Through the Program they will seek to achieve cooperative conservation between Authority and Lessee that are actions relating to the use, enhancement and enjoyment of natural resources and protection of the environment. The audit will be conducted at a minimum annually and more frequently if determined by Authority staff to be necessary. A letter from Authority staff setting forth staff's observations will be provided to the Lessee following the audit. If violation of applicable laws, rules, regulations, this Lease Agreement or the tariff have been observed, then Lessee will be notified of the same in the letter, and required to immediately take action to come into compliance, and to verify it has done so to Authority staff.

(h) Lessee must clean up, remove, remediate and repair any soil or ground water contamination or damage caused by the presence or release of any Hazardous Substance or Solid Waste in, on, under, or about the Leased Premises during occupancy of the Leased Premises in conformance with the requirements of Applicable Laws or Applicable Environmental Laws. Lessee shall immediately give Authority written notice of any suspected breach of this paragraph, upon learning of the presence or any release of any Hazardous Substance or Solid Waste, or upon receiving any notice from governmental agencies pertaining to any Hazardous Substance or Solid Waste which may affect the Leased Premises. The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this Lease for a period of five (5) years, contingent upon the completion of an environmental assessment and remediation of identified impacts to soil or groundwater consistent with this section, and thereafter automatically expire and be void for all purposes. If the required environmental assessment and remediation is not completed at the expiration or earlier termination of this Lease, then the obligations of Lessee hereunder shall survive the expiration or earlier termination of this Lease, without limitation.

(i) All of Lessee's representations and warranties in this Section 4.02 are continuing and must be true and correct for the entire Term of this Lease, and all of such representations and warranties will survive expiration or termination of this Lease Agreement for a period of five (5) years, contingent upon the completion of an environmental assessment and remediation of identified impacts to soil and groundwater, and thereafter automatically expire and be void for all purposes. If the required environmental assessment and remediation is not completed at the expiration or earlier termination of this Lease, then the representations and warranties in this Section 4.02 will survive the expiration or earlier termination of this Lease, without limitation.

**Section 4.03. Underground Storage Tanks**

Lessee may not construct, install, maintain, use or otherwise operate on the Leased Premises any petroleum or chemical underground storage tank.

**Section 4.04. Permitted Use; Continuous Operation**

Lessee will continuously maintain the Leased Premises open for its usual business and available for the purposes permitted hereunder during its usual business hours on days other than Saturday, Sunday or legal holidays, or during events of force majeure, war, terrorist, or event of



God or storms or earthquakes. The covenants of this Section 4.04 are material to this Lease, and should Lessee fail to satisfy such covenants, Authority may employ the remedies set forth in the Article of this Lease Agreement entitled Default (Article 8).

**Section 4.05. Use by Authority**

Authority reserves the right to use any streets or roadways on the Leased Premises. Authority further reserves the right to use as much of the Leased Premises as is necessary to lay mains for gas, water or sewers on the Leased Premises, to place poles and necessary wires and attachments for electricity or for telephone and fiber optic lines over and across any part of the Leased Premises, and to lay, or grant easements or rights of way to other parties for the laying of, pipelines for oil, petroleum, petroleum products, fiber optics and any other products over, under and upon the Leased Premises (collectively, the "**Authority Uses**"); provided, however, that the same shall not interfere with Lessee's buildings, improvements or Lessee's use of the Leased Premises. Authority has the right to use third parties for the performance of the rights reserved to Authority in this Article subject to Lessee's reasonable approval. Lessee at any time may require that any of the Authority Uses stated above be (as the case may be) relocated, raised, lowered, altered, or encased and protected by the Authority (at Authority's sole cost and expense) within 90 days after notice by Lessee to Authority.

**ARTICLE 5  
IMPROVEMENTS OR ALTERATIONS AND MAINTENANCE**

**Section 5.01. Permanent Improvements**

All improvements made, placed, or constructed on the Leased Premises by Lessee after the date of this Lease Agreement will be at the sole cost and expense of Lessee. Lessee must construct and install Lessee's improvements in a good and workmanlike manner. New or additional improvements may not be constructed nearer than 8.5 feet to the centerline of any existing or proposed railroad track on or adjacent to the Leased Premises except upon the express written mutual agreement of Authority and Lessee.

While constructing improvements, maintaining, or carrying on its activities, on the Leased Premises, Lessee must comply with the *Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191)* and applicable rules promulgated thereunder by the Texas Historical Commission, or its successor. Lessee shall undertake its activities on the Leased Premises in a manner consistent with public policy relating to the location and preservation of archeological sites and other cultural resources in, on, or under public lands. Lessee shall use the highest degree of care and all reasonable safeguards to prevent the taking, alteration, damage, destruction, salvage, or excavation of cultural resources and/or landmarks on the Leased Premises. Upon discovery of an archeological site, Lessee shall immediately give written notice of such discovery to Authority and to the Texas Historical Commission, as set out in the Committee's rules. As between the Authority and Lessee, Lessee shall have all right, title, or interest in or to any archaeological articles, objects, or artifacts, or other cultural resources located or discovered on the Leased Premises.

**Section 5.02. Maintenance and Return of Leased Premises**

Lessee will, throughout the Lease Term , at its own expense and risk, maintain the Leased Premises and all improvements on them in good order and condition, including but not limited to making all repairs and replacements necessary to keep the premises and improvements in that condition. All maintenance, repairs, and replacements required by this Section must be performed promptly when required.

If Lessee fails to perform its obligation to repair, replace, or maintain, as set forth above, within a reasonable time after receipt of written notice from Authority of the need for repair, replacement, or maintenance, Authority may enter the Leased Premises and make the repairs or replacements, or perform the maintenance, or have the repairs or replacements made or maintenance performed, at its own expense. Upon Authority's written notice to Lessee of the performance and cost of any maintenance, repairs, or replacements under this Section, Lessee must immediately reimburse Authority for the direct out-of-pocket costs incurred by Authority pursuant to this Section, together with interest on the sum at the rate of 5% per annum from the date of the notice until the date paid by Lessee to Authority.

At the expiration or termination of the Lease Term, Lessee will surrender the premises in good order and repair except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal made by Lessee pursuant to its obligations under this Lease Agreement.

**Section 5.03. Approval of Alterations and Improvements**

Lessee must submit to Authority plans (the "**Plans**") for any proposed buildings, drainage or improvements of any kind on the Leased Premises, or any alterations or additions to existing buildings or improvements, and they must be approved in writing by, the Director of Engineering Services of Authority prior to the commencement of work on the same, which approval shall not be unreasonably denied, delayed or conditioned. To facilitate the Authority's review, two (2) sets of formal plans that clearly define the project must be submitted to Authority for its prior approval. The drawings must be prepared on a standard engineering format (24" x 36" drawings) and show all physical features and improvements in and around the project site and must be signed and sealed by a Professional Engineer registered in the State of Texas. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the project site and the property lines must be included with the plans submitted. Any approval, comments or denial of such Plans by the Authority shall be promptly made to Lessee within ten (10) Business Days after submittal. Further, Authority shall prepare detailed comments or responses to the Plans in order to direct Lessee on the action needed to have the Plans revised and approved. Time is of the essence as to Plans approval.

No approval by Authority of Lessee's designs, site plans, plans, specifications or other matters may ever be construed as representing or implying that Lessee's designs, site plans, plans, specifications or other matters will, if followed, result in a properly-designed building or other improvements constructed on the Leased Premises. Such approvals shall in no event be construed as a representation or guaranty by the Authority that any improvements will be built in

a workmanlike manner, nor shall such approvals relieve Lessee of its obligation to construct the building in a workmanlike manner. **Lessee will defend, indemnify, and hold harmless Authority from and against any lawsuits, actions, causes of action or claims arising out of Authority's approval of any of Lessee's designs, site plans, plans or specifications.**

**Section 5.04. No Liens**

Unless otherwise agreed, Lessee may not grant, place or suffer, or permit to be granted, placed or suffered, against all or any part of the Leased Premises or Lessee's leasehold estate created hereby, any lien, security interest, pledge, conditional sale contract, claim, charge or encumbrance (whether constitutional, contractual or otherwise) and if any of the aforesaid should occur or be asserted, Lessee will, promptly upon demand by Authority and at Lessee's expense, cause same to be released.

**Section 5.05. Laborers and Materials**

**Lessee will pay for all labor and services performed for, materials used by, or furnished to, any contractor employed by Lessee with respect to the Leased Premises and defend, indemnify and hold Authority and the Leased Premises harmless and free from any liens, claims, encumbrances or judgments created or suffered by Lessee's failure to pay for labor or materials provided to the Leased Premises at the direction of Lessee.** If Lessee elects to post a payment or performance bond or is required to post an improvement bond with a public agency in connection with such labor, services or materials, Lessee agrees to include Authority as an additional obligee thereunder.

**Section 5.06. Storm Sewers/Railroad Spur Tracks**

Lessee agrees to construct or to pay for the construction of (a) storm sewers required by Authority to drain the Leased Premises or (b) railroad spur tracks requested by Lessee, and approved by Authority (which approval shall not be unreasonably denied, delayed or conditioned), to serve the Leased Premises. Lessee will be responsible for maintenance of any railroad trackage and bedding on the Leased Premises during the Lease Term.

Within the Construction Period the Authority, at its sole cost and expense, shall design, construct and complete a new concrete culvert crossing and drainage structure providing a rail and vehicle crossing over the existing 150-foot wide drainage easement running through Tract B, and as further depicted on **Exhibit C**.

**Section 5.07. Building Code**

All improvements placed on the Leased Premises by Lessee must comply with all applicable codes unless they are modified by Port of Corpus Christi Authority Design and Construction Guidelines found in the current Port of Corpus Christi Authority Project Manual which may be obtained from Authority's Department of Engineering Services.

**Section 5.08. Permits**

Lessee must obtain and maintain in effect at all times during the Term of this Lease Agreement all permits, licenses and consents required or necessary for the construction, installation, maintenance, use and operation of Lessee's improvements and Lessee's use and occupancy of, and operations at, the Leased Premises. Lessee will provide Authority's Department of Engineering Services with copy of its permits, licenses and consents as the same are obtained.

**Section 5.09. Ownership or Removal of Alterations, Modifications or Improvements by Lessee**

(a) During the Term all improvements, modifications or alterations constructed or placed on the Leased Premises by Lessee will be solely the property of Lessee.

(b) At the expiration or termination of this Lease Agreement, all improvements, modifications or alterations situated upon the Leased Premises, including all buildings, rail spurs and tracks, paneling, decorations, partitions, heating, ventilating and air-conditioning machinery and equipment, lighting fixtures, plumbing equipment, sprinkler system, and the like, shall, absent any agreement between Authority and Lessee to the contrary at the time of installation, or unless Authority otherwise elects, which election shall be made by giving a notice in writing (a) not less than fifteen (15) days prior to the expiration of this Lease Agreement, or (b) not more than fifteen (15) days following any termination of this Lease Agreement other than by expiration, become the property of Authority and shall remain upon and be surrendered with the Leased Premises as a part thereof at the expiration or termination of this Lease Agreement. In the event Authority notifies Lessee to remove any or all of the alterations, additions or improvements made by Lessee, Lessee must do so and must repair any damage caused by such removal, all within forty-five (45) days after the date of expiration or termination of this Lease Agreement; provided, however, that under no circumstances will Lessee be required to remove any roads or railroad tracks constructed on the Leased Premised during the Term of this Lease. Trade fixtures, furnishings and equipment, except for those referred to above, which are installed by Lessee may be removed by Lessee, at its expense, provided Lessee removes the same and repairs any damage caused by such removal within thirty (30) days after the date of expiration or termination of this Lease Agreement. Authority has no obligation to protect any personal property of Lessee located on the Leased Premises after the expiration or termination of the Lease Agreement. Any trade fixtures not removed, in accordance with this Section 5.09, by Lessee when this Lease Agreement expires or terminates are considered abandoned by Lessee, and will automatically become Authority's property. If any trade fixture installed by Lessee is abandoned by Lessee after this Lease Agreement expires or terminates, Lessee must pay Authority the direct out-of-pocket expense actually incurred by Authority to remove the fixture from the premises, less the fair market value of the fixture once removed, if Authority uses the trade fixture.

**Section 5.10. Signs**

Lessee may not place any signs at or on the Leased Premises nor paint any signs on any building on the Leased Premises unless first approved in writing by the Director of Engineering

Services of Authority, which approval shall not be unreasonably denied, delayed or conditioned. Lessee must remove all its signs when this Lease Agreement expires or terminates and repair any damage resulting from erecting or removing the signs.

**Section 5.11. Floodplain**

Lessee acknowledges that Lessee has been advised by Authority that the Leased Premises is in the FEMA floodplain and that construction of improvements must conform to the laws and regulations applicable to construction of improvements in a floodplain.

**Section 5.12. Side Yard Limits**

No permanent improvements may be constructed within five (5) feet of the Leased Premises' boundary line except upon the express written mutual agreement of Authority and Lessee.

**ARTICLE 6  
RAIL RIGHT AND RELATED RIGHTS**

**Section 6.01. Rail Right and Connection Points**

(a) Lessee may elect, within its sole discretion, to receive rail service directly from the Authority's Contractor or any of the railroads that serve the Port of Corpus Christi area (the "**Rail Right**"); provided, however, that nothing in this Lease Agreement is intended to give the Authority's Contractor or any of such railroads any additional rights over and above the rights they possess on the Effective Date. In other words, this Lease does not permit any of the railroads that serve the Port of Corpus Christi area (collectively, the "**Railroads**") or the Authority's Contractor to take an action it is prohibited from taking by another agreement in existence on the Effective Date. Lessee may receive rail service from any or all of these Railroads, and may not be restricted by Authority to just one of these Railroads or to the Authority's Contractor.

(b) Authority will designate at least one location at which Lessee may connect Lessee's tracks to the tracks owned by the Authority for direct rail service by any of the Railroads (hereinafter called the "**Direct Rail Service Connection Point**"). The initial Direct Rail Service Connection Point will be at the temporary location shown on **Exhibit B** (herein referred to as the "**M&G Phase 1 Direct Rail Connection Point**"). In time, the Authority shall change the location of the Direct Rail Service Connection Point to the permanent location shown on **Exhibit B** (herein referred to as the "**M&G Phase 2 Direct Rail Connection Point**"), provided Authority pays for the cost of designing, permitting and constructing the M&G Phase 2 Direct Rail Connection Point and connecting tracts. Also, the Authority shall directly pay and be responsible for any Federal Railroad Administration ("FRA") charges, fees or costs associated with any Direct Rail Service Connection Point. Section 3.02 sets forth the consideration that Lessee has agreed to pay the Authority for the Rail Right and the Direct Rail Service Connection Point.

Section 6.02. Rail Right Easement and Construction Obligations

In connection with the Rail Right, Authority and Lessee agree to the following terms and conditions, which shall be documented in a separate easement agreement to be mutually agreed upon within twenty (20) business days after the execution of this Lease:

(1) Lessee shall designate the point on the western boundary of Tract B at which Lessee's railroad track will enter onto the Authority's property (the "*Entry Point*").

(2) Authority shall grant and convey to Lessee a permanent easement (the "*Phase 1 Easement*") over the Authority's adjacent property from the Entry Point to the M&G Phase 1 Direct Rail Connection Point to provide free and uninterrupted rail access to and from Tract B to the M&G Phase 1 Direct Rail Connection Point; provided, however, that the portion of the Phase 1 Easement that is not within the boundaries of the Phase 2 Easement (described below) shall terminate six months after the Entry Point is connected to the M&G Phase 2 Direct Rail Connection Point by railroad tracks.

(3) Authority shall grant and convey to Lessee a permanent easement (the "*Phase 2 Easement*") over the Authority's adjacent property from the Entry Point to the M&G Phase 2 Direct Rail Connection Point to provide free and uninterrupted rail access to and from Tract B to the M&G Phase 2 Direct Rail Connection Point after the two points are connected by railroad tracks; provided, however, that Lessee shall not be entitled to use this easement until the Authority changes the location the Direct Rail Service Connection Point to the M&G Phase 2 Direct Rail Connection Point in accordance with Section 6.01(b).

(4) Lessee shall be responsible, at its sole cost and expense, for the construction and maintenance of the railroad tracks from the Entry Point to the M&G Phase 1 Direct Rail Connection Point (the "*M&G Phase I Rail Track*") for so long as the M&G Phase 1 Direct Rail Connection Point is in operation and utilized by Lessee.

(5) Authority shall be responsible for designing, permitting and constructing the M&G Phase 2 Direct Rail Connection Point and the railroad tracks connecting that point to the M&G Phase I Rail Track, if the Authority elects to change the location of the Direct Rail Service Connection Point to the M&G Phase 2 Direct Rail Connection Point pursuant to Section 6.01(b).

(6) If Authority constructs the M&G Phase 2 Direct Rail Connection Point and the railroad tracks between that point and the M&G Phase I Rail Track, Lessee shall be responsible for the maintenance of the M&G Phase 2 Direct Rail Connection Point and the connecting trackage for so long as Lessee utilizes the M&G Phase 2 Direct Rail Connection Point.

**ARTICLE 7  
SUBLETTING, ASSIGNMENT OR TRANSFER**

**Section 7.01. Sublease, Assignment or Transfer**

Lessee may assign this Lease in its entirety to an Affiliate without the Authority's consent by providing written notice to the Authority (an "*Allowed Assignment*"). Except as provided in the preceding sentence, Lessee may not assign this Lease Agreement in whole or in part nor any interest therein nor sublet the Leased Premises nor any part thereof nor grant any license, concession or other right of occupancy of any portion of the Leased Premises, nor permit the transfer of this Lease by operation of law or otherwise without the prior written consent of Authority, which approval shall not be unreasonably denied, delayed or conditioned. Consent of Authority to one or more assignments or subletting does not operate as a waiver of Authority's rights concerning any subsequent assignments or subletting. If this Lease Agreement is assigned, or if any of the Leased Premises, or any part thereof, is sublet or occupied by anyone other than the Lessee, then Authority may, after default by the Lessee, collect rent from the assignee, subtenant or occupant and apply the net amount collected, after the deduction of any costs of collection, including, but not limited to, reasonable and necessary attorneys' fees or other costs incurred by Authority, to Lessee's rent provided for in this Lease Agreement. No assignment, subletting, occupancy or collection of rent waives the obligations of Lessee under this Lease Agreement. Authority may assign or transfer any of its interests under this Lease Agreement. Furthermore, Lessee shall not, without Authority's express written consent (which consent shall not be unreasonably denied, delayed or conditioned), cause or permit an interest, direct or indirect, in itself to be sold, assigned, transferred, exchanged, or otherwise disposed of (each a "*Disposition*") such that, after the Disposition, Lessee shall cease to be controlled by substantially the same individuals and/or entities who Control it as of the effective date of the Lease Agreement; provided, however, that this restriction shall not be operative if, on the date of the Disposition, the net worth of Transferee (who is defined in Section 7.02) is at least equal to or greater than that of Lessee at the time of such transfer. As used in this paragraph "*Control*" means the power to elect a majority of the directors or other members of the governing body of Lessee, or in any other manner to control or determine the management of the Lessee.

**Section 7.02. Conditions**

Except for an Allowed Assignment, the following conditions automatically apply to each sublease, assignment or transfer by Lessee or any sublessee without the necessity of same being stated in or referred to in Authority's written consent:

- (a) Lessee must execute, have acknowledged and deliver to Authority and cause the sublessee, assignee or other transferee ("*Transferee*") of any portion of Lessee's interest in this Lease Agreement, the leasehold estate created hereby or the Leased Premises to execute, have acknowledged and deliver to Authority, an instrument in form and substance reasonably acceptable to Authority in which:

(1) The Transferee adopts this Lease Agreement and assumes and agrees to perform, jointly and severally with Lessee, all of the obligations of Lessee hereunder, as to the interest transferred to it;

(2) The Transferee grants Authority an express first and prior contract lien and security interest in its improvements located upon and property brought into the transferred premises to secure its obligations to Authority hereunder;

(3) Lessee subordinates to Authority's statutory lien, contract lien and security interest any liens, security interests or other rights, which Lessee may claim with respect to any property of the Transferee;

(4) Lessee and any guarantor of this Lease Agreement agrees with Authority that, if the rent or other consideration due by the Transferee exceeds the rent for the transferred space, then Lessee shall, and any guarantor guarantees that Lessee shall, pay Authority as additional rent hereunder all such excess rent and other consideration immediately upon Lessee's receipt thereof;

(5) The Transferee agrees to use and occupy the transferred space solely for the purposes permitted under Article 4 and otherwise in strict accordance with this Lease Agreement; and

(6) Lessee and any guarantor acknowledge and agree in writing that, notwithstanding the transfer, Lessee and any guarantor remain directly and primarily liable for the performance of all the obligations of Lessee hereunder (including, without limitation, the obligation to pay all rent), and Authority shall be permitted to enforce this Lease Agreement against Lessee, any guarantor or the Transferee, or all of them, without prior demand upon or proceeding in any way against any other persons.

(b) Lessee must deliver to Authority a counterpart of all instruments relative to the sublease, assignment or other transfer executed by all parties to such transaction (except Authority); and

(c) Lessee shall pay or cause to be paid to Authority, at the time of the execution and delivery of the documents, the sum of \$2,500.00 to cover Authority's administrative and legal costs for each amendment, assignment, and sublease requested from Authority by Lessee or any sublessee.

**ARTICLE 8  
DEFAULT**

**Section 8.01. Event of Default**

An "*Event of Default*" by the Lessee shall occur:



(1) if the Lessee fails to pay when due the rent payable under this lease, including any deficit payments required under this Lease, and any such default shall continue for thirty (30) days after the receipt of written notice thereof by the Lessee; or

(2) if the Lessee fails in any material respect to keep, perform, or observe any material covenant, condition, agreement, or obligation under this Lease that is to be kept, performed or observed by Lessee, and shall fail to cure, correct or remedy such non-monetary failure within sixty (60) days after Lessee has received written notice specifying such non-monetary failure, unless such non-monetary failure cannot be cured with due diligence within such period of sixty (60) days, in which case such non-monetary failure shall not be deemed to continue if the Lessee proceeds with due diligence to cure the failure and diligently completes the curing thereof; or

(3) if the Lessee shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (hereinafter collectively called "**Bankruptcy Laws**"), or if the Lessee shall (i) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, or liquidator (or other similar official under Bankruptcy Laws) of the Lessee or of any substantial portion of the Lessee's property; (ii) admit in writing its inability to pay its debts generally as they become due; (iii) make a general assignment for the benefit of its creditors; (iv) file a petition commencing a voluntary case under or seeking to take advantage of any Bankruptcy Law; or (v) acquiesce in writing to, any petition commencing an involuntary case against the Lessee pursuant to any Bankruptcy Law; or

(4) if an order for relief against the Lessee shall be entered in any involuntary case under the Federal Bankruptcy Code or any similar order against the Lessee shall be entered pursuant to any other Bankruptcy Law, or if a petition commencing an involuntary case against the Lessee or proposing the reorganization of the Lessee under the Federal Bankruptcy Code shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within ninety (90) days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (i) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the Lessee, (ii) the appointment of a receiver, custodian, trustee, or liquidator (or other similar official under Bankruptcy Laws) of the Lessee or of any substantial portion of the Lessee's property, or (iii) any similar relief as to the Lessee pursuant to any Bankruptcy Law, and any such proceeding or case shall continue undismitted, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for ninety (90) days.

**Section 8.02. Remedies of Landlord**

(a) If an Event of Default occurs and is continuing under subparagraphs (1), (3) or (4) of Section 8.01, then Landlord may, at any time thereafter prior to the curing thereof and without waiving any other remedies hereunder or available to Landlord under the terms of this Lease

(Landlord's remedies being cumulative), terminate this Lease upon not less than thirty (30) additional days' written notice to the Tenant setting forth the Tenant's uncured, continuing Event of Default and the Landlord's intent to exercise its rights to terminate this Lease under this Section 8.02(a), whereupon this Lease shall terminate on the termination date set forth in such notice unless the Tenant's Event of Default has been cured before such termination date. Upon termination of the Lease pursuant to the process described in this Section 8.02(a), the Tenant's interest in the Leased Premises shall automatically revert to the Landlord, the Tenant shall promptly quit and surrender the Leased Premises and the Tenant Improvements to the Landlord, without cost to the Landlord; and Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Leased Premises and the Tenant Improvements and remove all persons and personal property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to Landlord's right to prove, and claim in full, any arrears of the Rent or any other amounts accrued under this Lease prior to termination of this Lease.

(b) If an Event of Default occurs and is continuing under subparagraph (2) of Section 8.01, then Landlord may, at any time thereafter prior to the curing thereof seek judicial termination of this Lease by any court of competent jurisdiction and without waiving any other remedies herein provided (Landlord's remedies in this Lease Agreement being cumulative), and upon any final judgment awarding Landlord termination of this Lease, Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Leased Premises and the Tenant Improvements and remove all persons and personal property therefrom without being deemed guilty of any manner of trespass and without prejudice to Landlord's right to prove, and claim in full, any arrears of the Rent or any other amounts accrued under this Lease prior to termination of this Lease.

(c) If Landlord terminates this Lease pursuant to this Section 8.02, Lessee shall be liable to Authority for all rent accrued to the date of termination and damages in an amount equal to (1) the discounted present value of the amount by which the rent payable hereunder for the remainder of the stated Term exceeds the fair market value rental value of the Leased Premises for such period of time, plus (2) all expenses, including its attorneys' fees, incurred by Landlord in enforcing its rights hereunder.

**Section 8.03. No Waiver**

Any assent, expressed or implied, by the Authority or Lessee to any breach of any agreement, covenant or obligation contained in this Lease Agreement shall operate as such only in the specific instance, and shall not be construed as an assent or a waiver to any such agreement, covenant or obligation generally or of any subsequent breach thereof. The remedies provided herein or at law or equity shall not be mutually exclusive.

**Section 8.04. Default by Authority**

Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless Authority shall have failed to correct any such default within sixty (60) days following receipt of written notice from Lessee to Authority, properly specifying any

obligations Authority has failed to perform. If Authority fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept, performed or observed by Authority, and if Authority fails to remedy the same within sixty (60) days after Authority has been given a written notice specifying such default, then in such event Lessee may enforce the performance of this Lease by any method provided by law or equity.

**ARTICLE 9  
WAIVER OF LANDLORD'S LIEN**

**Section 9.01. Waiver of Landlord's Lien**

It is contemplated that Lessee may be required to borrow funds for construction of improvements on the Leased Premises from time to time during the Term of this Lease Agreement, and it may be desirable or convenient for Lessee to borrow additional funds for additional improvements, alterations, repairs or for other purposes to benefit the Leased Premises. Accordingly, it is agreed that Lessee shall at all times during the Term of this Lease, without the consent of Authority (but provided written notice and a copy of the security instruments are delivered to Authority), have the right to mortgage or convey by deed of trust or any other security instrument (the "Permitted Mortgage") the leasehold rights of Lessee created by this Lease Agreement, together with all of Lessee's rights, titles, and interest in the buildings and improvements then or thereafter to be placed on the Leased Premises; provided, however, that any such mortgage, deed of trust, security conveyance or encumbrance will at all times be subject to and shall recognize the superior right, title and interest of Authority to the fee interest underlying the Leased Premises and to Authority's rights hereunder to require Lessee's payment of all rent due hereunder and Lessee's full and faithful performance of all covenants and conditions of this Lease Agreement due Authority.

Subject to the conditions stated in this Article 9, Authority hereby waives any contractual or statutory landlord's lien Authority has or may have on the improvements and other property Lessee places on the Leased Premises to the rights of the holder of any such mortgage, deed of trust or other security instrument.

**Section 9.02. Holder of Security**

In the event at any time during the Term of this Lease Agreement Lessee or anyone holding under Lessee shall be in default of any of the covenants or any of the conditions of this Lease Agreement, then and in such event the holder of the mortgage, deed of trust or other security instrument may, before forfeiture or termination is invoked by Authority, make any and all payments and do and perform any and all acts or things which may be necessary or required to prevent a forfeiture or termination of this Lease Agreement; and the party making such payments or performing such acts or things shall thereby and thereupon be subrogated to all the rights of Lessee under this Lease Agreement. Authority agrees that, if requested in writing by the holder of any mortgage, deed of trust or other security instrument, it will send to the said holder at the address specified in the written request copies of all written notices of demand which Authority may serve upon Lessee, or anyone holding under Lessee, under and pursuant to the Terms of this Lease Agreement.

It is understood, however, that the mortgagee, trustee, beneficiary of said deed of trust or other holder of security above-mentioned shall in no way be liable to Authority for the payment of any rent or for the performance of any other covenants and conditions under this Lease Agreement until such time as it shall acquire by conveyance from Lessee or by foreclosure or other proceedings provided by law or by the terms of mortgage, deed of trust, or security instrument, all the right, title and interest of Lessee under this Lease Agreement; provided, however, that any party who shall acquire said right, title and interest of Lessee as above provided shall thereupon and thereby become liable for the full performance and all payments theretofore and thereafter required to be made by Lessee under the covenants and conditions of this Lease Agreement, as fully and completely and to the same extent as Lessee itself would have been if it still had retained its right, title and interest under this Lease Agreement.

**ARTICLE 10  
ENCUMBRANCES BY LESSEE**

**Section 10.01. Definitions**

The following terms used in this Article 10 shall have the meanings set forth below (as such terms are used in this Article 10 and elsewhere in this Lease Agreement):

(a) “*Leasehold*” means the estate for years, leasehold estate and other right, title and interest in the Leased Premises conveyed to Lessee by this Lease Agreement.

(b) “*Leasehold Mortgage*” means a holder of a Leasehold Mortgage in respect to which the notice has been duly given and received by Authority in conformance with the provisions of this Article 10 and as to which the provisions of this Article 10 are applicable (which includes Banco Inbursa, S.A., as detailed in Section 10.15(b)).

(c) “*Leasehold Mortgage*” means a deed of trust, indenture, pledge, mortgage, or other security agreement or arrangement encumbering of the Leasehold.

**Section 10.02 Right to Encumber**

At any time and from time to time during the Initial Term or Extension Term of this Lease Agreement, Lessee may assign or encumber Lessee's interest in the Leased Premises by one or more Leasehold Mortgages (as defined in Section 10.) containing such terms and provisions as Lessee may, in its sole discretion, deem fit and proper, and without the consent or approval of Authority. If Lessee encumbers the Leasehold (as defined in Section 10.01) by a Leasehold Mortgage and should Authority be advised in writing of the name and address of the Leasehold Mortgagee (as defined in Section 10.01), then Authority shall not terminate this Lease Agreement until Authority shall comply with the provisions of this Article 10.

**Section 10.03 Notice to Authority**

If Lessee shall, on one or more occasions, assign or encumber Lessee's interest in the Leased Premises by a Leasehold Mortgage, and if the holder of such Leasehold Mortgage shall

provide Authority with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee, Authority and Lessee agree that, following receipt of such notice by Authority, the provisions of this Article 10 shall apply in respect to each such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and address shall be provided to Authority. Authority shall promptly upon receipt of a communication purporting to constitute a notice provided for above acknowledge, by an instrument in recordable form, receipt of such communication as constituting the notice provided for above or, in the alternative, notify Lessee and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of this Section and specify the specific basis of such rejection. After Authority has received notice of a Leasehold Mortgage, Lessee, upon being requested to do so by Authority, shall with reasonable promptness provide Authority with a narrative description of the note or other obligation secured by such Leasehold Mortgage. If requested to do so by Authority, Lessee shall thereafter also provide Authority from time to time with a narrative description of each amendment or other modification or supplement to such instruments which may affect Lessee's interest in the Leased Premises. From time to time upon being requested to do so by Authority, Lessee shall also notify Authority of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded. Lessee authorizes any and all Leasehold Mortgagees to provide the information required under this subsection to Authority upon Authority's request.

**Section 10.04     Default Notice**

Authority, upon providing Lessee any notice of (i) a default under this Lease Agreement, or (ii) a termination of this Lease Agreement, or (iii) a matter on which Authority may predicate or claim a default or Event of Default, shall at the same time send a copy of such notice to every Leasehold Mortgagee. No such notice by Authority to Lessee shall be deemed to have been duly given unless and until a copy thereof has been sent to every Leasehold Mortgagee. From and after such notice has been sent to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified in this Lease Agreement to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice specified in any such notice. Authority shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. Lessee authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Leased Premises by the Leasehold Mortgagee for such purpose.

**Section 10.05     Notice to Leasehold Mortgagee**

Anything contained in this Lease Agreement to the contrary notwithstanding, if any Event of Default shall occur which entitles Authority to terminate this Lease Agreement or terminate Lessee's right to possession of the Leased Premises, Authority shall have no right to terminate this Lease Agreement or to terminate Lessee's right to possession of the Leased

Premises unless, following the expiration of the period of time given Lessee to cure such Event of Default or the act or omission which gave rise to such Event of Default, Authority shall notify every Leasehold Mortgagee of Authority's intent to so terminate or to terminate Lessee's right to possession of the Leased Premises at least sixty (60) days in advance of the proposed effective date of such termination or taking possession of the Leased Premises (such notice being referred to herein as a "**Termination Notice**," and the sixty (60) day period specified in such Termination Notice being referred to herein as the "**Termination Notice Period**"). These provisions shall apply if, during the Termination Notice Period, any Leasehold Mortgagee shall: (i) notify Authority of such Leasehold Mortgagee's desire to nullify such notice, and (ii) pay or cause to be paid all rent and other payments, including taxes, then due and in arrears as specified in the Termination Notice and which may become due during such Termination Notice Period, and (iii) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease Agreement then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee, provided however, that such Leasehold Mortgagee shall not be required during such Termination Notice Period to cure or commence to cure any default consisting of Lessee's failure to satisfy and discharge any lien, charge or encumbrance against the Lessee's interest in this Lease Agreement or the Leased Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee. Any notice to be given by Authority to a Leasehold Mortgagee pursuant to any provision of this Article 10 shall be deemed properly addressed if sent to the Leasehold Mortgagee at the address specified in the notice referred to above unless notice of a change of Mortgage ownership has been given to Authority.

**Section 10.06      Procedure on Default**

(a) If Authority shall elect to terminate this Lease Agreement or to terminate Lessee's right to possession of the Leased Premises by reason of any Event of Default of Lessee, and a Leasehold Mortgagee shall have proceeded in the manner provided for herein, the specified date for the termination of this Lease Agreement or termination of Lessee's right to possession of the Leased Premises as fixed by Authority in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period (i) pay or cause to be paid the rent and other monetary obligations of Lessee under this Lease Agreement as the same become due, and continue its good faith efforts to perform all of Lessee's other obligations under this Lease Agreement, excepting (A) obligations of Lessee to satisfy or otherwise discharge any lien, charge or encumbrance against Lessee's interest in this Lease Agreement or the Leased Premises which is junior in priority to the lien of the Mortgage held by such Leasehold Mortgagee and (B) non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee; and (ii) if not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease Agreement by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with the terms hereof, then this Lease Agreement shall not then terminate nor shall Authority take possession of the Leased Premises, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed from commencing or pursuing the foreclosure or assignment in lieu thereof or delayed by

procedural requirements from completing the foreclosure or assignment in lieu thereof (including the pendency of any related litigation) and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease Agreement by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Leasehold Mortgagee must, however, continue the rental payments to Authority during such period unless enjoined or stayed from doing so by order of a court with jurisdiction of Lessee and Leasehold Mortgagee or by operation of law. Nothing in this Section, however, shall be construed to extend this Lease Agreement beyond the Initial Term or Extension Term (if applicable) hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after all monetary events of default and all other defaults reasonably susceptible of being cured have been cured. If all monetary events of default and all other defaults reasonably susceptible of being cured shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, then this Lease Agreement shall continue in full force and effect as if Lessee had not defaulted under this Lease Agreement.

(c) If a Leasehold Mortgagee is complying with this Section, then upon the acquisition of the Leasehold by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise this Lease Agreement shall continue in full force and effect as if Lessee had not defaulted under this Lease Agreement, and Authority shall recognize the Leasehold Mortgagee or its designee or purchaser at a foreclosure sale or otherwise, as applicable, as the Lessee hereunder.

(d) The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease Agreement or of the Leasehold hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease Agreement or of the Leasehold hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Lessee to be performed hereunder, but the purchaser at any sale of this Lease Agreement and of the Leasehold in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease Agreement and of the Leasehold under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Lessee to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the Leasehold. If the Leasehold Mortgagee or its designee shall become holder of the Leasehold and if the Improvements situated on the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace, reconstruct or demolish such Improvements (if and only to the extent expressly required under this Lease Agreement) only to the extent of the net insurance proceeds received by the Leasehold Mortgagee or its designee by reason of such damage. However, should such net insurance proceeds be insufficient to repair, replace, reconstruct or demolish such Improvements to the extent expressly required by the terms of this Lease Agreement and should the Leasehold Mortgagee or its designee choose not to fully reconstruct or demolish the Improvements to the extent expressly required by this Lease Agreement, such failure shall constitute a default under this Lease Agreement.

(e) Any Leasehold Mortgagee or other acquirer of the Leasehold pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Leasehold, without further consent of Authority, sell and assign the Leasehold on such terms and to such persons and organizations as are acceptable to such Mortgagee or acquirer (whether or not the same is a permitted assignee) and thereafter be relieved of all obligations under this Lease Agreement; provided that such assignee has delivered to Authority (i) evidence acceptable to Authority of such assignee's financial and operating abilities to complete the Improvements on the Leased Premises and operate them, and (ii) its written agreement to be bound by all of the provisions of this Lease Agreement arising from and after the date of such assignment.

(f) Notwithstanding any other provisions of this Lease except the provisions of Section 10.06(e), any sale of this Lease Agreement and of the Leasehold in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease Agreement and of the Leasehold hereby created in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease Agreement and of the Leasehold hereby created.

(g) Any Leasehold Mortgagee or other acquirer of the Leasehold pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings shall, upon acquiring the Leasehold but subject to its rights under hereunder, diligently pursue a cure of all non-monetary requirements of this Lease Agreement of a continuing nature then in default and reasonably susceptible of being cured by the then-Lessee. In the event of an assignment as contemplated herein, the assignee Lessee shall diligently pursue a cure of all non-monetary requirements of this Lease Agreement of a continuing nature then in default and reasonably susceptible of being cured by the then-Lessee.

**Section 10.07 New Lease Agreement**

The provisions concerning a "*New Lease*" shall apply only if and to the extent such provisions may be enforced under applicable Texas law at the time such enforcement is sought. In the event of the termination of this Lease Agreement as a result of an Event of Default Authority shall, in addition to providing the notices of default (or Event of Default) and termination as required above, provide each Leasehold Mortgagee with written notice that the Lease Agreement has been terminated, together with a statement of all sums which would at that time be due under this Lease Agreement but for such termination, and of all other defaults or events of default, if any, then known to Authority. Authority agrees to enter into a new lease ("New Lease") of the Leased Premises with such Leasehold Mortgagee or its designee for the remainder of the Initial Term of this Lease Agreement, effective as of the date of termination, at the rent and upon the terms, options to extend the lease term, covenants and conditions (but excluding requirements which are not applicable or which have already been fulfilled) of this Lease Agreement, provided:

(a) Such Leasehold Mortgagee shall make written request upon Authority for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Authority's notice of termination of this Lease Agreement given pursuant hereto.



(b) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Authority at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease Agreement but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which Authority shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Authority from Lessee or other party in interest under Lessee.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Lessee's defaults of which said Leasehold Mortgagee was notified by Authority's notice of termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

(d) Any New Lease made pursuant to this Section shall be prior to any Mortgage or other lien, charge or encumbrance on the fee of the Leased Premises and the Lessee under such New Lease shall have the same right, title and interest in and to the Leased Premises as Lessee had under this Lease Agreement.

(e) The Lessee under any such New Lease shall be liable to perform the obligations imposed on the Lessee by such New Lease only during the period such person has ownership of such Leasehold.

**Section 10.08 New Lease Agreement Priorities**

If more than one (1) Leasehold Mortgagee shall request a New Lease, the Authority shall enter into such New Lease with the Leasehold Mortgagee whose Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Authority, without liability to Lessee or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the state of Texas as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

**Section 10.09 Leasehold Mortgage Need Not Cure Specified Defaults**

Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of any rights hereunder to cure any default or Event of Default of Lessee not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee, in order to comply with the provisions hereof, or as a condition of entering into the New Lease.

**Section 10.10 Takings**

Lessee's share, as provided by Article 14 of this Lease Agreement, of the condemnation award arising from any taking shall, subject to the provisions of such Article 14, be disposed of as provided for by any Leasehold Mortgage.

**Section 10.11 Casualty Loss**

A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on condition that the

insurance proceeds are to be applied in the manner specified in this Lease Agreement and the Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Lessee (but not such proceeds, if any, payable to Authority or payable jointly to Authority and Lessee) pursuant to the provisions of this Lease Agreement.

**Section 10.12     Legal Proceedings**

Authority shall give each Leasehold Mortgagee prompt notice of any legal proceedings between Authority and Lessee involving obligations under this Lease Agreement. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Authority shall give the Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of legal proceedings.

**Section 10.13     No Merger**

So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Leased Premises and the Leasehold shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold by Authority or by Lessee or by a third party, by purchase or otherwise.

**Section 10.14     Security Deposit**

If any Leasehold Mortgagee, its designee or other purchaser has acquired the Leasehold pursuant to foreclosure, conveyance in lieu of foreclosure or other proceedings, or has entered into a New Lease with Authority in accordance herewith, such Leasehold Mortgagee, its designee or other purchaser shall succeed to the rights of Lessee, if any, in and to any security deposit paid by Lessee to Authority. In such event, Lessee shall no longer have any rights to such security deposit, and Authority shall hold such security deposit for and on behalf of such Leasehold Mortgagee, its designee or other purchaser.

**Section 10.15     Notices**

(a) Except as provided in Section 10.15(b), notices from Authority to the Leasehold Mortgagee shall be mailed to the address furnished to Authority by the Leasehold Mortgagee, and those from the Leasehold Mortgagee to Authority shall be mailed to the address designated pursuant to the provisions hereof. Such notices, demands and requests shall be given in the manner described in Section 17.04 and shall in all respects be governed by the provisions of that Section.

(b) If Banco Inbursa, S.A. is the Leasehold Mortgagee, notices from the Authority to Banco Inbursa, S.A., shall be mailed to the following address:

Notice to Lender: Banco Inbursa, S.A.  
Institución de Banca Múltiple, Grupo Financiero Inbursa  
Paseo de las Palmas 736  
Col. Lomas de Chapultepec  
México, D.F., México, 11000  
Attention: Luis Roberto Frias Humphrey

With copies to: Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Michael Weinberger, Esq.

**Section 10.16 Erroneous Payments**

No payment made to Authority by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease Agreement; and a Leasehold Mortgagee having made any payment to Authority pursuant to Authority's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefor not later than one (1) year after the date of its payment.

**ARTICLE 11  
INDEMNITY**

**Section 11.01. Indemnification by Lessee**

Lessee shall defend, indemnify and hold harmless the Authority and its Commissioners, agents, officers, employees or contractors ("*Authority Parties*"), from and against, and Lessee shall be responsible for, any and all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys' and experts' fees and expenses), suits, settlements or judgments of any nature whatsoever (including claims for personal injury, bodily injury, real and personal property damage and economic loss) (all of which are hereinafter collectively called "*Claims*"), which may be brought or instituted or asserted against the Authority Parties based on or arising out of or relating to (i) the failure on the part of the Lessee and its Affiliates and any sublessees and their respective owners, officers, managers, agents, invitees, guests, contractors and subcontractors or licensees ("*Lessee Parties*") to comply with the provisions of Applicable Laws applicable to the Leased Premises or the Lessee's improvements on the Leased Premises ("*Lessee's Improvements*"), or (ii) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property on the Leased Premises or the Lessee Improvements in each case related to or connected with the condition, use, or occupancy of the Leased Premises or the Lessee Improvements or the construction, alteration, repair or maintenance of the Lessee Improvements, except for those Claims caused solely by the intentional misconduct, negligent acts or omissions of the Authority Parties. **IT IS THE EXPRESS INTENTION OF AUTHORITY AND LESSEE THAT THE INDEMNITIES SET FORTH IN THIS**

**SECTION 11.01 APPLY TO ALL MATTERS DESCRIBED HEREIN, INCLUDING, WITHOUT LIMITATION, ANY OF SAME THAT ARE CAUSED IN PART BY THE NEGLIGENCE OF THE AUTHORITY PARTIES.** Lessee shall, however, be relieved of its obligation of indemnity (but not its obligation to defend) with respect to any Claims to the extent, and only to the extent, of (1) the amount actually recovered from one or more insurance carriers and either paid to the Authority Parties or paid for benefit of the Authority Parties in reduction of such Claims, or (2) the percentage of responsibility attributed to the Authority Parties with respect to causing or contributing to cause in any way the accident, personal injury, property damage, death, or other harm for which the Claims were made. In Claims against any Authority Party by or for an employee of a Lessee Party, the Lessee's indemnification obligation under this Section 11.01 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Lessee Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. The obligations of the Lessee under this Section 11.01 shall survive the expiration or any earlier termination of the term of this Lease.

**Section 11.02. Notice of Claims**

The Authority shall give the Lessee prompt and timely notice of any Claims made or instituted against it or any other Authority Party of which it has knowledge, relating to any matter which in any way may result in indemnification pursuant to Section 11.01. Subject to the prior rights, if any, of insurers, the Lessee shall be entitled to control the defense and any compromise of any such Claims to the extent of any actual or potential claim for indemnification made or reserved by the Authority, and the Lessee shall give the Authority the opportunity to participate in the defense and any compromise of any such Claim to the extent of the Authority's interest therein. The obligations of the Lessee under this Section 11.02 shall survive the expiration or any earlier termination of the term of this Lease.

**ARTICLE 12  
INSURANCE**

**Section 12.01. Insurance**

(a) Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, commencing on the date that any material building activity by Lessee on the Leased Premises begins, Lessee agrees to carry and maintain at its sole expense during the Term of the Lease policies of insurance (sometimes collectively referred to in this Section as the "*Policies*") of the types and in the minimum amounts specified below:

(1) Property insurance at reasonable policy limits and covering all loss, damage or destruction to Lessee's improvements on the Leased Premises, subject to such deductibles and self-insured retentions as Lessee shall obtain, in Lessee's sole but reasonable discretion, in such property insurance policies.

(2) Flood insurance on each of the Lessee Improvements with the maximum policy limits permitted under such flood insurance policies, but only to the extent commercially available in the area of the Leased Premises.

(3) For all its employees engaged in performing work on the Leased Premises, workers' compensation insurance required by the Texas Workers' Compensation Code; and employer's liability insurance with policy limits of at least \$500,000.00 per accident, or such similar insurance which is in accordance with state and federal law applicable to said employees. Under the Worker's Compensation policy, Lessee shall provide an alternate employer endorsement.

(4) Commercial General Liability (CGL) insurance coverage with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate for bodily injury, personal injury and property damage liability at the Leased Premises, and endorsed to provide contractual liability coverage and Time Element Pollution coverage. The Authority is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Lease Agreement.

(5) Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit.)

(6) Umbrella liability coverage limits of not less than \$5,000,000.00 over and above the underlying primary coverage limits stated above with respect to bodily injury or death to any number of persons in any one accident or occurrence. The Authority is to be named as an additional insured.

(7) Pollution Legal Liability covering bodily injury, property damage and other losses caused by pollution conditions occurring during the Term of this Lease, including pollution of any body of water, with limits of not less than \$5,000,000.00 per occurrence. Pollution Coverage shall include, but not be limited to, environmental cleanup, remediation and disposal.

(b) Lessee shall deliver to Authority, Attention: Real Estate Manager, prior to the commencement of any material building activity by Lessee on the Leased Premises, as proof of the insurance required of Lessee, a certificate or certificates of insurance (and the endorsements required in this Section shall be attached to the certificate or certificates of the insurance) describing the Policies, which certificates must be reasonably acceptable, in their form and content, to Authority, and in the event of a claim shall deliver to the Authority upon request and in response to a claim, as applicable, true and correct copies of said insurance policies.

(c) The policies of such insurance shall, to the fullest extent permitted by the insurance companies:

(1) provide that it will not be canceled or reduced in coverage without thirty (30) days' prior written notice to Lessee who shall then notify Authority, Attention: Risk Manager; and

(2) be primary coverage.

(d) From time to time during the Term (but not more often than every five (5) years) to the extent that the Authority provides written notice to Lessee evidencing Authority's reasonable belief (in reasonable detail) that the amounts of coverage required by this Section 12.01 have become insufficient to adequately protect the interests of the Authority, then upon Lessee's receipt of such notice the Parties will commence a dialog in good faith to discuss a possible adjustment to the coverage amounts herein provided, to adequately restore the protection afforded to the interests of the Authority. In the event of a dispute regarding such coverage amounts, the Parties shall resort to the dispute resolution provisions herein provided.

(e) Lessee shall deliver to Authority certificates of renewal at least thirty (30) days prior to the expiration date of each of the Policies and copies of new policies at least thirty (30) days prior to terminating any of the Policies.

(f) The deductible or self-insured retention for each of the Policies of liability insurance may not exceed \$50,000.00 without the approval of the Authority.

(f) The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI.

(g) If Lessee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority may procure such insurance at Lessee's expense, and Authority is entitled to reimbursement from Lessee for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Lessee receives Authority's notice of payment until reimbursement.

**Section 12.02. Waiver of Subrogation**

**Lessee hereby waives every claim which arises or may arise in its favor against Authority during the Term of this Lease or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Leased Premises, to the extent that such loss or damage is or would have been covered by any property insurance which Lessee is required to carry under this Lease (whether or not Lessee actually carries such insurance or self-insures for the loss or damage). Lessee agrees to immediately give to each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of the waiver set forth in this Section, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.**

**ARTICLE 13  
PROPERTY LOSS**

**Section 13.01. Obligation to Restore**

(a) If all or any part of the improvements located on (or constituting a part of) the Leased Premises are destroyed or damaged by any casualty during any Term of this Lease Agreement, Lessee will promptly commence and thereafter prosecute diligently to completion the restoration of the same to the condition in which the destroyed or damaged portion existed prior to the casualty. Lessee will perform such restoration with at least as good workmanship and quality as the improvements being restored and in compliance with the provisions of Article 5 hereof. Notwithstanding the foregoing provisions of this paragraph to the contrary, if all of such improvements are wholly destroyed by any casualty or are so damaged or destroyed that, in Lessee's good faith judgment reasonably exercised, it would be uneconomic to cause the same to be restored (and Lessee shall give written notice of such determination to Authority within ninety (90) days after the date the casualty occurred), then Lessee shall not be obligated to restore such improvements and this Lease Agreement shall terminate as of the date of the casualty, and Authority shall be entitled to receive and retain the insurance proceeds for the loss.

(b) Except as provided in Section 13.01(a) or in Section 13.02(a), if a property loss affecting the Leased Premises occurs, all insurance proceeds arising from policies maintained by Lessee for the damages arising from such casualty shall be distributed and paid directly to Lessee.

**Section 13.02. Damage Near End of Term**

(a) If the Leased Premises are damaged to the extent of fifty per cent (50%) or more, or destroyed in whole or in part during the last twenty-four (24) months of the Term, Lessee shall have the right to terminate this Lease Agreement and not rebuild the improvements on the Leased Premises, in which event Authority shall be entitled to receive and retain the insurance proceeds from the loss.

(b) Lessee may exercise its right to terminate the Lease pursuant to Section 13.02(a) by giving the Authority written notice of such election within ninety (90) days after the occurrence of the damage. If such notice is given, the rent shall be adjusted as of the date of such notice of termination.

**Section 13.03. Notice of Damage**

Lessee shall immediately notify Authority of any destruction of or damage to the Leased Premises.

**ARTICLE 14  
CONDEMNATION**

**Section 14.01. Total Taking**

If a total taking of the Leased Premises by condemnation occurs, then this Lease Agreement shall terminate as of the date the condemning authority takes lawful possession of the Leased Premises.

**Section 14.02. Partial Taking**

If a partial taking of the Leased Premises by condemnation occurs, (a) this Lease Agreement will continue in effect as to the portion of the Leased Premises not taken, and (b) Lessee must promptly commence and thereafter prosecute diligently to completion the restoration of the remainder of Lessee's improvements located on (or constituting a part of) the Leased Premises to an economically viable unit with at least as good workmanship and quality as existed prior to the taking. In addition, upon a partial taking, the rent payable during the remainder of the Term of this Lease Agreement (after the condemning authority takes lawful possession of the portion taken) shall be reduced proportionally, giving due regard to the relative value of the portion of the Leased Premises taken as compared to the remainder thereof.

**Section 14.03. Voluntary Conveyance**

Nothing in this Article prohibits the Authority from voluntarily conveying all or part of the premises to a public utility, agency, or authority under threat of a taking under the power of eminent domain. Any such voluntary conveyance will be treated as a taking within the meaning of this Article.

**Section 14.04. Condemnation Award**

**In case of any taking or condemnation, whether or not this Lease shall terminate, the damages to the land award shall be the property of Authority, and Lessee hereby assigns to Authority all its right, title and interest in and to any such damages to the land award. Lessee, however, shall be entitled to claim, prove and receive in the condemnation proceeding such awards as may be allowed for improvements, damages, fixtures and other equipment installed by it, but only if such awards shall be made by the court in addition to (and shall in no manner whatsoever reduce) the award made by it to Authority for the land or part thereof so taken.**

**Section 14.05. Notice of Proposed Taking**

Lessee and Authority shall immediately notify the other of any proposed taking by condemnation of the Leased Premises.



**ARTICLE 15  
QUIET ENJOYMENT**

Lessee, on paying the rent and all other sums called for herein and performing all of Lessee's other obligations contained herein, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Leased Premises during the Term of this Lease Agreement, subject to the provisions of this Lease Agreement. Authority agrees to warrant and forever defend Lessee's right to occupancy of the Leased Premises against the claims of any and all persons whomsoever lawfully claiming the same or any part thereof, by, through or under Authority (but not otherwise) subject to (a) the provisions of this Lease Agreement, (b) the lawful use of the Leased Premises by any mineral owner, other than Authority, of part or all of the Leased Premises or a lessee in an oil, gas or mineral lease granted by any mineral owner, other than Authority, of all or part of the Leased Premises, (c) to the extent valid and enforceable as to the Leased Premises all matters of record in Nueces County, Texas, including, but not limited to, restrictive covenants, permits, licenses, easements and right-of-ways, and (d) any unrecorded restrictive covenants, permits, licenses, easements and right-of-ways in writing and executed by Authority to the extent the foregoing are validly existing and applicable to the Leased Premises, and are made known in writing to Lessee before this Lease Agreement is executed.

Lessee shall have no right to voluntarily permit any portion of the Leased Premises to be used for the purpose of drilling an oil or gas well without Authority's prior written consent.

**ARTICLE 16  
DISPUTE RESOLUTION AND MEDIATION**

**Section 16.01. Dispute Resolution**

In the event a dispute arises between the Parties regarding the application or interpretation of, or in any way relating to, this Lease, the Parties agree to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner. If the Parties shall have failed to resolve the dispute within the ten (10) Business Days after any written notice of the dispute has been sent to the other Party, then either Party may elect to refer the dispute to the respective senior management of the Parties by notice in writing to the other Party, and the respective senior officers of the Parties shall meet within the ten (10) Business Days after the date of the notice, to resolve the dispute. If the dispute is not resolved within five (5) Business Days after such a meeting has commenced (but in any event within ten (10) Business Days after the date of the letter referring the matter to senior management), then either Party may at any time thereafter resort to mediation, under the provisions of Section 16.02.

**Section 16.02. Mediation**

Authority and Lessee agree they will, before taking any other legal action, including the filing of an action in State or Federal Court, attempt in good faith, to mediate in Corpus Christi, Texas, any controversy or claim arising out of or related to this Lease Agreement before a mediator to be agreed upon by Authority and Lessee. Authority and Lessee must agree upon a mediator within fifteen (15) Business Days after a written request for mediation by either Party,

or either Party may request any State District Judge sitting in Nueces County, Texas, to appoint a mediator and such appointment will be final. The mediator will schedule a mediation meeting at a time and place determined by the mediator. Authority and Lessee will each pay one-half of the costs of mediation to the mediator. Any mediation shall not extend beyond thirty (30) days after the appointment of the mediator, and should the Parties fail to resolve any dispute by mediation within such 30-day period, the Parties shall have all rights available at law or in equity.

**ARTICLE 17  
GENERAL PROVISIONS**

**Section 17.01. Compliance with Authority's Tariff**

Lessee must comply with all federal, state and local laws, rules or regulations, including Authority's Tariff 100-A and Bulk Terminal Tariff 1-A, applicable to Lessee's tenancy or operations on the Leased Premises. Lessee must comply with the requirements of Item 669 of Authority's Tariff 100-A to the extent the same apply to Lessee, its agents, servants and employees.

**Section 17.02. Inspection**

Lessee will permit Authority and Authority's agents, representatives or employees to enter on the Leased Premises for the purpose of inspection to determine whether Lessee is in compliance with the terms of this Lease Agreement, so long as any such inspection does not interfere with Lessee's plant operations.

In an emergency, Authority, its agents, servants and employees, may use any means to open any gate or door into or on the Leased Premises without any liability for doing so, except that Authority must provide notice to Lessee as soon as possible thereafter. Entry into the Leased Premises by Authority for any purpose permitted herein shall not constitute a trespass nor an eviction (constructive or otherwise), nor entitle Lessee to any abatement or reduction of rent, nor constitute grounds for any claim by Lessee (and Lessee hereby waives any such claim) for damages for any injury to or interference with Lessee's business, for loss of occupancy or quiet enjoyment or for consequential damages.

**Section 17.03. No Partnership or Third Party Beneficiaries**

The relationship between Authority and Lessee at all times shall remain solely that of landlord and tenant and not be deemed a partnership or joint venture. This Lease Agreement is for the sole benefit of Authority and Lessee and no other person, entity or third party unless the benefit to a person, entity or third party is expressly stated in this Lease Agreement.

**Section 17.04. Payments and Notices**

(a) All payments, notices, demands or requests from Lessee to Authority shall be given to Authority, Attention: Executive Director, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other address as Authority shall request in writing.

(b) All payments, notices, demands or requests from Authority to Lessee shall be given to Lessee, Attention: Diane Mitchell at 27610 Huntington Road Apple Grove, West Virginia 25502, with a copy to Jason L. Davis, Crain Caton & James, A Professional Corporation, 1401 McKinney Street, Suite 1700, Houston, Texas 77010-4035, or at such other address as Lessee shall request in writing.

(c) Any notice required or permitted under this Lease Agreement must be in writing. Any notice required by this Lease Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage paid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received.

**Section 17.05. Estoppel Certificate**

On request, Lessee will execute an estoppel certificate that states the Commencement Date and termination date of the Lease, describes any rights to extend the Term of the Lease, lists any defaults by Authority, and provides any other information reasonably requested by the Authority.

**Section 17.06. Abatement**

Lessee's covenant to pay rent and additional rent and Authority's covenants are independent. Except as otherwise provided, Lessee is not entitled to abatement of rent or additional rent for any reason.

**Section 17.07. Abandoned Property**

Authority may retain, destroy or dispose of any property left on the Leased Premises at the expiration or termination of this Lease.

**ARTICLE 18  
MISCELLANEOUS**

**Section 18.01. Parties Bound**

This Agreement binds and inures to the benefit of the Parties and their respective legal representatives, heirs, distributees, successors and assigns, where assignment is permitted by this Lease Agreement.

**Section 18.02. Applicable Law**

**THIS LEASE AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR**

PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS LEASE AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. Venue of any action arising out of this Lease Agreement will be in Nueces County, Texas.

**Section 18.03. Severability**

If any part of this Lease Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

**Section 18.04. Time of Essence**

Time is of the essence with respect to each date or time specified in this Lease Agreement by which an event is to occur.

**Section 18.05. Rights and Remedies Cumulative**

The rights and remedies provided by this Lease Agreement are cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. All the rights and remedies may be exercised and enforced concurrently or whenever occasion for the exercise arises.

**Section 18.06. Attorneys' Fees**

In the event Authority or Lessee breach or default upon any of the terms of this Lease Agreement and the Party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting Party agrees to pay the reasonable attorneys' fees incurred by the prevailing Party.

**Section 18.07. Captions**

All captions in this Lease Agreement are for reference and convenience only and shall not modify or affect the provisions of this Lease Agreement in any manner.

**Section 18.08. Public Disclosure**

Authority is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Public Information Act (Texas Government Code, chapters 551 and 552), and as such Authority is required to disclose to the public (upon request) this Lease Agreement and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, Lessee agrees that the disclosure of this Lease Agreement or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Authority as required by the Texas Open Meetings Act, Texas Public Information Act or any other law will not expose Authority (or any party acting by, through or under Authority) to any claim, liability or action by Lessee. Authority agrees to keep confidential the business terms of this Lease to the extent permitted by law. Authority shall

provide immediate notice to Lessee of any open records request and allow Lessee to seek protective order within the statutory time limits.

In the event that Authority is requested to disclose any information regarding the Company or the transactions contemplated hereby which can be withheld under the Texas Public Information Act, Authority will provide the Lessee with prompt prior notice so that the Lessee may seek a protective order or other appropriate remedy and/or waive the right to have the information withheld.

**Section 18.09. Brokers**

**Lessee hereby warrants and represents unto Authority that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease Agreement, and agrees to defend, indemnify and hold harmless Authority from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization by, through or under Lessee in connection with this Lease Agreement.**

**Section 18.10. Authority**

The person executing this Lease Agreement on behalf of the Lessee and Authority personally warrants and represents unto the other Party that (a) (if applicable) Lessee and Authority is a duly organized and existing legal entity, in good standing in the state of Texas, (b) Lessee and Authority has full right and authority to execute, deliver and perform this Lease Agreement, (c) the person executing this Lease Agreement on behalf of Lessee and Authority was authorized to do so, and (d) upon request of Authority or Lessee, such person will deliver to Authority or Lessee satisfactory evidence of his or her authority to execute this Lease Agreement on behalf of Lessee or Authority.

**Section 18.11. Recording**

Upon the request of either Party to this Lease, Landlord and Tenant shall execute the Memorandum of Lease, in the form agreed upon by the Parties, and either Party may record the Memorandum of Lease in the appropriate Real Property Records. Neither Party to this Lease may record this Lease without the express written consent of the other Party.

**Section 18.12. Interpretation**

Both Authority and Lessee and their respective legal counsel have reviewed and have participated in the preparation of this Lease Agreement. Accordingly, no presumption will apply in favor of either Authority or Lessee in the interpretation of this Lease Agreement or in the resolution of the ambiguity of any provision hereof.

**Section 18.13. Force Majeure**

In the event either Party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of *force majeure*, which includes strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the Party delayed in performing work or doing acts (hereinafter "*force majeure*"), such Party shall be excused for the period of time equivalent to the delay caused by such *force majeure*.

Notwithstanding the foregoing, any extension of time for *force majeure* shall be conditioned upon the Party seeking an extension of time delivering written notice of such *force majeure* to the other Party within five (5) Business Days of the event causing the *force majeure*. The maximum period of time which a Party may delay any act or performance of work due to *force majeure* shall be sixty (60) days unless repairs are not able to be completed or commenced within such 60 days, then such time shall be extended as reasonably necessary to complete the repairs due to the *force majeure* event.

**Section 18.14. Contractual Relationship**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Authority or Lessee.

**Section 18.15. Entire Agreement**

This Lease Agreement, including any exhibits, constitutes the Parties' final and mutual agreement with respect to the subject matter hereof. There are no written or oral representations or understandings regarding the subject matter of this Agreement that are not fully expressed in this Lease Agreement or the Purchase Agreement. No change, waiver or discharge is valid unless in a writing that is signed by the Party against whom it is sought to be enforced.

*[end of page; signature page follows]*

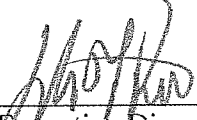
**SIGNATURE PAGE TO LEASE AGREEMENT**

(Port of Corpus Christi Authority to M&G Resins USA, LLC)

IN WITNESS WHEREOF, this Lease Agreement is executed in duplicate originals, each of which shall be deemed to be an original, at Corpus Christi, Texas, as of the dates provided below each signature, to be effective for all purposes as of the Effective Date

*“Authority”*

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By:   
John P. LaRue, Executive Director

Date: 6-27, 2013

*“Lessee”*

**M&G RESINS USA, LLC,  
a Delaware limited liability company**

By: \_\_\_\_\_  
Kevin R. McCarren, Vice President, Finance

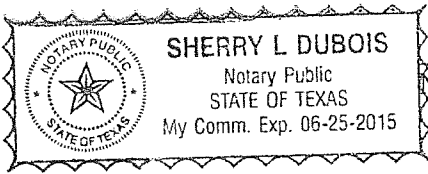
Date: \_\_\_\_\_, 2013

**ATTACHMENTS:**

- Exhibit “A” – Legal Description of Tract B and Survey**
- Exhibit “B” – Direct Rail Service Connection Points**
- Exhibit “C” – Concrete Culvert Crossing**

STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on the 27<sup>th</sup> day of June, 2013, by JOHN P. LARUE, Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Authority.



Sherry L Dubois  
Notary Public, State Of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Diane E. Mitchell, Vice President, Finance of M&G Resins USA, LLC, a Delaware limited liability company, on behalf of said company.

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



**SIGNATURE PAGE TO LEASE AGREEMENT**  
(Port of Corpus Christi Authority to M&G Resins USA, LLC)

IN WITNESS WHEREOF, this Lease Agreement is executed in duplicate originals, each of which shall be deemed to be an original, at Corpus Christi, Texas, as of the dates provided below each signature, to be effective for all purposes as of the Effective Date

*“Authority”*

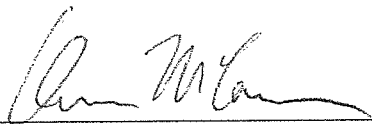
**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
John P. LaRue, Executive Director

Date: \_\_\_\_\_, 2013

*“Lessee”*

**M&G RESINS USA, LLC,  
a Delaware limited liability company**

By:  \_\_\_\_\_  
Kevin R. McCarren, Vice President, Finance

Date: \_\_\_\_\_, 2013

**ATTACHMENTS:**

- Exhibit “A” – Legal Description of Tract B and Survey**
- Exhibit “B” – Direct Rail Service Connection Points**
- Exhibit “C” – Concrete Culvert Crossing**

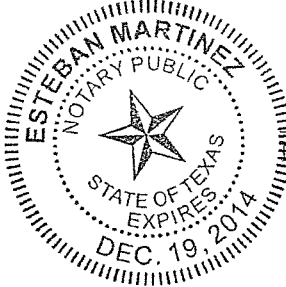
STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by JOHN P. LARUE, Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Authority.

\_\_\_\_\_  
Notary Public, State Of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the 26<sup>th</sup> day of June, 2013, by Kevin R. McCarren, Vice President, Finance of M&G Resins USA, LLC, a Delaware limited liability company, on behalf of said company.



Esteban Martinez  
\_\_\_\_\_  
Notary Public, State of Texas

Lease Agreement  
Legal Description of Tract B  
Exhibit A

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3054 S. ALAMEDA, ZIP 78404  
361 882-5521~ FAX 361 882-1265  
e-mail: [murrayjr@aol.com](mailto:murrayjr@aol.com)

**BASS & WELSH ENGINEERING**  
**TX Registration No. F-52**  
**Survey Registration No. 100027-00**  
P.O. Box 6397  
Corpus Christi, TX 78466-6397

June 3, 2013

**Field Note Description**  
**Tract "B"**

Being a tract situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1 and being a portion of that 168.22 acre tract described as Tract 1 in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Company recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod set in the east boundary of Tract 1 and the west boundary of the 2,694.93 acre tract patented to the Nueces County Navigation District No. 1 by the State of Texas known as Survey 939 recorded in Volume 192 at Page 579 of the deed records of Nueces County, Texas, whence the northeast corner of the 168.22 acre Tract 1 bears N 21°16'36" E at 130.35 feet

THENCE S 21°16'36" W along the east boundary of Tract 1 and the west boundary of the Nueces County Navigation District Tract a distance of 350.05 feet to a 5/8 inch iron rod set for the southeast corner of this tract;

THENCE N 52°57'34" W 336.88 feet south of and parallel to the south boundary of the heretofore described Tract "A" a distance of 3,333.27 feet to a point for an interior corner of this tract, said point lying in the west margin of the drainage easement described as Tract 3B in the document recorded under Clerk's File No. 2003000174, Deed Records, Nueces County, Texas;

THENCE S 35°39'01" W along the west boundary of the heretofore referenced drainage easement a distance of 645.67 feet to a 5/8 inch iron rod set for a corner of this tract;

THENCE N 53°06'25" W a distance of 2,074.76 feet to a 5/8 inch iron rod set in the west line of the 168.22 acre tract described as Tract 1 for the southwest corner of this tract;

THENCE N 44°54'24" E along the west boundary of the 168.22 acre tract a distance of 360.50 feet to a 5/8 inch iron rod set for the northwest corner of this tract, said point being the southwest corner of the heretofore referenced Tract "A";

THENCE along the south boundary of Tract "A", S 72°48'23" E a distance of 1649.81 feet to the point of curvature of a curve to the right;

THENCE continuing along the south boundary of Tract "A", along said curve to the right whose radius is 1186.50 feet, in a southeasterly direction a distance of 411.00 feet to the point of tangency of said curve;

THENCE continuing along the south boundary of Tract "A", S 52°57'34" E a distance of 3,293.28 feet to the **POINT OF BEGINNING**, forming a tract embracing 58.47 acres.

\_\_\_\_\_  
Murray Bass, Jr., R.P.L.S.

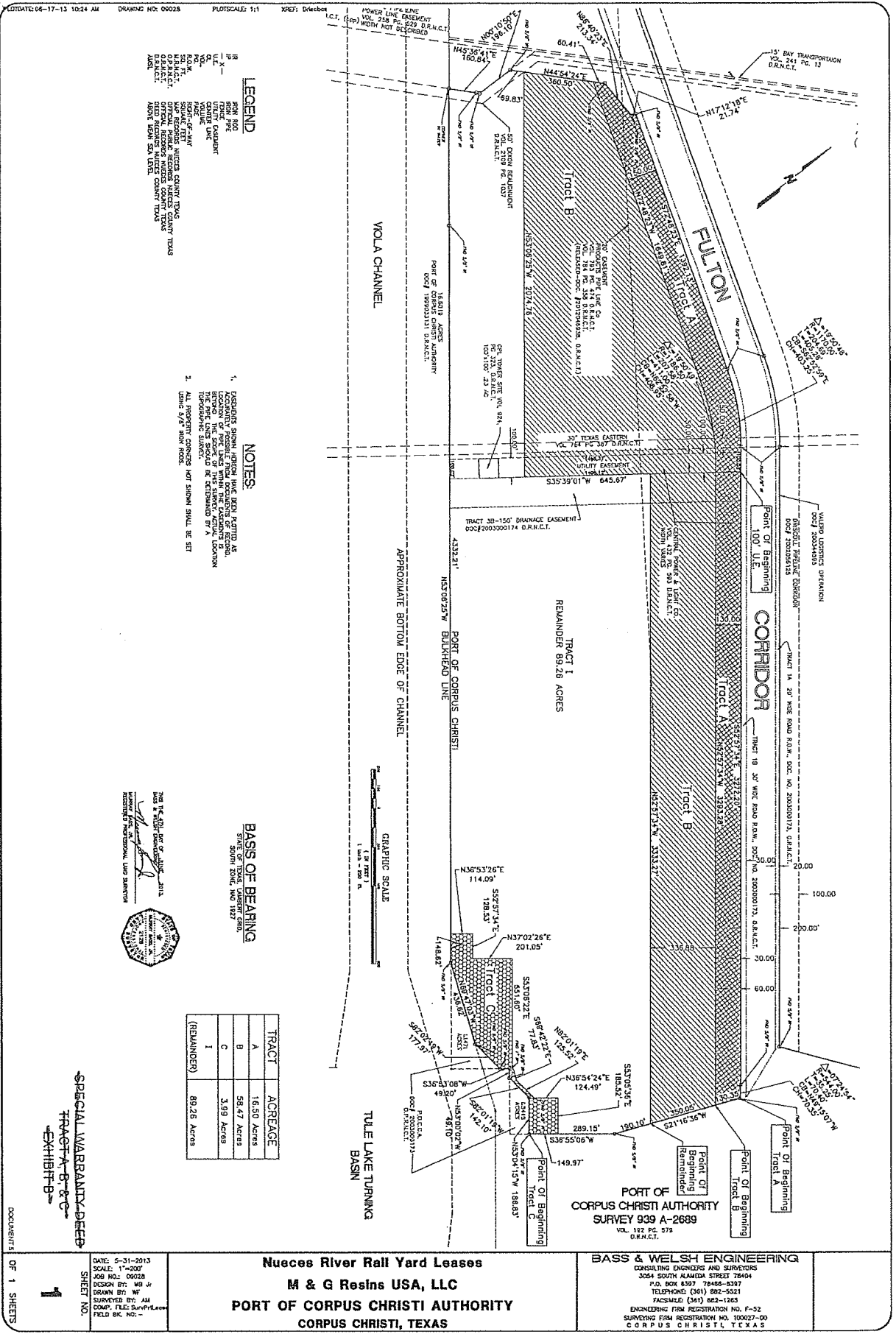
Note: State of Texas, Lambert Grid, South Zone, NAD 1927  
MBJ:sab

09028-Field Note Desc-Tract B.doc

Page 1 of 1

Document 2

Page 315/4727 "A" - Lease (Legal)



**LEGEND**

- B- FROM ROD
- X- FROM PIPE
- U.L.- UTILITY EASEMENT
- U.L. UTILITY LINE
- YOLU- YOLU LINE
- FOOT-OF-WAY
- WATER
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS
- OFFICIAL PLANS RECORDS NUECES COUNTY TEXAS

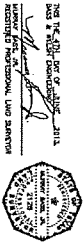
**NOTES**

1. EXISTING SHOWN HEREIN ARE FOR RECORD AS ACCURATELY SHOWN ON RECORDED DOCUMENTS OF RECORD. THIS SURVEY IS MADE FOR THE PURPOSE OF RECORDING THE SAME. THE LOCATION OF THE SURVEYED POINTS IS SHOWN ON THIS MAP.
2. ALL PROPERTY CORNERS NOT SHOWN SHALL BE SET USING 5/8" IRON RODS.

**BASIS OF BEARING**

STATE OF TEXAS, COUNTY OF NUECES, SURVEY 939 A-2689, 2013

TRACT	ACREAGE
A	16.50 Acres
B	58.47 Acres
C	3.99 Acres
1	89.26 Acres
(REMAINDER)	



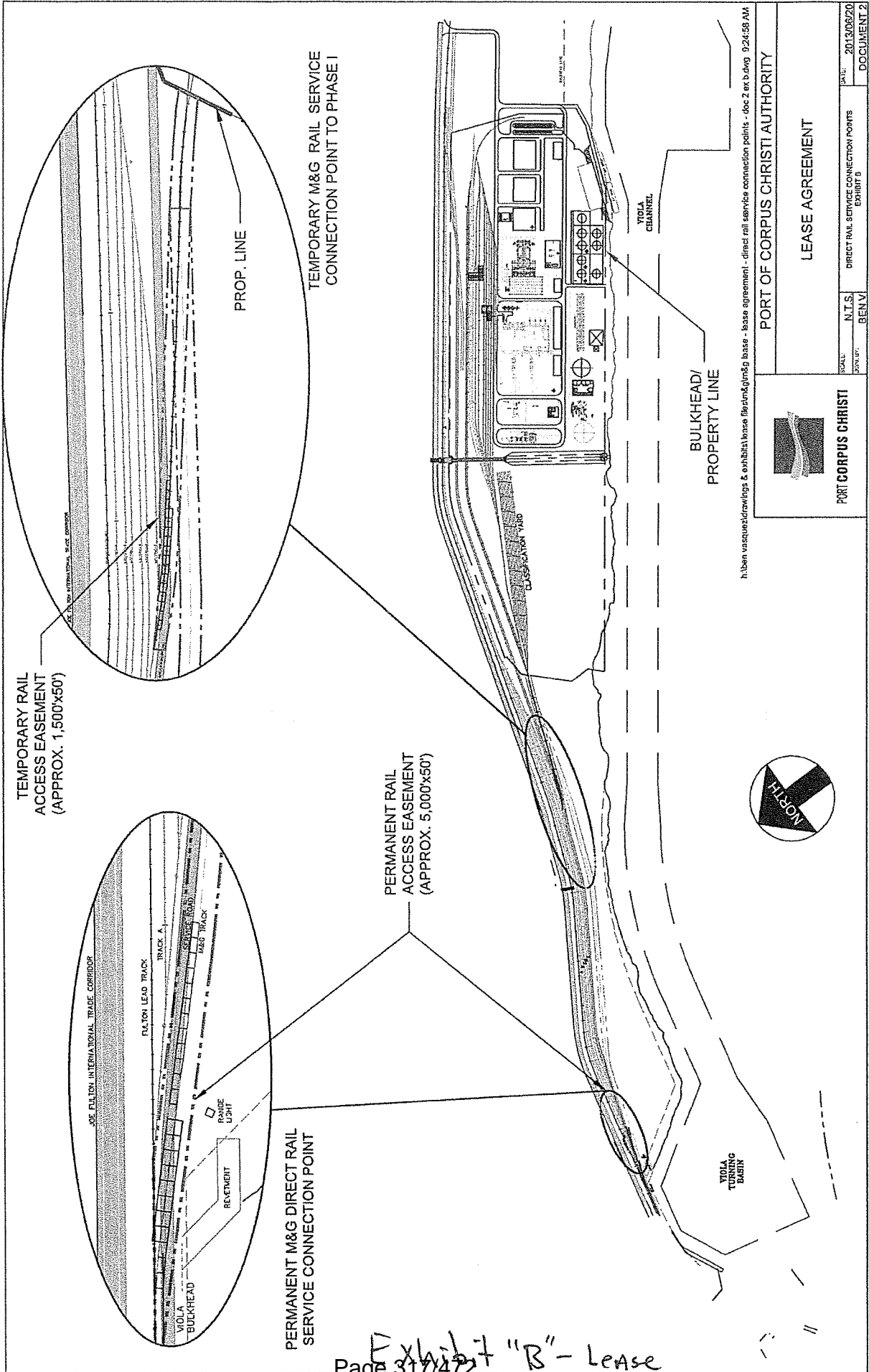
SPECIAL WARRANTY DEED  
TRACT A-B-C  
EXHIBIT B

OF 1 SHEETS

**Nueces River Rail Yard Leases**  
**M & G Resins USA, LLC**  
**PORT OF CORPUS CHRISTI AUTHORITY**  
**CORPUS CHRISTI, TEXAS**

**BASS & WELSH ENGINEERING**  
CONSULTING ENGINEERS AND SURVEYORS  
3054 SOUTH ALAMEDA STREET 78404  
P.O. BOX 8397 78468-8397  
TELEPHONE (361) 862-5321  
FACSIMILE (361) 862-1265  
ENGINEERING FIRM REGISTRATION NO. F-52  
SURVEYING FIRM REGISTRATION NO. 100027-00  
CORPUS CHRISTI, TEXAS

Page 1306472 A - Lease (Survey)



h:\ben\vasquez\drawings & exhibits\lease files\m&g\lease - lease agreement - direct rail service connection points - doc 2 ex b.dwg 9/24/08 AM

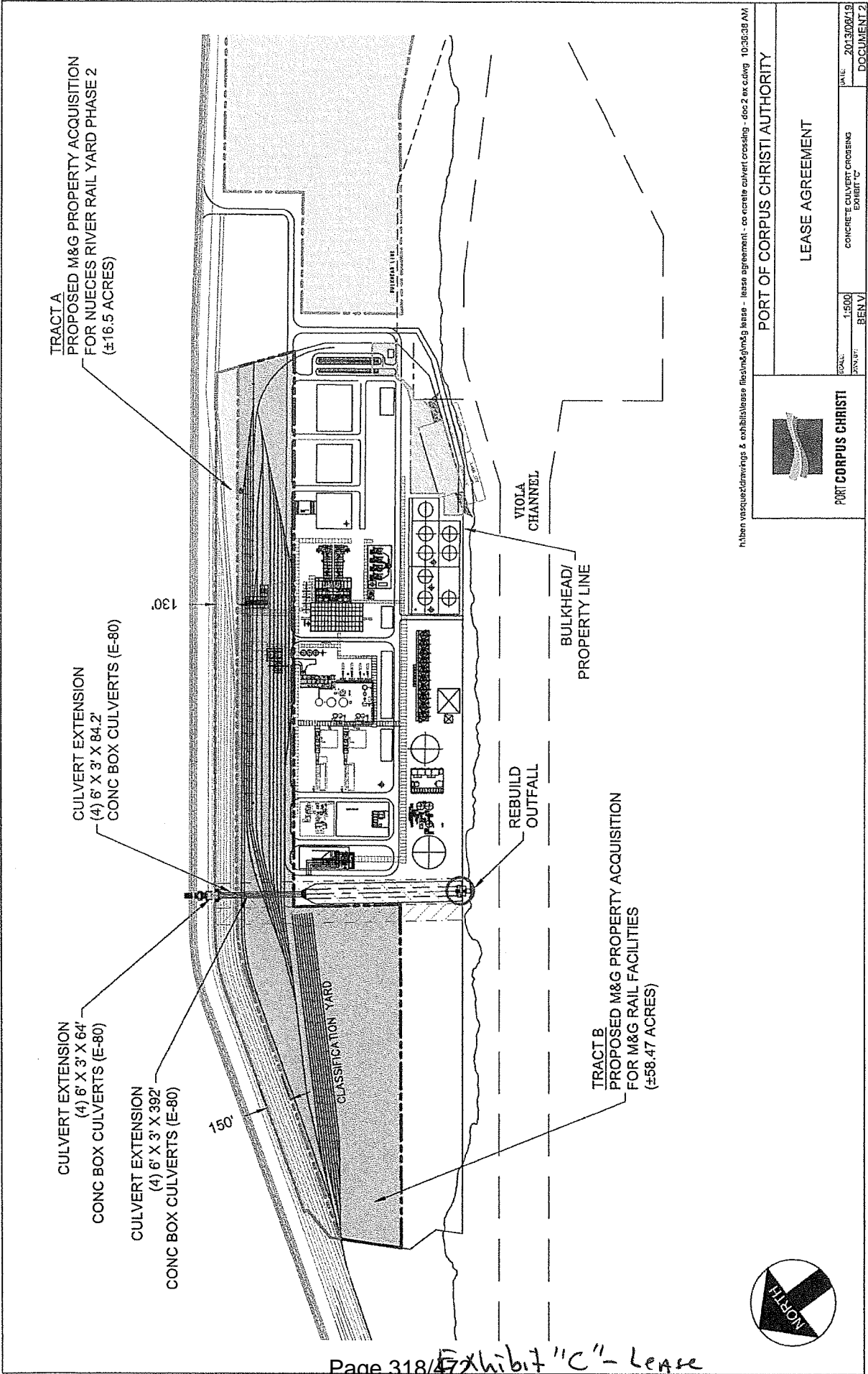


PORT OF CORPUS CHRISTI

LEASE AGREEMENT

SCALE:	N.T.S.	DATE:	20/13/06/20
DATE:	2/24/07	PROJECT:	DIRECT RAIL SERVICE CONNECTION POINTS
PROJECT:	BENV	EXHIBIT:	EXHIBIT 5
EXHIBIT:		DOCUMENT:	DOCUMENT 2

Exhibit "B" - Lease  
Page 3 of 4



when vasquez@nueces.com & exhibits/lease for nrm&gm&g lease - lease agreement - co concrete culvert crossing - doc 2 ex c.dwg 10:35:38 AM

PORT OF CORPUS CHRISTI AUTHORITY

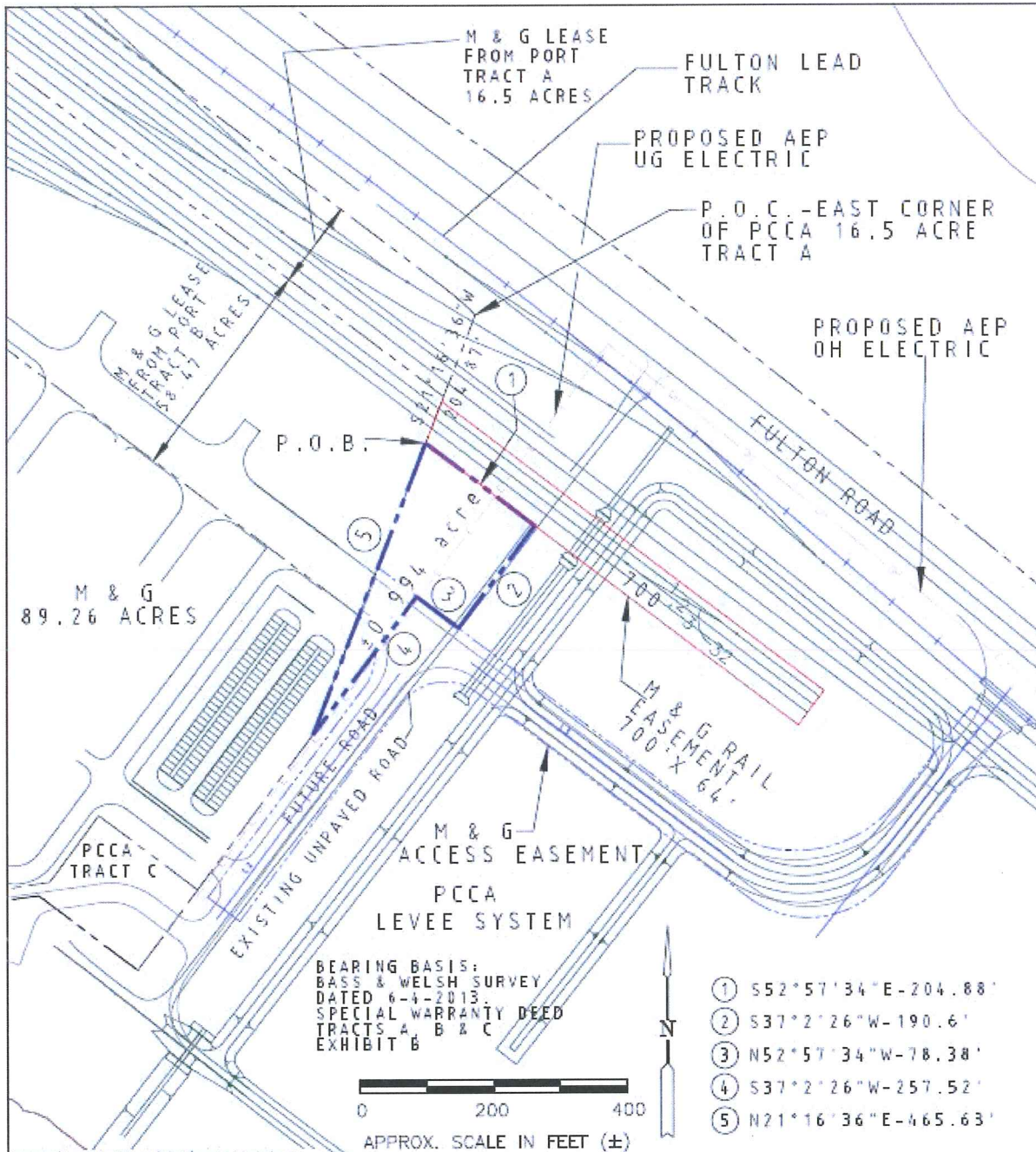
LEASE AGREEMENT


SCALE: 1"=500'  
DATE: 20/13/06/19  
BY: BEN V  
CONCRETE CULVERT CROSSING  
EXHIBIT 'C'  
DOCUMENT 2

**Exhibit "A"**

**Survey Plat with Metes and Bounds description of the 0.994 Truck Access Track**

(See Attached)



NO.	DATE	REVISION	PORT OF CORPUS CHRISTI AUTHORITY	
			<p style="text-align: center;"><b>LEASE AREA FOR M &amp; G</b></p>	
 <p style="text-align: center;"><b>PORT CORPUS CHRISTI</b></p>			SCALE: AS SHOWN	DATE: NOV. 2014
			DWN. BY: RALPH	EXHIBIT A (±0.994 ACRE)



**Exhibit "G"**

**Amendment of Rail Access Easement and License  
(See Attached)**

A handwritten signature or set of initials, possibly 'Roe', written in black ink in the bottom right corner of the page.

**AMENDMENT OF RAIL ACCESS EASEMENT AND LICENSE**

This Amendment of Rail Access Easement and License ("**Amendment**") is made effective as of the 19 day of May, 2015 (the "**Amendment Date**"), by and between the **Port of Corpus Christi Authority of Nueces County, Texas**, a navigation district operating under Article XVI, Section 59 of the Texas Constitution (hereinafter called "**PCCA**"), and **M&G ResinsUSA, LLC** or its assigns (hereinafter called "**M&G**"), a Delaware limited liability company (PCCA and M&G each herein called a "**Party**" and together the "**Parties**"). This Amendment includes all Exhibits hereto.

**Recitals**

**WHEREAS**, PCCA and M&G entered into a Rail Access Easement and License dated June 28, 2013 ("**Original Easement Agreement**"), a copy of which is attached hereto as **Exhibit One**; and

**WHEREAS**, capitalized terms in this Amendment shall have the meanings ascribed to those terms under the provisions of the Original Easement Agreement, except as provided herein; and

**WHEREAS**, Section 1 of the Original Easement Agreement reads as follows:

- (a) Easement and Easement Area. Authority hereby grants and conveys to M&G, and its successors and assigns, a permanent, exclusive, rail access easement and right-of-way fifty feet (50') in width (the "First Easement") along, upon, on, in, over, under, through, and across a portion of the Authority's Property to be determined. The exact location of the First Easement (the "First Easement Area") shall be determined by mutual good faith agreement between the Authority and M&G at such time as M&G requests. The First Easement Area will run from the west end of M&G's rail yard on Tract B to the "Temporary M&G Rail Service Connection Point to Phase I" shown on Exhibit D attached hereto. When the exact location of the First Easement Area has been agreed upon by the Parties, M&G will cause a survey and metes and bounds description of the First Easement Area to be prepared by a licensed surveyor. The Parties will then execute and record an amendment to this Agreement which will include a survey plat and metes and bounds description of the exact location of the First Easement Area. Notwithstanding anything to the contrary contained in this Agreement, the portion of the First Easement that is not within the boundaries of the Second Easement Area (described below) shall terminate six months after the Connecting Trackage (described below) in the Second Easement Area becomes operational
- (b) Second Easement Area. Authority hereby grants and conveys to M&G, and its successors and assigns, a permanent, exclusive, rail access easement and right-of-way fifty feet (50') in width (the "Second Easement") along, upon, on, in, over, under, through, and across a portion of the Authority's Property to be determined. The exact location of the Second Easement (the "Second Easement Area") shall be determined by mutual good faith agreement between the Authority and M&G at such time a Authority requests. The Second Easement Area will run from the west end of M&G's rail yard on

Tract B to the “*Permanent M&G Direct Rail Service Connection Point*” shown on **Exhibit D** attached hereto. When the exact location of the Second Easement Area has been agreed upon by the Parties, the Authority will cause a survey and metes and bounds description of the Second Easement Area to be prepared by a licensed surveyor. The Parties will then execute and record an amendment to this Agreement which will include a survey plat and metes and bounds description of the exact location of the Second Easement Area.

**WHEREAS**, the parties have agreed on the exact location of the Second Easement Area and now desire to amend the Original Easement Agreement to terminate the First Easement Area and to include a survey plat depicting and describing the exact location of the Second Easement Area;

**WHEREAS**, the parties have agreed to expand the scope of the Original Easement Agreement to allow M&G to access and use a twenty-six foot wide access road constructed by Authority on the Second Easement Area (the “Authority Access Road”) for the purpose of accessing and servicing the railroad tracks within the Second Easement Area; and

**WHEREAS**, the Authority has agreed to grant to M&G an additional non-exclusive road access easement across an existing twenty foot (20’) wide service road to provide for ingress and egress between the Authority Access Road and the Joe Fulton International Trade Corridor (the “Fulton Corridor”) for the purpose of accessing and servicing the railroad tracks within the Second Easement Area;

**NOW THEREFORE**, for and in consideration of the premises set forth above and incorporated herein by this reference, the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged and confessed, and intending to be legally bound, Authority and M&G agree to the following:

1. Effective as of the Amendment Date, the following changes shall be made to the Original Easement Agreement without the need for any further action by the Parties:

The Original Easement Agreement is hereby amended as follows:

- I. The easement and right of way across the First Easement Area is hereby terminated;
- II. Section 1(b) is amended to read in its entirety as follows:

Authority hereby grants and conveys to M&G and its successors and assigns, a permanent, exclusive rail, and road access easement and right-of-way (the “Second Easement”) across the tract of land more particularly depicted and described by metes and bounds on **Exhibit Two**, attached hereto (the “Second Easement Area”). The Second Easement Area runs from the west end of M&G’s

rail yard on Tract B to the point marked on **Exhibit Two** as “M&G RR Switch,” being the same point as the “*Permanent M&G Direct Rail Service Connection Point*” shown on **Exhibit D** attached hereto. The Second Easement will consist of three parts. Part one is located between the west end of M&G’s rail yard on Tract B to the point marked “End of Non-Exclusive Road Access Easement” on **Exhibit Two** (“**Part One**”). Part One of the Second Easement shall be for M&G’s exclusive rail and exclusive rail service road use. Part two of the Second Easement is located between the point marked on **Exhibit Two** as the “End of M&G’s Non-Exclusive Road Access Easement” and the point marked on **Exhibit Two** as “M&G RR Switch” (“**Part Two**”). Part Two of the Second Easement will consist of a twenty-four foot (24’) wide rail easement exclusive to M&G; and the Authority’s twenty-six foot (26’) wide access road parallel and adjacent thereto as shown in **Exhibit Two** (“Authority’s Access Road”). Part three of the Second Easement will consist of an existing twenty foot (20’) wide service road owned by the Authority ( the “Existing Service Road”) located between the point marked on **Exhibit Three** as the “M&G RR Switch” and the point marked on **Exhibit Three** as “Existing Entrance” along the Fulton Corridor. M&G’s use of Authority’s Access Road and the Existing Service Road will be non-exclusive and may be used by M&G for the purpose accessing, inspecting, servicing, and operating the Connecting Trackage (hereinafter defined) from the west end of M&G’s rail yard on Tract B or from the Fulton Corridor.

- III. Section 1(c) is hereby amended to add subsection (iii) as follows:
  - (iii) to provide vehicular road access on and to the Easement Area to inspect, construct, maintain, repair, and replace the Connecting Trackage.
  
- IV. The last sentence of Section 1(c) is hereby amended to read as follows:

Authority shall not place any other improvements in, on or under the Easement Area, or otherwise take any action that would interfere with the purposes of the Easement, except for Authority’s Access Road, and except for the road crossings reserved by Authority in Section 2 below.

- V. Section 2 is hereby amended to add the following sentence to the end of Section 2:

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, at Authority's sole expense, to construct, operate, maintain, repair, replace, use, and let others use Authority's Access Road and the Existing Access Road.

2. This Amendment shall be binding on the successors and assigns of the Parties.

3. This Amendment may be executed in multiple counterparts, each of which will be considered to be an original. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. The Parties may provide signatures to this Amendment by facsimile or Adobe ".pdf" file and such facsimile or Adobe ".pdf" file signatures shall be deemed to be the same as original signatures.

**[Signature Page Immediately Follows]**

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized officers as of the dates provided below each signature, to be effective, however, for all purposes, as of the 19 day of May, 2015.

**PCCA:**

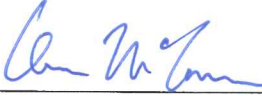
**Port Of Corpus Christi Authority  
Of Nueces County, Texas**

By:   
John P. LaRue  
Executive Director

Date: May 19, 2015

**M&G:**

**M&G Resins USA, LLC**

By:   
Kevin R. McCarren  
Vice President, Finance

Date: May 8, 2015

**[Notary Page Immediately Follows]**

THE STATE OF TEXAS §  
§  
COUNTY OF NUECES §

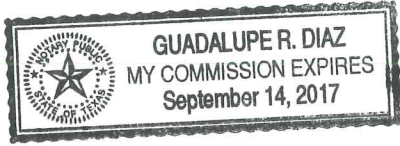
This instrument was acknowledged before me on the 19<sup>th</sup> day of MAY, 2015, by John P. LaRue, Executive Director of the PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, on behalf of the Authority.



Sherry L. Dubois  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 8 of May, 2015, by Kevin R. McCarren, Vice President, Finance of M&G RESINS USA, LLC, a Delaware limited liability company, on behalf of the company.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:  
Jason Davis  
Crain Caton & James, PC  
1401 McKinney Street, Suite 1700  
Houston, Texas 77010

**EXHIBIT "ONE"**  
**TO**  
**AMENDMENT OF RAIL ACCESS EASEMENT AND LICENSE**

Original Easement Agreement  
(See Attached)



**RAIL ACCESS EASEMENT AND LICENSE**  
(M&G 50-foot wide Rail Access Easement)

This Rail Access Easement and License (this "Agreement") dated this the 28 day of June, 2013 (the "Effective Date"), is executed by and between **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, a navigation district and political subdivision of the State of Texas ("Authority"), and (ii) **M&G RESINS USA, LLC**, a Delaware limited liability company ("M&G"). Authority and M&G are sometimes hereinafter referred to individually as "Party" and collectively as "Parties."

**RECITALS:**

A. Authority is the owner of that certain 36.151-acre tract of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1, which is more particularly described and depicted on Exhibit A attached hereto and incorporated herein by this reference for all purposes ("Authority's Property").

B. M&G is the owner of that certain 89.26-acre tract of land situated in Nueces County, Texas, in the Rincon del Oso Grant, Abstract No. 1, which is more particularly described on Exhibit B attached hereto and incorporated herein by this reference for all purposes (the "M&G Property").

C. M&G intends to construct a new PET and PTA processing facility and plant on the M&G Property (the "M&G Facility").

D. Authority is the owner of approximately 58.47 acres of land, more or less, in Nueces County, Texas ("Tract B"), which is more particularly described on Exhibit C attached hereto and which M&G is leasing from Authority pursuant to a lease agreement entered into contemporaneously with the execution of this Agreement ("Tract B Lease").

E. M&G will construct railroad tracks and other facilities on Tract B for the purpose of transporting cargo to and from the M&G Property and the M&G Facility, which M&G would not be able to do without the rail access easement and license contemplated by this Agreement.

F. A main line railroad track runs along the north side of the Authority's Inner Harbor (the "Fulton Lead Track") which is currently utilized by three Class I Railroads ("Class I Railroads").

G. Authority has a contract with a short line common carrier railroad ("Authority's Contractor") to provide terminal switching services on and railroad facility maintenance of the Authority's terminal railroad in the Inner Harbor of the Port of Corpus Christi.

H. Authority has agreed to grant and convey to M&G two 50-foot wide rail access easements on, over, within, and through a portion of the Authority's Property that will connect

M&G's tracks on Tract B to the Fulton Lead Track for the purpose of providing Tract B, the M&G Property and the M&G Facility with direct rail service by any of the railroads that serve the Port of Corpus Christi area (collectively, the "Railroads") and the Authority's Contractor.

AGREEMENTS:

NOW, THEREFORE, for and in consideration of the premises set forth above and incorporated herein by this reference, the sum of \$10.00 in hand paid, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged and confessed, and intending to be legally bound, Authority and M&G agree to the following:

1. Grant of Rail Access Easement and License.

(a) Easement and Easement Area. Authority hereby grants and conveys to M&G, and its successors and assigns, a permanent, exclusive, rail access easement and right-of-way fifty feet (50') in width (the "First Easement") along, upon, on, in, over, under, through, and across a portion of the Authority's Property to be determined. The exact location of the First Easement (the "First Easement Area") shall be determined by mutual good faith agreement between the Authority and M&G at such time as M&G requests. The First Easement Area will run from the west end of M&G's rail yard on Tract B to the "*Temporary M&G Rail Service Connection Point to Phase I*" shown on Exhibit D attached hereto. When the exact location of the First Easement Area has been agreed upon by the Parties, M&G will cause a survey and metes and bounds description of the First Easement Area to be prepared by a licensed surveyor. The Parties will then execute and record an amendment to this Agreement which will include a survey plat and metes and bounds description of the exact location of the First Easement Area. Notwithstanding anything to the contrary contained in this Agreement, the portion of the First Easement that is not within the boundaries of the Second Easement Area (described below) shall terminate six months after the Connecting Trackage (described below) in the Second Easement Area becomes operational

(b) Second Easement Area. Authority hereby grants and conveys to M&G, and its successors and assigns, a permanent, exclusive, rail access easement and right-of-way fifty feet (50') in width (the "Second Easement") along, upon, on, in, over, under, through, and across a portion of the Authority's Property to be determined. The exact location of the Second Easement (the "Second Easement Area") shall be determined by mutual good faith agreement between the Authority and M&G at such time a Authority requests. The Second Easement Area will run from the west end of M&G's rail yard on Tract B to the "*Permanent M&G Direct Rail Service Connection Point*" shown on Exhibit D attached hereto. When the exact location of the Second Easement Area has been agreed

upon by the Parties, the Authority will cause a survey and metes and bounds description of the Second Easement Area to be prepared by a licensed surveyor. The Parties will then execute and record an amendment to this Agreement which will include a survey plat and metes and bounds description of the exact location of the Second Easement Area.

For purposes of this Agreement, "Easement" means the First Easement and the Second Easement. For purposes of this Agreement, "Easement Area" means the First Easement Area and the Second Easement Area.

(c) Easement Purposes. The Easement shall only be used for the following purposes:

- (i) to provide free and uninterrupted railroad access to and from the west side of M&G's rail yard on Tract B by the Railroads and/or the Authority's Contractor; and
- (ii) to lay, install, construct, inspect, maintain, replace, remove, and use railroad tracks, subgrade, and railroad scales within, upon, over and across the Easement Area to connect M&G's tracks on Tract B to the Fulton Lead Track (the "Connecting Trackage") directly in the case of the Second Easement and over the Authority's track in the case of the First Easement.

The terminus location points of the Connecting Trackage are shown on the drawing attached hereto as Exhibit D.

Authority shall not place any improvements in, on or under the Easement Area, or otherwise take any action that would interfere with the purposes of the Easement, except for the road crossings reserved by the Authority in Section 2 below.

(d) Additional Rights. Authority further grants to M&G and its successors and assigns the additional right to enter onto the Authority's Property as reasonably necessary from time to time, at reasonable times, for purposes of constructing, maintaining, repairing, and replacing the Connecting Trackage in accordance with the purposes of the Easement and the terms of this Agreement. Such right of entry shall only be exercised after five (5) days advanced written notice to Authority unless in the event of an emergency. Entry by M&G onto the Authority's Property shall not unreasonably interfere with the Authority's use of the Authority's Property.

(e) Rail License. Authority hereby grants and conveys to M&G, and its successors and assigns, an irrevocable license ("License") for the

exclusive use of the portion of the Connecting Trackage owned by the Authority in the Second Easement Area. This License gives M&G the right to determine which Railroads will be permitted to use this portion of Connecting Trackage and the right to determine whether the Authority's Contract will be permitted to use this portion of the Connecting Trackage. This License will remain in effect for as long as the Easement is in effect, and when the Easement terminates, the License will terminate.

- (f) Duration of Easement. The Easement will remain in effect for as long as the Tract B Lease is in effect, and when the Tract B Lease terminates, the Easement will terminate. Furthermore, if M&G elects to abandon the Easement, the Easement will terminate.

2. Authority Reserved Rights. Authority and its successors and assigns forever shall have the right to continue to use and enjoy the surface and subsurface of their respective fee owned portions of the Easement Area for all purposes, provided such use does not impair, interfere with, or obstruct the use of the Easement Area by M&G for the purposes of the Easement. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right to construct, at the Authority's sole expense, up to three roadway crossings (collectively, the "Crossings") over the Easement Area and Connecting Trackage at locations determined by the Authority in its commercially reasonable discretion. Authority may install one or more of the Crossings in connection with its construction of the Connecting Trackage in the Second Easement Area as provided in Section 3(b) of this Agreement. Before commencing construction of any other Crossings, Authority shall give M&G at least fourteen days prior written notice. The Crossings shall include adequate drainage facilities necessary or appropriate for the prevention of ponding and/or flooding or any other kind of water damage in the general area where a Crossing is located. Said drainage facilities shall be installed, repaired, maintained and cleaned by Authority at the sole risk, cost and expense of Authority. Sole responsibility for protecting the Crossings from the standpoint of safety and policing the Crossings shall rest exclusively on the Authority at all times and under all circumstances. If it is deemed necessary by the Authority or any federal, state, or municipal authority or other governing body, to install automatic protection at the Crossings, said automatic crossing protection shall be installed and maintained by Authority at the sole cost and expense of the Authority. The Crossings shall not unreasonably interfere or unreasonably interrupt M&G's use and enjoyment of the Easement Area and the Connecting Trackage.

3. Construction of Connecting Trackage.

- (a) M&G shall be responsible, at its sole cost and expense, for the construction, maintenance and repair of the Connecting Trackage in the First Easement Area for so long as this Connecting Trackage is in operation and utilized by M&G. M&G's work shall be performed in a good and workmanlike manner and in accordance with all applicable statutes, ordinances, codes, rules, regulations, and requirements of the City of Corpus Christi ("City") and all federal, state, and local laws and regulations.

- (b) Authority shall be responsible for the design, permitting and construction of the Connecting Trackage in the Second Easement Area, which may include tying into a portion of the Connecting Trackage constructed by M&G in the First Easement Area. Authority's work shall be performed in a good and workmanlike manner and in accordance with all applicable statutes, ordinances, codes, rules, regulations, and requirements of the City and all federal, state, and local laws and regulations.

4. Maintenance of Easement Area.

- (a) M&G shall maintain the Connecting Trackage in a condition sufficient to permit safe passage upon, over, and across it at all times.
- (b) The Costs, as hereinafter defined, for the repair, maintenance and improvement of the Connecting Trackage shall be borne by M&G. "Costs" mean all out of pocket costs and expenses associated with the maintenance, repair, and/or replacement of the Connecting Trackage.

5. Character of Easement. This Agreement is irrevocable, shall run with and burden both the M&G Property and the Authority's Property, and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Each owner, by acceptance of a deed conveying title to the Authority's Property or the M&G Property, shall for himself and his successor and assigns be deemed to accept such deed upon and subject to each and all of the provisions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired said interest.

6. Equitable Right of Enforcement. Any interference or threatened interference with the Easement Area or any portion of the Easement Area may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting such interference and commanding compliance with its terms, which restraining orders and injunctions will be obtainable upon proof of the existence of such interference or threatened interference, and without the necessity of proof of inadequacy of legal remedies or irreparable harm; provided, however, this is not to be an election of remedies or a waiver of any other rights or remedies available at law or equity.

7. No Public Dedication. In no event and under no circumstances of any kind or nature whatsoever shall the Easement granted be deemed to be a gift or dedication of any portion of the Authority's Property for the benefit of the general public or to any governmental entity.

8. Title Exceptions. The Easement is further made subject to any restrictions, covenants, easements, rights-of-way, encumbrances, and mineral or royalty reservations or interests affecting the Authority's Property and appearing of record in the real property records of Nueces County, Texas, to the extent that said items and matters are in effect and validly enforceable against the Easement.

9. Warranty of Title. Subject to the matters set forth in Section 8, Authority warrants that it has good and indefeasible fee simple title to the Authority's Property, that it has lawful right and authority to grant to M&G the Easement, and that it will forever warrant and defend the Easement unto M&G and its successors and assigns against the claims of all persons claiming by, through, or under the Authority.

10. Exhibits. All Exhibits attached hereto are hereby incorporated herein by this reference and made a part hereof for all purposes.

11. Amendment. The provisions of this Agreement may be amended, modified, enlarged, or otherwise changed in whole or in part by the unanimous written consent and agreement of all of the current owners of the Authority's Property and the M&G Property as of the date of such amendment, which amendment shall be properly recorded in the real property records of Nueces County, Texas as a condition to its effectiveness.

12. Governing Law. THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

13. Severability/Interpretation. In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Whenever required by the context, as used in this Agreement, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa.

14. Notices. Any notice required or permitted under this Agreement shall be in writing with a statement therein to the effect that notice is given pursuant to this Agreement and the same shall be served (i) by hand delivery, (ii) by overnight courier service guaranteeing next business day delivery, (iii) via facsimile transmission to the facsimile number listed below, or (iv) by depositing same in the United States mail, registered or certified mail, return receipt requested, postage prepaid. Notice shall be deemed given and received if and when actually received (if not by mail), or on the date of delivery as shown on the return receipt (if by mail). Notices to the Authority and to M&G shall be sent to the following address (unless and until change of address information is sent to the other Party):

If to M&G: M&G Resins USA, LLC  
Attn.: Diane Mitchell  
27610 Huntington Road  
Apple Grove, West Virginia 25502  
Phone: 304-576-4652  
Fax: 304-576-4770  
Email: [diane.e.mitchell@gruppomgus.com](mailto:diane.e.mitchell@gruppomgus.com)

With a Copy to: Jason Davis  
Crain, Caton & James, PC  
1401 McKinney Street, 17<sup>th</sup> Floor  
Houston, Texas 77010  
Phone: 713-752-8679  
Email: jdavis@craincaton.com

If to Authority: Port of Corpus Christi Authority  
Attn: Executive Director  
222 Power Street  
P.O. Box 1541  
Corpus Christi, Texas 78403  
Fax: 361-881-5155

Either Party may designate by Notice given to the other Party a new address, facsimile number or person to which Notices hereunder shall thereafter be sent.

15. Counterparts. This Agreement may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

*[Next page is the signature page]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

**Authority:**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By:   
JOHN P. LARUE, Executive Director

**M&G:**

**M&G RESINS USA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Kevin R. McCarren, Vice President, Finance

**ATTACHMENTS:**

- Exhibit "A" – Legal Description of Authority's Property
- Exhibit "B" – Legal Description of M&G Property
- Exhibit "C" – Legal Description of Tract B
- Exhibit "D" – Drawing of Rail Connection Points



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

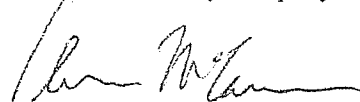
**Authority:**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_  
JOHN P. LARUE, Executive Director

**M&G:**

**M&G RESINS USA, LLC,**  
a Delaware limited liability company

By:  \_\_\_\_\_  
Kevin R. McCarren, Vice President, Finance

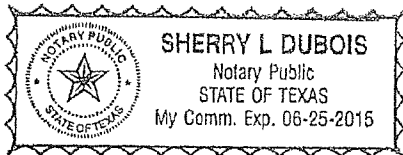
**ATTACHMENTS:**

- Exhibit "A" – Legal Description of Authority’s Property
- Exhibit "B" – Legal Description of M&G Property
- Exhibit "C" – Legal Description of Tract B
- Exhibit "D" – Drawing of Rail Connection Points

ACKNOWLEDGMENTS

THE STATE OF TEXAS     §  
                                          §  
COUNTY OF NUECHES     §

This instrument was acknowledged before me on this 27<sup>th</sup> day of June, 2013, by John P. Larue, as Executive Director of PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas, on behalf of said navigational district.



Sherry L. Dubois  
Notary Public, State of Texas  
My commission expires: 6-25-15  
SHERRY L. DUBOIS  
Print or Type Name of Notary

THE STATE OF \_\_\_\_\_ §  
                                          §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Kevin R. McCarren, Vice President, Finance of M&G RESINS USA, LLC, a Delaware limited liability company, on behalf of such company.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Print or Type Name of Notary

AFTER RECORDING RETURN TO:  
Jason Davis  
Crain Caton & James, PC  
1401 McKinney Street, Suite 1700  
Houston, Texas 77010

ACKNOWLEDGMENTS

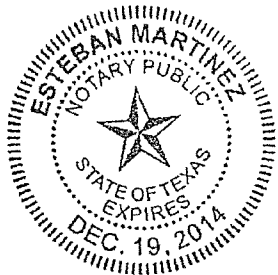
THE STATE OF TEXAS     §  
                                          §  
COUNTY OF NUECHES     §

This instrument was acknowledged before me on this \_\_\_\_\_ day of June, 2013, by John P. Larue, as Executive Director of PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas, on behalf of said navigational district.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Print or Type Name of Notary

THE STATE OF TEXAS                     §  
                                                       §  
COUNTY OF HARRIS                     §

This instrument was acknowledged before me on this 96<sup>th</sup> day of June, 2013, by Kevin R. McCaren, Vice President, Finance of M&G RESINS USA, LLC, a Delaware limited liability company, on behalf of such company.



Esteban Martinez  
Notary Public, State of TEXAS  
My commission expires: 12-19-2014  
ESTEBAN MARTINEZ  
Print or Type Name of Notary

AFTER RECORDING RETURN TO:  
Jason Davis  
Crain Caton & James, PC  
1401 McKinney Street, Suite 1700  
Houston, Texas 77010

003934/000005 -- 272139  
142 - 843635v3 --  
003934/000005  
142 - 857905v1

**EXHIBIT A**

**Authority's Property - Legal Description  
(See Attached)**

003934/000005 -- 272139  
142 - 843635v3 -  
003934/000005  
142 - 857905v1



**EXHIBIT B**  
**M&G's Property - Legal Description**

MURRAY BASS, JR., P.E., R.P.L.S.  
 NIXON M. WELSH, P.E., R.P.L.S.  
[www.bass-welsh.com](http://www.bass-welsh.com)  
 e-mail: [nixmw@aol.com](mailto:nixmw@aol.com)

3100 F. ALAMEDA, ZIP 78404  
 361 882-3521 ~ FAX 361 882-1265  
 e-mail: [murrawir@aol.com](mailto:murrawir@aol.com)

**BASS & WELSH ENGINEERING**  
 TX Registration No. F-52  
 Survey Registration No. 100027-00  
 P.O. Box 6597  
 Corpus Christi, TX 78466-6597

June 14, 2013

**Field Note Description**  
**Remainder Tract**

Being a tract situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1 and being the remainder of that 168.22 acre tract described as Tract 1 in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Corporation recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas after the deduction of the heretofore described tracts "A", "B" and "C" and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the east boundary of the 168.22 acre tract, said point being the southeast corner of the heretofore described Tract "B";

THENCE S 21°16'36" W along the east line of the 168.22 acre tract a distance of 190.10 to a 5/8 inch iron rod found for an intermediate corner of the 168.22 acre and an intermediate corner of this tract;

THENCE S 36°55'06" W continuing along the east boundary of the 168.22 acre tract a distance of 289.15 feet to a 5/8 inch iron rod set for the most northeasterly corner of the heretofore described Tract "C" for a corner of this tract;

THENCE along the north boundary of the heretofore described Tract "C" as follows:

- N 53°05'36" W a distance of 185.52 feet;
- S 36°54'24" W a distance of 124.49 feet;
- S 82°01'19" W a distance of 125.52 feet;
- N 69°42'22" W a distance of 77.83 feet;
- N 53°06'22" W a distance of 551.60 feet to a point;

THENCE S 37°02'26" W a distance of 201.05 feet to a point;

THENCE N 52°57'34" W a distance of 128.53 feet to a point;

THENCE S 36°53'26" W a distance of 114.09 feet to the most westerly corner of Tract "C" for a corner of this tract, said point lying in the south boundary of the 168.22 acre tract and the north bulkhead line of the Port of Corpus Christi;

THENCE N 53°06'25" W a distance of 4332.21 feet to the southwest corner of the 168.22 acres for the southwest corner of this tract;

THENCE N 45°36'41" E with west line of the 168.22 acre tract a distance of 160.84 feet to a 5/8 inch iron rod found for an intermediate corner of the 168.22 acres and a corner of this tract;

THENCE continuing along the west boundary of the 168.22 acres, N 0°10'50" E a distance of 196.10 feet to a 5/8 inch iron rod found for an intermediate corner of the 168.22 acres and a corner of this tract;

MBJ:sab

09028-Field Note Desc-Remainder.doc

Page 1 of 2

003934/000005 -- 272139  
 142 - 843635v3 -  
 003934/000005  
 142 - 857905v1

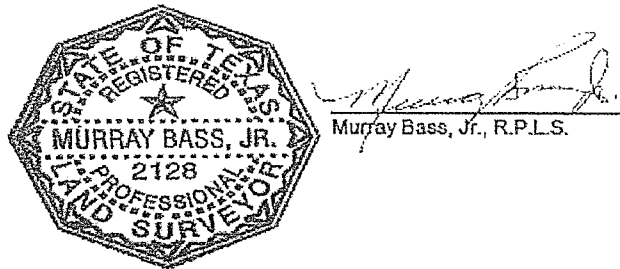
Exhibit "B" – continued

THENCE continuing along the west line of the 168.22 acres N 44°54'24" E a distance of 69.83 feet to the southwest corner of the heretofore described Tract "B" for the northwest corner of this tract;

THENCE S 53°06'25" E along the south line of Tract "B" a distance of 2074.76 feet to a point for a corner of Tract "B" and an interior corner of this tract;

THENCE N 35°39'01" E along the boundary of Tract "B" a distance of 645.67 feet to an interior corner of Tract "B" and a corner of this tract;

THENCE continuing along the boundary of Tract "B" S 52°57'34" E a distance of 3333.27 feet to the POINT OF BEGINNING, forming a tract embracing 89.26 acres.



Note: Basis of Bearing is State of Texas, Lambert Grid, South Zone, NAD 1927

MBJ:sab

09020-Field Note Desc-Remainder.doc

Page 2 of 2

003934/000005 -- 272139  
142 - 843635v3 -  
003934/000005  
142 - 857905v1

12

Execution Copy

EXHIBIT C  
(Tract B Legal Description)

MURRAY BASS, JR., P.E., R.P.L.S.  
NIXON M. WELSH, P.E., R.P.L.S.  
www.bass-welsh.com  
e-mail: nixonmw@aol.com

ALAMEDA, ZIP 78404  
561 882-5521 ~ FAX 561 882-1265  
e-mail: murrayjr@aol.com

BASS & WELSH ENGINEERING  
TX Registration No. F-52  
Survey Registration No. 100027-00  
P.O. Box 6597  
Corpus Christi, TX 78466-6597

June 3, 2013

Field Note Description  
Tract "B"

Being a tract situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1 and being a portion of that 168.22 acre tract described as Tract 1 in the deed to M & G Resins, USA, LLC, a Delaware Limited Liability Company recorded under Clerk's File No. 2013010971, Official Public Records of Nueces County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod set in the east boundary of Tract 1 and the west boundary of the 2,694.93 acre tract patented to the Nueces County Navigation District No. 1 by the State of Texas known as Survey 939 recorded in Volume 192 at Page 579 of the deed records of Nueces County, Texas, whence the northeast corner of the 168.22 acre Tract 1 bears N 21°16'36" E at 130.35 feet

THENCE S 21°16'36" W along the east boundary of Tract 1 and the west boundary of the Nueces County Navigation District Tract a distance of 350.05 feet to a 5/8 inch iron rod set for the southeast corner of this tract;

THENCE N 52°57'34" W 336.88 feet south of and parallel to the south boundary of the heretofore described Tract "A" a distance of 3,333.27 feet to a point for an interior corner of this tract, said point lying in the west margin of the drainage easement described as Tract 3B in the document recorded under Clerk's File No. 2003000174, Deed Records, Nueces County, Texas;

THENCE S 35°39'01" W along the west boundary of the heretofore referenced drainage easement a distance of 645.67 feet to a 5/8 inch iron rod set for a corner of this tract;

THENCE N 53°06'25" W a distance of 2,074.76 feet to a 5/8 inch iron rod set in the west line of the 168.22 acre tract described as Tract 1 for the southwest corner of this tract;

THENCE N 44°54'24" E along the west boundary of the 168.22 acre tract a distance of 360.50 feet to a 5/8 inch iron rod set for the northwest corner of this tract, said point being the southwest corner of the heretofore referenced Tract "A";

THENCE along the south boundary of Tract "A", S 72°48'23" E a distance of 1649.81 feet to the point of curvature of a curve to the right;

THENCE continuing along the south boundary of Tract "A", along said curve to the right whose radius is 1186.50 feet, in a southeasterly direction a distance of 411.00 feet to the point of tangency of said curve;

THENCE continuing along the south boundary of Tract "A", S 52°57'34" E a distance of 3,293.28 feet to the POINT OF BEGINNING, forming a tract embracing 58.47 acres.



*Murray Bass, Jr.*  
Murray Bass, Jr., R.P.L.S.

Note: State of Texas, Lambert Grid, South Zone, NAD 1927  
MBJ:sab

09028-Field Note Desc-Tract B.doc

Page 1 of 1

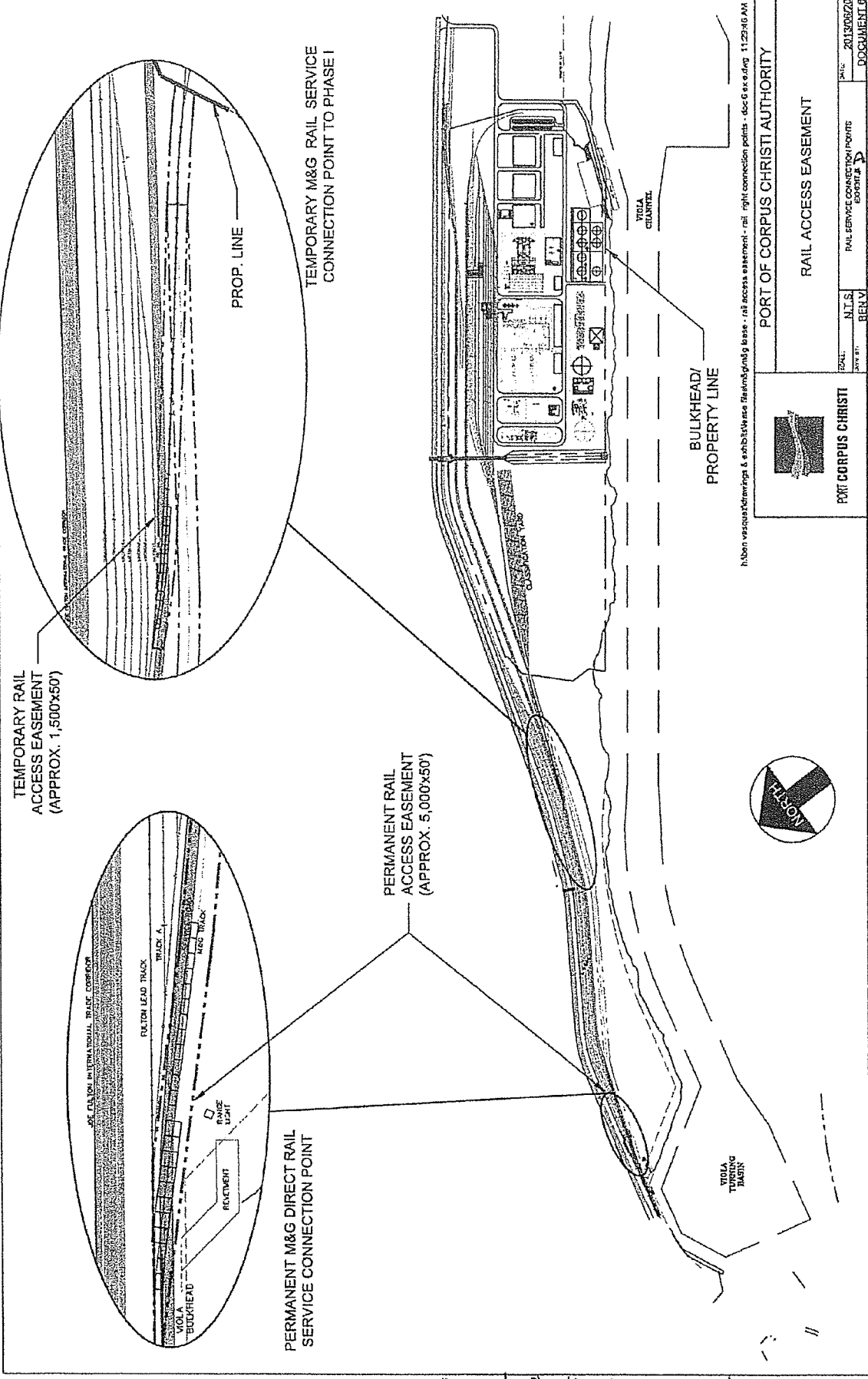
003934/000005 -- 272139  
142 - 843635v3 -  
003934/000005  
142 - 857905v1



**EXHIBIT D**

**Rail Connection Points Drawings & Descriptions  
(See Attached)**

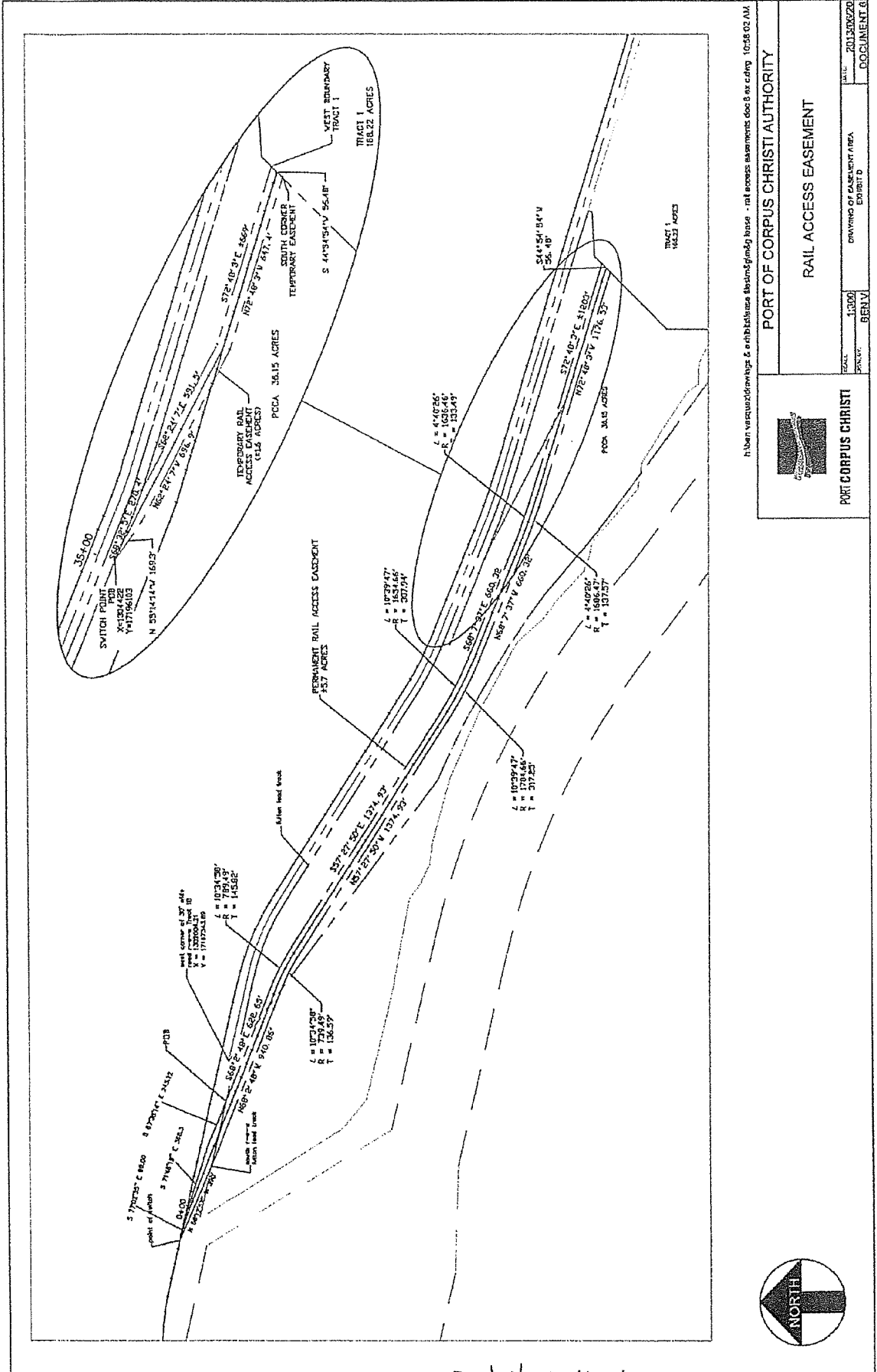
003934/000005 -- 272139  
142 - 843635v3 -  
003934/000005  
142 - 857905v1



huben vesquasctemwngs & subhstlyse tham&gndg base . rail access easement . rail right connection points - doc 6 a.e.dwg 11.23.16 AM

SCALE:	N.T.S.	DATE:	2/17/16
BY:	REL/V	PROJECT:	RAIL SERVICE CONNECTION POINTS
		NO.:	201309220
			DOCUMENT 6

Printed 11/17/16 - page 1



Urban variances/drawings & exhibit/assess/assess/assess - rail access easements doc 8 ex c.d.r.p. 10/28/02.AJ

PORT OF CORPUS CHRISTI AUTHORITY

RAIL ACCESS EASEMENT

PORT OF CORPUS CHRISTI

SCALE: 1:3000

DATE: 2013/06/20

PROJECT: BENV

DRAWING NO.: EXHIBIT D

DOCUMENT: 3



Exhibit 15

RAIL ACCESS EASEMENT  
METES & BOUNDS LEGAL DESCRIPTION OF EASEMENT AREA  
EXHIBIT D

PERMANENT RAIL ACCESS EASEMENT  
METES & BOUNDS LEGAL DESCRIPTION  
OF EASEMENT AREA

Being a railroad right-of-way tract situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1, the W.S. McGregor Survey 583, Abstract 1001 and the W.S. McGregor Survey 582, Abstract 1000. Said tract also being a portion of 1,783.33 acre tract described in Volume 146 Page 228 D.R.N.C. and a 36.151 acre tract of land conveyed to Port of Corpus Christi from Driscoll Foundation per Document #2009037666 O.R.N.C.T.

COMMENCING at the west corner of a 30 foot wide road right-of-way designated Tract 1B deeded to Port of Corpus Christ Authority (Document #200300173) O.R.N.C.T. said west corner having coordinates of X = 1302004.21 Y = 17197343.89 (Texas South Zone NAD83);

THENCE N 85°50'25" W for a distance of 194.8 feet to the point of beginning;

THENCE S 68°2'48" E along north boundary of tract for a distance of 622.65 feet to a point of curvature to the right;

THENCE along north boundary said curve to the right whose radius is 789.49 feet for a distance of 145.82 feet to the point of tangency of said curve;

THENCE continuing along north boundary S 57°27'50" E for a distance of 1,374.93 feet to a point of curvature to the left;

THENCE along north boundary said curve to the left whose radius is 1,654.66 feet a distance of 307.94 feet to the point of tangency of said curve;

THENCE continuing along north boundary S 68°7'37" E for a distance of 660.32 feet to a point of curvature to the left;

THENCE along north boundary said curve to the left whose radius is 1,636.47 feet a distance of 133.49 feet to the point of tangency of said curve;

THENCE along north boundary S 72°48'3" E for a distance of ± 1,203 feet to a point being on the west boundary of a 168.22 acre tract known as Tract1 surveyed by Bass & Welsh dated: 11-13-2012;

THENCE S 44°54'54" W along said Tract 1 west boundary for a distance of 56.48 feet to the south corner of this tract;

THENCE along the south boundary of this tract N 72°48'3" W for a distance of 1,176.53 feet to a point of curvature to the right;

THENCE along south boundary said curve to the right whose radius is 1,686.47 feet a distance of 137.57 feet to point of tangency of said curve;

THENCE along south boundary N 68°7'37" W for a distance of 660.32 feet to a point of curvature to the right;

DOCUMENT 6

Exhibit "D" - page 3

RAIL ACCESS EASEMENT  
METES & BOUNDS LEGAL DESCRIPTION OF EASEMENT AREA  
EXHIBIT D

THENCE along south boundary said curve to the right whose radius is 1,704.66 feet for a distance of 317.25 feet to a point of tangency of said curve;

THENCE along south boundary N 57°27'50" W for a distance of 1,374.93 feet to a point of curvature to the left;

THENCE along south boundary said curve to left whose radius is 739.49 feet for a distance of 136.59 feet to point of tangency of said curve;

THENCE along south boundary N 68°2'48" W for a distance of 940.86 feet to a point lying in the south right-of-way of Fulton Lead Track

THENCE N 66°12'57" W for a distance of ± 390 feet to a future point of switch on the Fulton Lead Track;

THENCE along centerline of Fulton Lead Track S 77°2'35" E for a distance of ± 99 feet to a point;

THENCE leaving Fulton Lead Track S 71°46'19" E for a distance of 366.3 feet to a point;

THENCE S 67°38'14" E for a distance of 245.1 feet to point of beginning containing 5.7 acres more or less.

TEMPORARY RAIL ACCESS EASEMENT  
METES & BOUNDS LEGAL DESCRIPTION  
OF EASEMENT AREA

Being a Temporary Rail Access Easement situated in Nueces County, Texas in the Rincon del Oso Grant, Abstract No. 1. Said temporary easement also being a portion of a 1,783.33 acre tract described in Volume 146, Page 228 D.R.N.C. and a 36.151 acre tract of land conveyed to Port of Corpus Christi from Driscoll Foundation per Document #2009037666 O.R.N.C.T.

BEGINNING at switch point of said temporary rail. Said point also lying in the centerline of a future railroad track designated as Track E having approximate coordinates of X=1304422 Y=17196103 (Texas South Zone NAD83);

THENCE along centerline of said future Track E S 68°32'5" E for a distance of 270.4 feet to a point;

THENCE along north line of temporary easement S 62°24'7" E for a distance of 591.5 feet to a point;

THENCE along said north line of temporary easement and the north line of the aforementioned Permanent Rail Access Easement S 72°48'3" E for a distance of ± 669 feet to a point being on the west boundary of a 168.22 acre tract known as Tract 1 surveyed by Bass & Welsh dated: 11-13-2012.

THENCE S 44°54'54" W along said Tract 1 west boundary for a distance of 56.48 feet to the south corner of this temporary easement;

THENCE along the south line of temporary easement and the south line of the Permanent Rail Access Easement N 72°48'3" W for a distance of 647.4 feet to a point;

DOCUMENT 6

Exhibit 'D' - page 4

RAIL ACCESS EASEMENT  
METES & BOUNDS LEGAL DESCRIPTION OF EASEMENT AREA  
EXHIBIT *D*

THENCE leaving said south line of Permanent Rail Access Easement N 62°24'7" W for a distance of 696.9 feet to a point;

THENCE N 55°14'14" W for a distance of 169.3 feet to point of beginning containing 1.6 acres more or less.

Reference is made to a plat designated as Rail Access Easement – Exhibit D which further describes this easement.

This description based from office records and not from a ground survey.

References:

Bass & Welsh Land Title  
Survey of 409 Acres dated: 11-13-2012

Coym, Rehmet & Gutierrez  
Survey of 30 foot Wide Road Right-of- Way Dated: 6-19-2002

AutoCAD file: 2013 06 14 M&G Direct Connect Plan provided by CH2M HILL


DOCUMENT 6

Exhibit "D" - page 5

Doc# 2013026818  
# Pages 23  
07/01/2013 9:38AM  
e-Filed & e-Recorded in the  
Official Public Records of  
NUECES COUNTY  
DIANA T. BARRERA  
COUNTY CLERK  
Fees \$99.00

Any provision herein which restricts the Sale, Rental  
or use of the described REAL PROPERTY because of  
Race, Color, Religion, Sex, Handicap, Familial Status  
or National Origin is invalid and unenforceable  
under FEDERAL LAW, 3/12/89

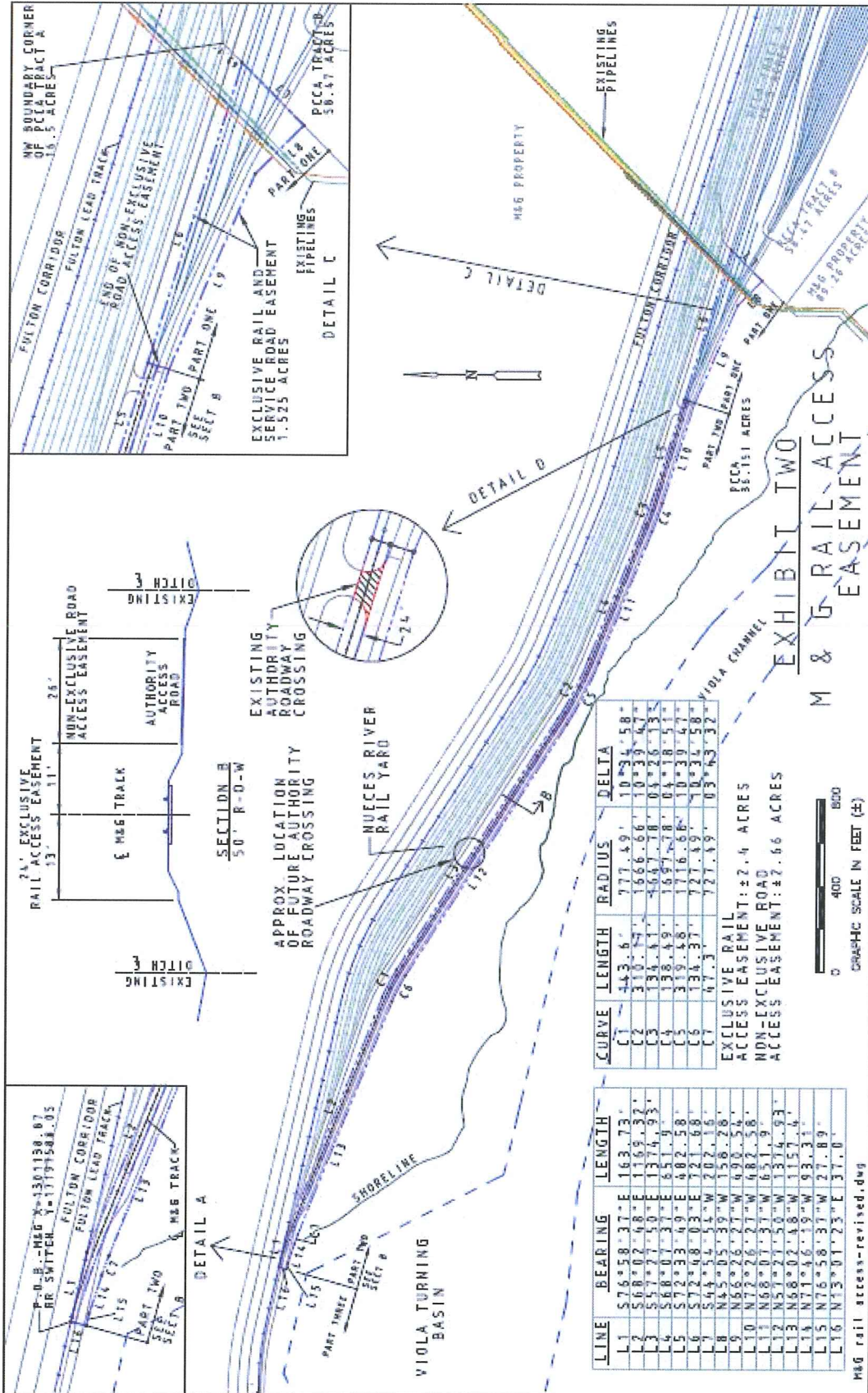
STATE OF TEXAS  
COUNTY OF NUECES  
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS  
FILED IN FILE NUMBER SEQUENCE ON THE DATE AND  
AT THE TIME STAMPED HEREON BY ME AND WAS DULY  
RECORDED IN THE OFFICIAL PUBLIC  
RECORDS OF NUECES COUNTY TEXAS

 *Diana T. Barrera*  
COUNTY CLERK  
NUECES COUNTY, TEXAS

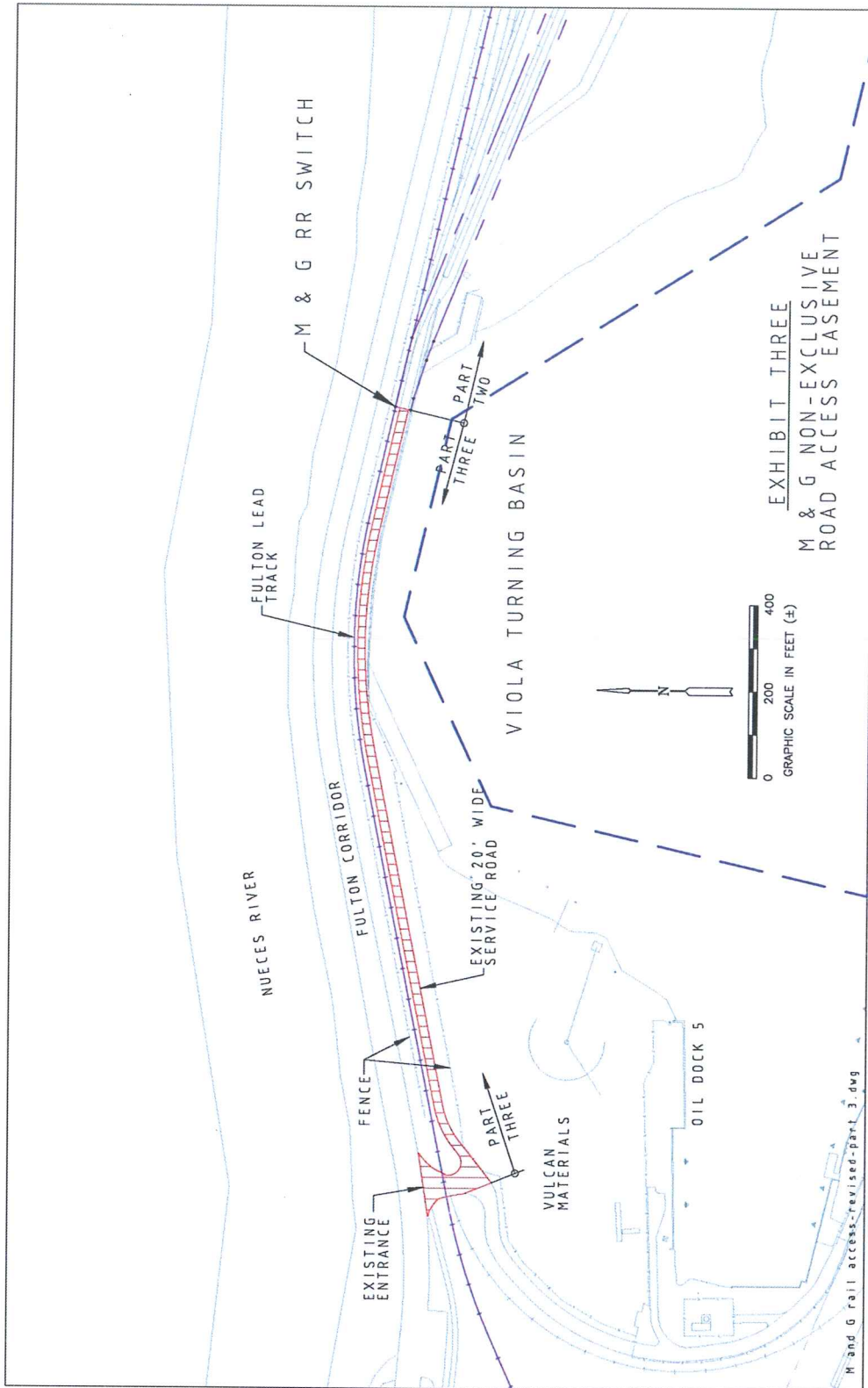
**EXHIBIT "TWO"**  
TO  
**AMENDMENT OF RAIL ACCESS EASEMENT AND LICENSE**

Second Easement Area  
(See Attached)





WL 289553v8  
 003934/000005  
 142 - 1494368v2



**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-A***

**Approve Contracts with Microsoft and Novacoast for  
Replacement of Email, Office and Network Systems**

For over twenty years the Port has used Novell for email and network systems. Many businesses, especially those in government and education, built their first networks around Novell. However, during the last ten years Novell has lost its market share to Microsoft in this space. It is becoming difficult to find software that is compatible with Novell along with staff and consultants to support it. Staff allocated \$168,136 in the 2015 budget to replace Novell email and network systems with Microsoft Office 365 (email) and Active Directory (network).

Staff received a quote from SHI, an authorized Microsoft Enterprise Enrollment partner, for a subscription to Microsoft Office 365 at an annual amount of \$30,534.50. This is a three-year agreement with Microsoft for a total cost of \$91,603.50. This agreement is in accordance with the State of Texas Directory of Information Resources contract DIR-SDD-2503.

Microsoft Office 365 provides hosted email services in six Microsoft owned data centers across the United States. This delivers superior redundancy of our email and provides uninterrupted access in the event of hurricanes or other disasters in our area. A subscription with Microsoft Office 365 will license the Port for the latest Microsoft Office suite on PC, tablets and phones along with access to upgrades at no additional expense. Currently, the Port is licensed for Microsoft Office 2007 which is nearing its end of life and will not be compatible with future operating systems.

Staff received statements of work from Novacoast for professional services to migrate Novell email and network systems to Microsoft Office 365 and Active Directory in the aggregate amount of \$137,058. These statements of work are in accordance with the State of Texas Directory of Information Resources contract DIR-SDD-2037.

Staff recommends approval of a three-year contract with Microsoft through SHI and statements of work with Novacoast in the total amount of \$228,661.50.

**LEAD CONTACT:** Tyler Fuhrken at 361-885-6150 or [tyler@pocca.com](mailto:tyler@pocca.com).



**Pricing Proposal**

<b>Quotation #:</b>	8408442
<b>Description:</b>	Microsoft Office 365 E3 Enterprise Agreement
<b>Created On:</b>	Jun-03-2015
<b>Valid Until:</b>	Jun-30-2015

**PORT OF CORPUS CHRISTI**

**Tyler Fuhrken**

PO BOX 1541 AUTH. OF  
 NUECES;  
 ATTN: Accounts Payable  
 CORPUS CHRISTI, TX 78403  
 United States  
 Phone: (361) 882-5633  
 Fax:  
 Email: tyler@poccca.com

**Account Executive, East Texas, Public Sector**

**Tara Hayes**

1301 South Mopac Expressway  
 Suite 375  
 Austin, Texas 78746  
 Phone: (832) 661-7910  
 Fax: (281) 549-6471  
 Email: Tara\_Hayes@shi.com

All Prices are in US Dollar(USD)

Product	Qty	Your Price	Total
1 Off365PE3 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-10842 <b>Note:</b> * includes client portions for Exchange, Lync and SharePoint - Full E3 Suite	125	\$205.20	\$25,650.00
2 Off365PK1 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: TPA-00001 <b>Note:</b> K Suite	45	\$31.20	\$1,404.00
3 WinSvrCAL ALNG LicSAPk MVL PER USER CAL Microsoft - Part#: R18-00096	170	\$10.70	\$1,819.00
4 WinSvrStd ALNG LicSAPk MVL 2Proc Microsoft - Part#: P73-05897	5	\$332.30	\$1,661.50
		<b>Total</b>	<b>\$30,534.50</b>

**Additional Comments**

DIR-SDD-2503

\*\* EXCLUDES client portion for Win Svr CAL and/or System Center Config Manager (Bridge license can be added if needed)

**Retrieve your quote:**

<https://www.shi.com/Quotes/Quoteinfo.aspx>

The Products offered under this proposal are subject to the [SHI Return Policy](#), unless there is an existing agreement between SHI and the Customer.



Volume Licensing

Enterprise Enrollment

State and Local

Enterprise Enrollment number  
*(Microsoft to complete)*


Proposal ID/Framework ID


Previous Enrollment number  
*(Reseller to complete)*

Earliest expiring previous  
Enrollment end date <sup>1</sup>

**This Enrollment must be attached to a signature form to be valid.**

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) any supplemental contact information form or Previous Agreement/Enrollment form that may be required, (5) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. If the Enrollment is renewed, the renewal term will expire 36 full calendar months after the effective date of the renewal term. Any reference in this Enrollment to "day" will be a calendar day.

**Product order.** The Reseller will provide Enrolled Affiliate with Enrolled Affiliate's Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Enrolled Affiliate and the Reseller. The Reseller will provide Microsoft with the order separately from this Enrollment.

**Terms and Conditions**

**1. Definitions.**

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product List and chosen by Enrolled Affiliate under this Enrollment.

“Enterprise Online Service” means any Online Service designated as an Enterprise Online Service in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

“Expiration Date” means the date upon which the Enrollment expires.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“L&SA” means a License with Software Assurance for any Product ordered.

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), OR (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, OR (2) an Industry Device, OR (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of Enrolled Affiliate’s Enterprise. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product List.

“Reserved License” means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“Transition” means the conversion of one or more License to or from another License(s). Products eligible for Transition and permitted Transitions are identified in the Product List.

“Transition Period” means the time between the Transition and the next Enrollment anniversary date for which the Transition is reported.

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Use Rights. The Use Rights for Online Services are published in the Online Services Terms.

**2. Order requirements.**

- a. **Minimum Order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
  - (i) **Enterprise Commitment.** If ordering any Enterprise Products, Enrolled Affiliate's order must include coverage for all Qualified Users and/or all Qualified Devices in any Product pool an Enterprise Product is ordered in. Enrolled Affiliate may elect to mix Enterprise Products and the corresponding Enterprise Online Services within a Product pool as long as all devices not covered by an Enterprise Product are only used by users covered with a per user license.
  - (ii) **Enterprise Online Services.** If ordering Enterprise Online Services *only*, then Enrolled Affiliate must maintain at least 250 Subscription Licenses.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products and Services.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Adding Products.**
  - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.
  - (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses.
- f. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
  - (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
  - (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
  - (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product List, Enrolled Affiliate may reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.

**(iv) Transitions.** Enrolled Affiliate must report all Transitions. Transitions may result in an increase in certain Licenses to be included on the true-up order and a reduction of other Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. For Licenses paid up front, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

**(v) Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product List, as follows:

- a)** For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
- b)** For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
- c)** For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

**(vi) Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

**(vii) True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

**(viii) Late true-up order.** If the true-up order or update statement is not received when due:

- 1)** Microsoft will invoice Reseller for all Reserved Licenses not previously ordered.
- 2)** Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

**g. Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

- (i)** For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
- (ii)** If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.



- (iii) If Enrolled Affiliate has previously ordered an Online Service as an Additional Product and wants to step-up to an Enterprise Online Service eligible for a Transition, the step-up may be reported as a Transition.
- (iv) If Enrolled Affiliate Transitions a License, it may be able to further step-up the Transitioned License. If Enrolled Affiliate chooses to step-up and the step-up License is separately eligible to be Transitioned, such step-up Licenses may result in a License reduction at the Enrollment anniversary date following the step-up.
- h. Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- i. Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### **3. Pricing.**

- a. Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service will be fixed throughout the applicable initial or renewal Enrollment term. Price levels and Microsoft's prices for Resellers are reestablished at the beginning of the renewal term. However, if Enrolled Affiliate qualifies for a different price level during the applicable initial or renewal term, Microsoft may at its discretion establish a new price level for future new orders either upon Enrolled Affiliate's request or on its own initiative. Any changes will be based upon price level rules in the Product Selection Form.

### **4. Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and on each Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

### **5. Transitions.**

- a. Transition requirements.**

  - (i) Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. Enrolled Affiliate may not, however, reduce the quantity of Licenses or associated Software Assurance prior to the end of the Transition Period.
  - (ii) Enrolled Affiliate must order the Licenses to which it is transitioning for the year(s) following the Transition Period.
  - (iii) If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance must be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may

not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by Enrolled Affiliate.

- (iv) If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.
  - (v) If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.
- b. Effect of Transition on Licenses.**
- (i) Transition will not affect Enrolled Affiliate's rights in perpetual Licenses paid in full.
  - (ii) New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.
  - (iii) For L&SA not paid in full at the end of the Transition Period, Enrolled Affiliate will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.
  - (iv) For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

## **6. End of Enrollment term and termination.**

- a. General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. Renewal Option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing the Enrollment for one additional 36 full calendar month term or signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. The renewal term will start on the day following the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.
- c. If Enrolled Affiliate elects not to renew.**
  - (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA.
  - (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product List, the following options are available at the end of the Enrollment initial or renewal term.
    - 1) Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate's price level as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate does want an Extended Term, Reseller must submit a request to Microsoft. Microsoft must receive the request not less than 30 days prior to the Expiration Date.
    - 2) Cancellation during Extended Term.** If Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, Reseller must submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received the notice.

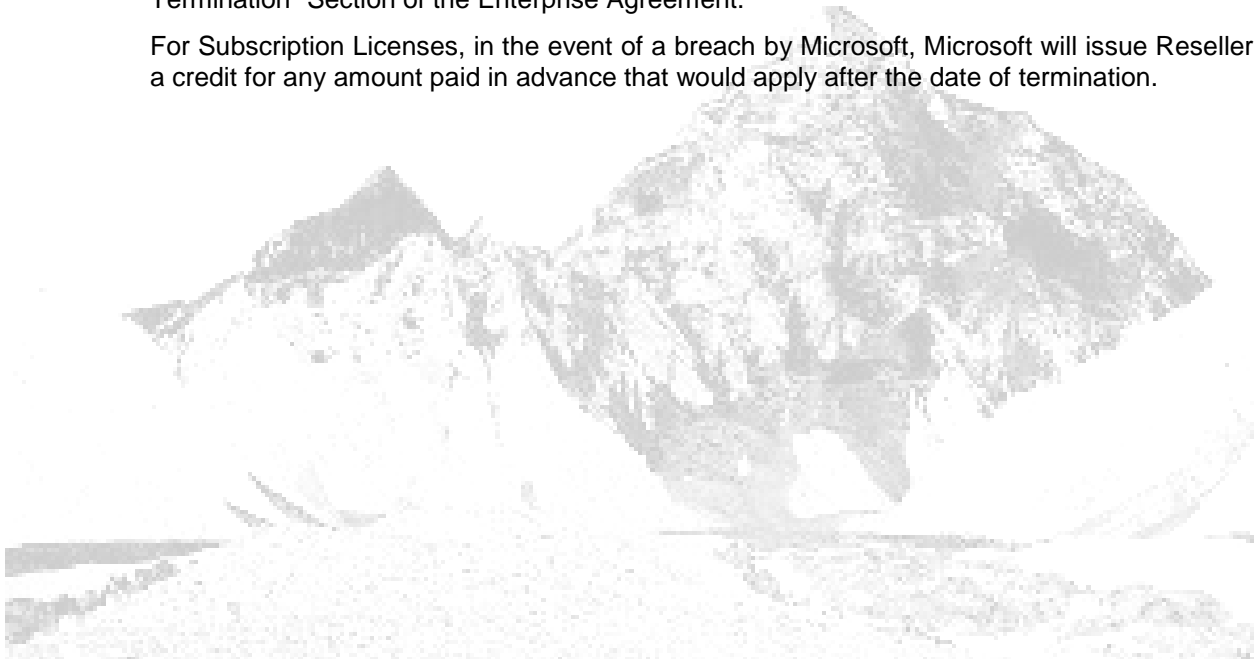
**(iii) Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

**(iv) Customer Data.** Upon expiration or termination of a License for Online Services, Microsoft will keep Customer's Data in a limited function account for 90 days so that Customer may extract it. Enrolled Affiliate will reimburse Microsoft if there are any associated costs. After 90 days Microsoft will disable Enrolled Affiliate's account and will delete its Customer Data. Enrolled Affiliate agrees that, other than as described above, Microsoft has no obligation to continue to hold, export or return Enrolled Affiliate's Customer Data and that Microsoft has no liability whatsoever for deletion of Enrolled Affiliate's Customer Data pursuant to these terms.

**d. Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement.

**e. Early termination.** Any Early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.



## Enrollment Details

### 1. Enrolled Affiliate's Enterprise.

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates

### 2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

**Name of entity (must be legal entity name)\*** Port of Corpus Christi Authority

**Contact name\* First** Tyler **Last** Fuhrken

**Contact email address\*** tyler@pocca.com

**Street address\*** 222 Power Street

**City\*** Corpus Christi

**State/Province\*** TX  
**Postal code\*** 78401-  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\*** USA  
**Phone\*** (361) 882-5633  
**Tax ID** 74-6000609  
*\* indicates required fields*

**b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized for applicable Online Services to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

**Contact name\* First Last**  
**Contact email address\***  
**Street address\***  
**City\***  
**State/Province\***  
**Postal code\*** -  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\***  
**Phone\***  
**Language preference.** Choose the language for notices. English  
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.  
*\* indicates required fields*

**c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name\*: First Last**  
**Contact email address\***  
**Phone\***  
 This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.  
*\* indicates required fields*

**d. Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\*** SHI International Corp  
**Street address (PO boxes will not be accepted)\*** 290 Davidson Ave  
**City\*** Somerset  
**State/Province\*** NJ  
**Postal code\*** 08873  
**Country\*** USA  
**Contact name\***  
**Phone\*** 888 764 8888  
**Contact email address\***  
*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

<b>Signature*</b> _____ <b>Printed name*</b> Tyler Fuhrken <b>Printed title*</b> IT Manager <b>Date*</b> _____
-------------------------------------------------------------------------------------------------------------------------

*\* indicates required fields*

**Changing a Reseller.** If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
  - (i) Additional notices contact
  - (ii) Software Assurance manager
  - (iii) Subscriptions manager
  - (iv) Customer Support Manager (CSM) contact

### **3. Financing elections.**

Is a purchase under this Enrollment being financed through MS Financing?  Yes,  No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

novacoast

# Statement of Work

eDirectory to Active Directory Migration

DIR-SDD-2037

Prepared For:

Port of Corpus Christi

Issued:

6.4.2015

Valid to:

8.4.2015

# Team

## Cathy Schaefer

Practice Manager

P: (800) 949-9933, Ext. 4816

E: cschaefer@novacoast.com

## Andrew Mauldin

Client Executive

P: (504) 858-9089

E: amauldin@novacoast.com

## Bill Long

Territory Manager

P: (800) 949-9933, Ext. 5101

E: blong@novacoast.com

## Billing Administration

Novacoast Accounting

P: 800.949.9933 x4000

E: billing@novacoast.com

---

## Novacoast Corporate Office

1505 Chapala Street Santa Barbara, CA 93101

P: 800.949.9933 | F: 805.564.1809

<http://www.novacoast.com>



# Document Information

## Revision History

Created by:	Novacoast	Revision: 1
	March 15, 2015	
Last Modified By:	cathy schaefer	Revision: 3
	June 4, 2015 14:05	

## About this document:

Information found in this document is derived from a variety of sources, including but not limited to Novacoast partner product documentation, Novacoast partner Technical Support documents, sources publicly available on the Internet, as well as Novacoast's vast experience in implementing relevant technology solutions.

## Disclaimer

Novacoast™, Inc. makes no representations or warranties with respect to the contents or use of this document, and specifically disclaims any expressed or implied warranties of merchantability or fitness for any particular purpose.

## Trademarks

The Novacoast name and logo are registered trademarks of Novacoast, Inc. in the United States and other countries. The Novacoast Symbol is a trademark of Novacoast, Inc.

All third-party trademarks are property of their respective owner.

## Copyright

Copyright © 2015 Novacoast, Inc. All rights reserved.

Port of Corpus Christi, hereinafter referred to as "Customer", and Novacoast agree to the following provisions.

## Change Control Process

The Change Control Process governs changes to the scope of this project throughout the project's duration. It applies to new components and to enhancements of existing components.

A written Change Request communicates any desired changes to this project. It describes the proposed change, the reason for the change, and the effect the change might have on the project. The Novacoast project manager supplies the appropriate Change Management documents.

Both Novacoast and the customer review the Change Request and approve or reject it. Both parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the project's scope, schedule, or fee.

## Cancellation and Rescheduling Policy

Customer may cancel or reschedule a resource up to one (1) full business day prior to the resources scheduled on-site start time. Customer shall incur all costs to modify travel arrangements and other expenses related to the rescheduled resource.

For any cancellations or schedule adjustments made less than one (1) full business day prior to the resources scheduled on-site start time, Customer will be charged 40% of the total scheduled time, based on the resources predetermined hourly rate, and all costs to modify travel arrangements and other related expenses. This charge will also apply in the event a previously scheduled resource arrives at the Customer location and the Customer is not prepared for the resource to begin work within the first hour of being on-site.

In the event the scheduled resource was required to travel to the Customer location, the Customer will be billed for an additional eight (8) hours to cover resource travel time.

The invoice for additional costs is issued against the existing purchase order. Customer agrees to issue an amended purchase order to cover the additional costs.

# Table of Contents

**Team ..... 2**

**Document Information ..... 3**

**Table of Contents ..... 4**

**About Novacoast ..... 5**

    Who we are ..... 5

    What we do ..... 5

    How we work..... 5

**Scope of Work..... 6**

    Overview ..... 6

    Planning ..... 6

    eDirectory Migration to Active Directory..... 6

    Deliverables ..... 8

    Duration ..... 9

    Project close out ..... 9

**Cost of Assistance ..... 10**

    Agreement of Standard Working Hours ..... 10

    Cost of Assistance ..... 10

**Terms and Conditions ..... 11**

**Authorizing Signatures ..... 12**

**Customer Contacts..... 13**

# About Novacoast

## Who we are

Novacoast is an international IT Professional Services and Product Development Company built on a foundation of engineering expertise and a culture of creative problem solving. Empowered on every level by our flexible and fearless perspective, Novacoast combines its advanced technical knowledge with our customers' expertise so together we can make informed decisions and avoid costly IT mistakes.

## What we do

We specialize in identity and access management, security and compliance, network infrastructure, remote management, desktop management, and open source solutions.

We offer custom application and product development. The Novacoast Development team is made up of talented developers with agile skillsets and dedicated user interface designers. We have experience in designing mobile, social, web and enterprise software applications along with customizations for existing software. We also provide technical staffing to our clients through our Staffing Services division, which leverages our engineering expertise and extensive network of industry contacts to provide selection, grooming and training of contract, part time or full time appointments.

## How we work

Our service areas are built around key engineers with expertise in certain technologies—specialists who are resources to clients and to other engineers within Novacoast. Basically, all Novacoast engineers have access to a collaborative cavalry. This means Novacoast combines specialist capabilities with a generalist approach to cross-functional needs in large enterprises. Our diverse know-how also allows us to support small to mid-size businesses, which typically have the same needs and IT dependencies as large businesses, but work within narrower budgetary constraints.

Although the ratio of technical personnel remains high at Novacoast, we have additional skill sets focused on client business needs, project management, and technical documentation.

Headquartered in Santa Barbara, CA, Novacoast delivers services nationally and internationally.

## The Novacoast Services Model

**The Novacoast Services Model delivers these core services:**

- Evaluation of your business needs
- Technical assessment of your current IT environment
- Planned information systems that grow with you
- Custom software development
- Automation of your business applications
- Front-end assessment of your technical training needs
- Training resources designed to improve employee skills
- Complete documentation and training manuals
- Cutting-edge tech support

# Scope of Work

Customer has requested a Time and Materials agreement with Novacoast. This does not constitute guaranteed deliverables and is only to help Novacoast properly staff the project on a Time and Materials basis.

## Overview

Port of Corpus Christi (POCC) is undertaking a migration from Novell eDirectory to Microsoft Active Directory and GroupWise to O365 (cloud hosted Exchange). POCC has asked Novacoast to provide a budgetary SOW for a scope and design for the design and implementation of a new Active Directory Tree and migration with the cost of assistance to perform the migration process.

## Planning

Consultant will work with POCC to develop a project plan and project task checklist. This will detail out the work steps and timing for the implementation and migration. Included in this will be the development of supporting documents and procedures, such as communication planning, risk mitigation planning, etc. This will also include the determination of what customer resources will be required to complete the migration project. Tasks included in this phase:

- Kick off meeting
  - Review Scope of work
  - Review existing network and email environment
  - Review POCC processes, identify key stakeholders, outline operational procedures, etc.
  - Identify POCC project resources and availability
  - Review initial timetable and specific work blackouts, holidays, etc.
- Define key project elements
- Create initial project plan
- Review and schedule onsite visits as needed
- Determine pilot migration group and notification process
- Deliver, update and review project plan as required

Consultant anticipates that the Planning phase will require a minimum of two (2) 2 hour meetings (more may be required if all participants are not available during each meeting time) to review/discuss POCC requirements and future fill access plans.

Consultant will have in attendance for these meetings the following resources: Consultant project manager, Consultant lead engineer and additional engineer/developer resources as needed will be present.

It is requested that POCC be represented by POCC Project Sponsor, POCC Project Team Lead, POCC ITS Project Manager, POCC representative with knowledge of existing email environment, Novell environment, vCenter environment and current/future server roll out schedule.

## eDirectory Migration to Active Directory

### Task 1: Active Directory Design and Implementation

Consultant will work with POCC in the design and implementation of Active Directory, including users and current services provided by eDirectory, such as DNS/DHCP, printing, and drive mappings. POCC's main physical site will host the domain controllers with a secondary physical site acting as a Disaster Recovery site hosting a domain controller.

- Discovery Tasks Identified for Users/Groups and Drive Mappings
  - Map Users and Groups between Directories (eDirectory to Active Directory)
  - Groups Membership/Users
    - Map users
    - eDirectory userID to Active Directory userID
  - Site Groups to AD Group(s)
  - eDirectory Drive Mappings (from Login Scripts) to Drive Mappings in AD
- Discovery Tasks Identified for DNS, DHCP and Printing
  - DNS
    - Export zones / Zone transfer
  - DHCP
    - Export/Import scopes
  - Print Services
    - Identify print server and requirements for migration
- Pre-Stage eDirectory
  - Timeline to complete the following tasks by site:
    - Modifications/Cleanup
    - Identified tasks during discovery project
- Pre-Stage Active Directory
  - Timeline to complete the following tasks by site:
    - AD requirements
    - Users Objects
    - Create new users or Modify existing users
    - Map AD User to eDirectory User
    - Group Objects
    - Create New Groups
- Complete migration tools/process and testing
  - Complete each file syncing process steps based on site information such as
    - Target storage solution
    - Migration window
    - Total user population
    - Folder structure and modification required based on IRF, other information
- Complete Login script migration tools/process and testing
  - Create and test migration process for converting Novell based login script to AD based login scripts
- Perform Production Migration
  - Production VMware hosts and virtual machines installed and configured by customer based on Novacoast recommendations
  - Pre Migration Tasks
    - End User/ Site communications that need to go out about what is happening
    - Pre-Run Migration process
    - Run final trustee report
    - Correct and File/pathing errors
    - Identify affected users and generating a list or email group for communication
    - Generate csv file with userID mappings (eDirectory account to AD account)
    - Delta sync of all changes
    - Correct and File/pathing errors
- Migration Tasks
  - Disable Login to NetWare server
  - Migration process
  - Run Migration Process
  - Confirm all data migrated
  - Cut everyone off and bounce server

- Delta sync of all changes, then once that's done, do the following:
  - Compare the file and folder counts are identical or close as possible (minimum numbers)
  - Copy logs uploaded for review
  - Test users (1 to 5) available to login and make sure they have correct access to files and mappings
  - Resolve any Issues
  - User logs in and confirms access
- Post Migration Tasks
  - Next 24 – 48 hrs. help desk tickets get resolved
  - Resolve permission issues – sub folders
    - AD groups permissions correct
    - Users are in the AD groups
  - Resolve drive mapping issues
    - AD groups permissions correct
    - Users are in the AD groups

#### Task 2: File System Data Migration

Consultant will work with POCC to determine proper schedule for production file services migration. Consultant will not be responsible for modifying any applications, but will need to work with POCC to ensure applications dependent on file services are working correctly. Consultant can bring in additional resources at additional cost, if required, to assist with application migration support. Consultant is not including physically visiting workstations within the POCC environment as part of the migration process. If it is determined that the desktop/laptop system will require physical visits, a change order will be issued or POCC staff will be responsible for visiting desktop/laptops.

- Document current file hierarchy and trustee/rights assignment
- Document total file count of current file services volumes for production group
- Run pre file copy process on file services for production group
- Run trustee/rights to permissions translation scripts
- Compare file count on source and target volumes
- Compare trustee with permissions on source and target volumes
- Join workstation to domain
- Migrate local user profile to domain user profile using the Novacoast User Profile Migration Tool
- Test application functionality
- Perform clean up file copy process just prior to file services cutover
- Support help desk as needed for post migration support
  - Up to 7 days remote
- Update migration process documentation as needed

After each site migration a review will be performed with necessary team members from both POCC and Consultant to review the migration. Any open items still outstanding will be assigned to Consultant or POCC resource for resolution and follow up.

### Deliverables

- Active Directory Design and Implementation
- Cutover Plan
- Cutover schedule
- File migration success reports
- User Profile Migration Tool documentation
- Administration documentation

## **Duration**

The project will take Two Novacoast engineers approximately 6-8 weeks.

## **Project close out**

Consultant will meet with key stakeholders and review project goals. Documentation will be presented and reviewed.

- Review key project elements to ensure completion
- Present final, as-built project documentation
- Review any outstanding issues or open items
- Complete project sign off documentation

# Cost of Assistance

## Agreement of Standard Working Hours

This proposal covers professional services performed during the standard business hours of Monday through Friday, 8am to 6pm, local time. Local time is based on the physical location at which services will be provided.

All professional services performed between 6pm and midnight local time will be charged at one-and-a-half (1.5) times the agreed upon standard rate.

Any work performed midnight to 6am, on holidays or weekends\* will be charged at two (2) times the agreed upon standard rate.

\*Holiday hours begin at 6:01 PM on the business day before the holiday and end at 6:59 AM the business day following the holiday.

## Cost of Assistance

This SOW and the figures quoted within are valid for thirty (30) days from date of SOW delivery. This term may be extended based on mutual agreement of the Parties.

**Table 1: Cost of Assistance**

DESCRIPTION	HOURS	RATE	COST
Time and Materials agreement - two Novacoast Engineers- DIR-SDD-2037	600	\$166.10 / hour**	\$99,660.00
<b>Total</b>			\$99,660.00
<b>Travel Expenses*</b>			\$5000.00***
<b>Cost + Travel Total</b>			<b>\$104,660.00</b>

All rates quoted in this SOW are in US Dollars unless otherwise stated.

\*Travel costs are charged at actuals. Pricing shown in this column are estimates and do not represent a minimum or maximum. Optional components may result in an adjustment to travel estimate. Travel cost will not exceed \$2500/wk per engineer.

\*\*Engineering rates reflect DIR pricing- DIR-SDD-2037

\*\*\*\$5000 travel is an estimate for two weeks on site for one engineer at \$2500/wk. Travel will be billed at actuals and will not exceed \$5000 total unless specifically stated by Customer in writing that more time on site is needed.

## Payment Terms

This is a time & materials agreement. Payment for hourly work is due upon receipt of invoice. An authorized signature shall constitute acceptance of these services and products in the attached document and is required to schedule Novacoast resources.



# Terms and Conditions

Novacoast makes the following assumptions in regard to this business agreement with Customer.

The Customer is responsible for:

- 1: Furnishing Novacoast engineers with information and data on Customer operations, activities, and existing systems, as reasonably required to achieve the project objectives;
- 2: Providing Novacoast staff with the necessary security access to systems and facilities during the performance of services;
- 3: Providing and being solely responsible for the backup of all computer systems;
- 4: Providing adequate workspace and power sources at each facility where services will be performed;
- 5: Providing suitable server platforms with properly installed and patched network operating system (NOS) software, and obtaining any other commercial software licenses necessary for Novacoast to complete the services described in this SOW;
- 6: Providing and being solely responsible for contract of any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc.), and for the costs associated with such facilities;
- 7: Ensuring the availability and responsiveness of key personnel needed to support the implementation of the project.

Novacoast further requires understanding and agreement on the following:

- 1: The intent of this Statement of Work is to address as many foreseeable integration issues as possible. It is both Customer and Novacoast's understanding that additional systems integration issues might arise during the course of the project. Therefore, the acquisition of additional system hardware or software might be required. Novacoast has the resources to source and supply the required product for Customer or Customer may source the required product from any other provider.
- 2: This Statement of Work and the prices quoted herein are valid for 30 days.
- 3: Customer will pay all third party transaction costs associated with this statement of work.
- 4: It is agreed and understood that in the event there is any breach of this agreement, Novacoast shall be liable only to repair or replace the products and services provided hereunder and shall not be responsible for any other special or consequential damages that might result.
- 5: Novacoast retains on an exclusive basis all right, title and interest in and to any intellectual property developed, delivered and/or used by Novacoast in the performance of this SOW. This clause shall not affect the ownership of any preexisting materials.
- 6: Novacoast disclaims all express, and implied warranties, representations, and conditions with respect to services and any deliverables. Novacoast will perform all services in a complete, professional and workmanlike manner according to the project details described in this SOW.
- 7: A party's liability for any claim arising under or related to this SOW shall be limited to direct damages and shall not exceed the amount paid under the SOW. Neither party shall be liable to the other for any indirect, special, incidental or consequential damages arising under or relating to this SOW, even if the other party has been advised of the possibility of such damages. The limitation in this section doesn't apply to a party's infringement of the other party's intellectual property rights. No action arising out of this SOW may be brought by Customer more than one year after the action accrued. The above is customer's sole and exclusive remedy for breach of warranty by Novacoast with regard to the provision of the deliverables.
- 8: If any legal action is necessary to enforce the terms of this SOW, the prevailing party shall be entitled to attorney's fees in addition to any other relief.
- 9: This SOW completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements or other communications between the parties, oral or written, regarding such subject matter, unless expressly stated in prior proposal, agreement or communication. Amendment of this agreement is only permitted by a subsequently dated written amendment signed on behalf of Novacoast and Customer by their authorized representatives, and any provision on a purchase order purporting to supplement or vary the provisions contained in this SOW shall be void.
- 10: Without the prior written consent of Novacoast, neither Customer nor any of its affiliates will, for a period of one (1) year following the termination of this Agreement, solicit for employment or employ any employee of Novacoast. If Customer violates the terms of this section, Customer will pay within ten (10) days of retention of Novacoast employee a lump sum fee equal to 50% of the previous years earnings, including commission and bonus payments, of the employee at the time of separation from Novacoast. Notwithstanding the above, this section shall not restrict the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring, without prior written consent, the other party's employee, who answers any advertisement, or who otherwise voluntarily applies for hire, without having been solicited or recruited by the hiring party.
- 11: Any professional services requested by Customer that are not part of this Statement of Work are considered out-of-scope work. Out-of-scope work is arranged by using Novacoast's Change Request Form. Out-of-scope work is any service that is not described in this SOW, including cost adjustments.
- 12: Unless otherwise agreed to, this Agreement shall be deemed to have been made in and construed by the laws of the State of California. Any dispute stemming from this Agreement shall be heard before the appropriate California court.
- 13: Customer and Novacoast understand and acknowledge that this is a time and materials engagement. All hours assigned to a particular phase or project goal are estimates. Novacoast will use best efforts to accomplish the goals as set forth in this document within the time allocated. Nothing in this document shall be read as a promise by Novacoast to fully deliver within the allocated time, and the parties therefore agree to make mutually agreed upon adjustments as needed.

# Authorizing Signatures

The undersigned acknowledge that they are authorized to enter into this SOW on behalf of their respective organizations. Signatures below will constitute acceptance of all terms contained in this SOW and any supporting documents referenced throughout.

CUSTOMER		NOVACOAST
	Printed Name	
	Signature	
	Date	

# Customer Contacts

<b>CUSTOMER INFORMATION</b>	
Company Name:	Port of Corpus Christi
Billing Address:	PO Box 1541 Corpus Christi, Tx 78403-1541
County:	
To the Attention of:	Bland Chamberlain
Tax Status, if exempt please provide certificate	

<b>IT CONTACT</b>	
Name:	Bland Chamberlain
Phone:	361-885-6146
Email:	bland@pocca.com

<b>A/P CONTACT</b>	
Name:	
Phone:	
Email:	

novacoast

# Statement of Work

## GroupWise Migration

### DIR-SDD-2037

Prepared For:

Port of Corpus Christi

Issued:  
6.4.2015

Valid to:  
8.4.2015

# Team

## Cathy Schaefer

Practice Manager

P: (800) 949-9933, Ext. 4816

E: cschaefer@novacoast.com

## Andrew Mauldin

Client Executive

P: (504) 858-9089

E: amauldin@novacoast.com

## Bill Long

Territory Manager

P: (800) 949-9933, Ext. 5101

E: blong@novacoast.com

## Billing Administration

Novacoast Accounting

P: 800.949.9933 x4000

E: billing@novacoast.com

---

## Novacoast Corporate Office

1505 Chapala Street Santa Barbara, CA 93101

P: 800.949.9933 | F: 805.564.1809

<http://www.novacoast.com>

# Document Information

## Revision History

Created by:	Cathy Shaefer April 9, 2015	Revision: 1
Last Modified By:	Andrew Mauldin June 4, 2015 14:07	Revision: 2

## About this document:

Information found in this document is derived from a variety of sources, including but not limited to Novacoast partner product documentation, Novacoast partner Technical Support documents, sources publicly available on the Internet, as well as Novacoast's vast experience in implementing relevant technology solutions.

## Disclaimer

Novacoast™, Inc. makes no representations or warranties with respect to the contents or use of this document, and specifically disclaims any expressed or implied warranties of merchantability or fitness for any particular purpose.

## Trademarks

The Novacoast name and logo are registered trademarks of Novacoast, Inc. in the United States and other countries. The Novacoast Symbol is a trademark of Novacoast, Inc.

All third-party trademarks are property of their respective owner.

## Copyright

Copyright © 2015 Novacoast, Inc. All rights reserved.

Port of Corpus Christi, hereinafter referred to as "Customer", and Novacoast agree to the following provisions.

## Change Control Process

The Change Control Process governs changes to the scope of this project throughout the project's duration. It applies to new components and to enhancements of existing components.

A written Change Request communicates any desired changes to this project. It describes the proposed change, the reason for the change, and the effect the change might have on the project. The Novacoast project manager supplies the appropriate Change Management documents.

Both Novacoast and the customer review the Change Request and approve or reject it. Both parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the project's scope, schedule, or fee.

## Cancellation and Rescheduling Policy

Customer may cancel or reschedule a resource up to one (1) full business day prior to the resources scheduled on-site start time. Customer shall incur all costs to modify travel arrangements and other expenses related to the rescheduled resource.

For any cancellations or schedule adjustments made less than one (1) full business day prior to the resources scheduled on-site start time, Customer will be charged 40% of the total scheduled time, based on the resources predetermined hourly rate, and all costs to modify travel arrangements and other related expenses. This charge will also apply in the event a previously scheduled resource arrives at the Customer location and the Customer is not prepared for the resource to begin work within the first hour of being on-site.

In the event the scheduled resource was required to travel to the Customer location, the Customer will be billed for an additional eight (8) hours to cover resource travel time.

The invoice for additional costs is issued against the existing purchase order. Customer agrees to issue an amended purchase order to cover the additional costs.

# Table of Contents

<b>Team</b> .....	<b>2</b>
<b>Document Information</b> .....	<b>3</b>
<b>Table of Contents</b> .....	<b>4</b>
<b>About Novacoast</b> .....	<b>5</b>
Who we are .....	5
What we do .....	5
How we work.....	5
<b>Scope of Work</b> .....	<b>6</b>
Overview .....	6
<b>Cost of Assistance</b> .....	<b>9</b>
Agreement of Standard Working Hours .....	9
Cost of Assistance .....	9
<b>Terms and Conditions</b> .....	<b>10</b>
<b>Authorizing Signatures</b> .....	<b>11</b>
<b>Customer Contacts</b> .....	<b>12</b>

# About Novacoast

## Who we are

Novacoast is an international IT Professional Services and Product Development company built on a foundation of engineering expertise and a culture of creative problem solving. Empowered on every level by our flexible and fearless perspective, Novacoast combines its advanced technical knowledge with our customers' expertise so together we can make informed decisions and avoid costly IT mistakes.

## What we do

We specialize in identity and access management, security and compliance, network infrastructure, remote management, desktop management, and open source solutions.

We offer custom application and product development. The Novacoast Development team is made up of talented developers with agile skillsets and dedicated user interface designers. We have experience in designing mobile, social, web and enterprise software applications along with customizations for existing software. We also provide technical staffing to our clients through our Staffing Services division, which leverages our engineering expertise and extensive network of industry contacts to provide selection, grooming and training of contract, part time or full time appointments.

## How we work

Our service areas are built around key engineers with expertise in certain technologies—specialists who are resources to clients and to other engineers within Novacoast. Basically, all Novacoast engineers have access to a collaborative cavalry. This means Novacoast combines specialist capabilities with a generalist approach to cross-functional needs in large enterprises. Our diverse know-how also allows us to support small to mid-size businesses, which typically have the same needs and IT dependencies as large businesses, but work within narrower budgetary constraints.

Although the ratio of technical personnel remains high at Novacoast, we have additional skill sets focused on client business needs, project management, and technical documentation.

Headquartered in Santa Barbara, CA, Novacoast delivers services nationally and internationally.

## The Novacoast Services Model

**The Novacoast Services Model delivers these core services:**

- Evaluation of your business needs
- Technical assessment of your current IT environment
- Planned information systems that grow with you
- Custom software development
- Automation of your business applications
- Front-end assessment of your technical training needs
- Training resources designed to improve employee skills
- Complete documentation and training manuals
- Cutting-edge tech support



# Scope of Work

Customer has requested a Time and Materials agreement with Novacoast. This does not constitute guaranteed deliverables and is only to help Novacoast properly staff the project on a Time and Materials basis.

## Overview

Port of Corpus Christi (POCC) is undertaking a migration from GroupWise 8x single post office consisting of approximately 204 mailboxes to O365 (cloud hosted Exchange). POCC has asked Novacoast to provide a budgetary SOW for a scope and design for the migration with the cost of assistance to perform the migration process.

**Table 1: Project Tasks**

#	TASK/TECHNOLOGY DESCRIPTION
1	<p>Setup Tasks</p> <ul style="list-style-type: none"> <li>■ Remote access setup and testing based on credentials provided by Customer for access to the eDirectory and GroupWise 8 system</li> <li>■ Confirm customer has ordered the O365 SKU and has acquired the licenses</li> <li>■ Acquire/confirm that the O365 administrator account is configured and test login to the customer portal</li> <li>■ Confirm all DNS entries are configured for all O365 features, including auto discovery and ActiveSync                             <ul style="list-style-type: none"> <li>• Customer responsible for all DNS entries, firewall settings, SSL Certificates, and licenses as required for O365 and the migration</li> </ul> </li> <li>■ Confirm customer has configured O365 with their domain</li> <li>■ Confirm or create the user accounts in the portal                             <ul style="list-style-type: none"> <li>• Create the users from a customer provided .csv import file.</li> <li>• Or import the users from eDirectory with the Migration Tool Kit</li> </ul> </li> <li>■ Confirm Customer has purchased the GWAVA Retain Migration Tool Kit</li> </ul> <p>NOTE: The GWAVA Retain Migration Toolkit licensing/costs is not included in this SOW</p> <p>Pre-Migration Tasks</p> <ul style="list-style-type: none"> <li>■ Post Office Maintenance consisting of content fix with statistics and attachment options.</li> <li>■ Review of maintenance log for the post office and resolve issues</li> <li>■ Validate all domain and post office databases</li> <li>■ eDirectory basic health check</li> <li>■ Confirm the existing Retain GroupWise archiving of the live GroupWise data is up-to-date</li> </ul>
2	<p>GroupWise Migration Design considerations:</p> <ul style="list-style-type: none"> <li>■ Determine the date range for the migrated data, all live data or a specified date range</li> <li>■ Determine data per user to be migrated (if not all live data)</li> <li>■ Determine types of data: mail, calendar, tasks, address book, frequent contacts, etc.</li> <li>■ Proxy rights enabled on mailboxes preserved (delegate in O365)</li> <li>■ Distribution Lists (groups)                             <ul style="list-style-type: none"> <li>■ GroupWise Distribution List vs. eDirectory Object associated with GW Post Office</li> <li>■ Nested distribution lists</li> </ul> </li> <li>■ Determine user GroupWise Legacy archives to be migrated</li> <li>■ Define a schedule for user mailbox migrations</li> </ul>

3	<p>Install and configure the migration utility and tasks required for the migration.</p> <ul style="list-style-type: none"> <li>■ Confirm customer provides four MS Windows 7 virtual machine(s), fully patched and configured as per the migration utility specifications, are installed and ready</li> <li>■ GroupWise Configuration             <ul style="list-style-type: none"> <li>■ GroupWise Trusted Application</li> <li>■ GroupWise Post offices</li> </ul> </li> <li>■ O365 Setup for the Migration Toolkit Requirements             <ul style="list-style-type: none"> <li>■ Enable Basic authentication</li> <li>■ Setup Impersonation Account</li> <li>■ Create new Throttling Policy</li> </ul> </li> <li>■ Install and configure GWAVA Retain Migration Toolkit 2.0</li> <li>■ eDirectory/GroupWise users into O365 and apply licenses with the Migration Toolkit (optional as per Task 1)</li> </ul>
4	<p>Perform the GroupWise 8 system live migration to O365</p> <ul style="list-style-type: none"> <li>■ Compare/map the GroupWise users to their O365 account</li> <li>■ Export the Distribution Lists and import into O365 as required</li> <li>■ Configure email migration settings</li> <li>■ Migrate users email based on the approved migration plan             <ul style="list-style-type: none"> <li>■ Mailbox, Sent Items, Draft, Calendar, Notes, Tasks, Trash, etc.                 <ul style="list-style-type: none"> <li>• Recurring annual appointments may not be migrated</li> <li>• Exchange attachment size limit: 10 MB – unless changed in Exchange</li> </ul> </li> <li>■ Cabinet and Personal folders                 <ul style="list-style-type: none"> <li>• Shared folders – user may need to reconfigure the share</li> </ul> </li> <li>■ Address books – all personal and frequent contacts</li> </ul> </li> <li>■ Test five sample users migrated data (selected by customer)</li> </ul> <p>Notes:</p> <ul style="list-style-type: none"> <li>■ Microsoft throttles the data migration which controls the amount of time it takes to migrate all the user's mailboxes</li> <li>■ A mass migration from the live GroupWise system may require multiple passes</li> <li>■ GroupWise external or expired users are not migrated.</li> <li>■ GroupWise individual user archived mail is not a part of the live data migration</li> <li>■ O365 Archive feature CANNOT be enabled until the migration is completely finished. Enabling the O365 Archive feature will disable the multiple path settings and result in duplicate items in O365</li> <li>■ GroupWise client removal and/or Outlook client distribution is not included in this SOW</li> </ul>
6	<p>Install and Configure the Retain Archive Exchange/O365 module</p> <ul style="list-style-type: none"> <li>■ Install the Module and define the existing Retain user in O365 for the archive process</li> <li>■ Configure one archive profile, schedule, and job</li> <li>■ Run an initial archive job</li> <li>■ Confirm the mailboxes are being archived</li> </ul>
7	<p>GroupWise to O365 Post-Migration support (24) hours</p>

## **Assumptions**

The following assumptions are being made as part of the GroupWise to O365 project phase:

- The GroupWise legacy user archives are not part of this SOW. Customer may request Novacoast to provide this service and a change order will be provided for approval to cover schedule changes and cost.
- Customer performs GroupWise POA Scheduled maintenance as per Novacoast recommendations for at least the two weekends prior to the migration and provide the log files to Novacoast for review.
- Customer is responsible for GroupWise backup
- Customer is responsible for all hardware, software, and licenses as required for the project
- Customer is responsible for the GroupWise Retain Archive and other 3<sup>rd</sup> party applications

# Cost of Assistance

## Agreement of Standard Working Hours

This proposal covers professional services performed during the standard business hours of Monday through Friday, 8am to 6pm, local time. Local time is based on the physical location at which services will be provided.

All professional services performed between 6pm and midnight local time will be charged at one-and-a-half (1.5) times the agreed upon standard rate.

Any work performed midnight to 6am, on holidays or weekends\* will be charged at two (2) times the agreed upon standard rate.

\*Holiday hours begin at 6:01 PM on the business day before the holiday and end at 6:59 AM the business day following the holiday.

## Cost of Assistance

This SOW and the figures quoted within are valid for thirty (30) days from date of SOW delivery. This term may be extended based on mutual agreement of the Parties.

**Table 1: Cost of Assistance**

DESCRIPTION	HOURS	RATE	COST
Time and Materials agreement- DIR-SDD-2037	180	\$166.10 / hour**	\$29,898.00
<b>Total</b>			\$29,898.00
<b>Travel Expenses*</b>			\$2500.00***
<b>Cost + Travel Total</b>			<b>\$32,398.00</b>

All rates quoted in this SOW are in US Dollars unless otherwise stated.

\*Travel costs are charged at actuals. Pricing shown in this column are estimates and do not represent a minimum or maximum. Optional components may result in an adjustment to travel estimate. Travel cost will not exceed \$2500/wk per engineer.

\*\*Engineering rates reflect DIR pricing- DIR-SDD-2037

\*\*\*\$2500 travel is an estimate for one week on site for one engineer at \$2500/wk. Travel will be billed at actuals and will not exceed \$2500 total unless specifically stated by Customer in writing that more time on site is needed.

## Payment Terms

This is a time & materials agreement. Payment for hourly work is due upon receipt of invoice. An authorized signature shall constitute acceptance of these services and products in the attached document and is required to schedule Novacoast resources.

# Terms and Conditions

Novacoast makes the following assumptions in regard to this business agreement with Customer.

The Customer is responsible for:

- 1: Furnishing Novacoast engineers with information and data on Customer operations, activities, and existing systems, as reasonably required to achieve the project objectives;
- 2: Providing Novacoast staff with the necessary security access to systems and facilities during the performance of services;
- 3: Providing and being solely responsible for the backup of all computer systems;
- 4: Providing adequate workspace and power sources at each facility where services will be performed;
- 5: Providing suitable server platforms with properly installed and patched network operating system (NOS) software, and obtaining any other commercial software licenses necessary for Novacoast to complete the services described in this SOW;
- 6: Providing and being solely responsible for contract of any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc.), and for the costs associated with such facilities;
- 7: Ensuring the availability and responsiveness of key personnel needed to support the implementation of the project.

Novacoast further requires understanding and agreement on the following:

- 1: The intent of this Statement of Work is to address as many foreseeable integration issues as possible. It is both Customer and Novacoast's understanding that additional systems integration issues might arise during the course of the project. Therefore, the acquisition of additional system hardware or software might be required. Novacoast has the resources to source and supply the required product for Customer or Customer may source the required product from any other provider.
- 2: This Statement of Work and the prices quoted herein are valid for 30 days.
- 3: Customer will pay all third party transaction costs associated with this statement of work.
- 4: It is agreed and understood that in the event there is any breach of this agreement, Novacoast shall be liable only to repair or replace the products and services provided hereunder and shall not be responsible for any other special or consequential damages that might result.
- 5: Novacoast retains on an exclusive basis all right, title and interest in and to any intellectual property developed, delivered and/or used by Novacoast in the performance of this SOW. This clause shall not affect the ownership of any preexisting materials.
- 6: Novacoast disclaims all express, and implied warranties, representations, and conditions with respect to services and any deliverables. Novacoast will perform all services in a complete, professional and workmanlike manner according to the project details described in this SOW.
- 7: A party's liability for any claim arising under or related to this SOW shall be limited to direct damages and shall not exceed the amount paid under the SOW. Neither party shall be liable to the other for any indirect, special, incidental or consequential damages arising under or relating to this SOW, even if the other party has been advised of the possibility of such damages. The limitation in this section doesn't apply to a party's infringement of the other party's intellectual property rights. No action arising out of this SOW may be brought by Customer more than one year after the action accrued. The above is customer's sole and exclusive remedy for breach of warranty by Novacoast with regard to the provision of the deliverables.
- 8: If any legal action is necessary to enforce the terms of this SOW, the prevailing party shall be entitled to attorney's fees in addition to any other relief.
- 9: This SOW completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements or other communications between the parties, oral or written, regarding such subject matter, unless expressly stated in prior proposal, agreement or communication. Amendment of this agreement is only permitted by a subsequently dated written amendment signed on behalf of Novacoast and Customer by their authorized representatives, and any provision on a purchase order purporting to supplement or vary the provisions contained in this SOW shall be void.
- 10: Without the prior written consent of Novacoast, neither Customer nor any of its affiliates will, for a period of one (1) year following the termination of this Agreement, solicit for employment or employ any employee of Novacoast. If Customer violates the terms of this section, Customer will pay within ten (10) days of retention of Novacoast employee a lump sum fee equal to 50% of the previous years earnings, including commission and bonus payments, of the employee at the time of separation from Novacoast. Notwithstanding the above, this section shall not restrict the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring, without prior written consent, the other party's employee, who answers any advertisement, or who otherwise voluntarily applies for hire, without having been solicited or recruited by the hiring party.
- 11: Any professional services requested by Customer that are not part of this Statement of Work are considered out-of-scope work. Out-of-scope work is arranged by using Novacoast's Change Request Form. Out-of-scope work is any service that is not described in this SOW, including cost adjustments.
- 12: Unless otherwise agreed to, this Agreement shall be deemed to have been made in and construed by the laws of the State of California. Any dispute stemming from this Agreement shall be heard before the appropriate California court.
- 13: Customer and Novacoast understand and acknowledge that this is a time and materials engagement. All hours assigned to a particular phase or project goal are estimates. Novacoast will use best efforts to accomplish the goals as set forth in this document within the time allocated. Nothing in this document shall be read as a promise by Novacoast to fully deliver within the allocated time, and the parties therefore agree to make mutually agreed upon adjustments as needed.

# Authorizing Signatures

The undersigned acknowledge that they are authorized to enter into this SOW on behalf of their respective organizations. Signatures below will constitute acceptance of all terms contained in this SOW and any supporting documents referenced throughout.

CUSTOMER		NOVACOAST
	Printed Name	
	Signature	
	Date	

# Customer Contacts

<b>CUSTOMER INFORMATION</b>	
Company Name:	Port of Corpus Christi
Billing Address:	PO Box 1541 Corpus Christi, Tx 78403-1541
County:	
To the Attention of:	Bland Chamberlain
Tax Status, if exempt please provide certificate	

<b>IT CONTACT</b>	
Name:	Bland Chamberlain
Phone:	361-885-6146
Email:	bland@pocca.com

<b>A/P CONTACT</b>	
Name:	
Phone:	
Email:	

**DATE:** June 16, 2015  
**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-B***

**Approve an Easement and Right-of-Way Agreement Granting  
AEP Texas Central Company the Right to Serve  
Superior Weighting Products, LLC  
Leased Premises at the Rincon Industrial Park**

Superior Weighting Products, LLC, (SWP) currently leases 12.07 acres in the Rincon Industrial Park from the PCCA under a Lease Agreement that was approved by the Port Commission on the August 13, 2013. SWP's plans for the site include the construction and operation of a \$12 million barite and mineral processing facility that will import approximately 250,000 tons of barite ore per year at the PCCA Bulk Terminal. The barite will then be transported to SWP's facility by rail and truck.

SWP is nearing completion of construction of its processing plant and has asked AEP Central Texas Company to provide them electrical service. See attached exhibit. In that regard, representatives of AEP have approached staff requesting an easement from the PCCA to connect the plant site to the existing electric distribution line located along the western boundary of Rincon Road. The easement and right-of-way will cross Rincon Road, the PCCA Railroad right-of-way, and a portion of the SWP's leased premises.

The attached easement agreement was drafted using the standard AEP/PCCA form agreement, which includes the requirement to maintain 36 feet of clearance over the surface of the ground and top of the rail for the overhead portions of the power line and a provision that the easement will automatically terminate should AEP cease to use the easement area or abandon the same for a period of 12 consecutive months. Because the easement is requested for the benefit of a PCCA tenant, it will be granted at no cost.

Staff recommends approval of the attached Easement and Right-of-Way Agreement with AEP Texas Central Company.

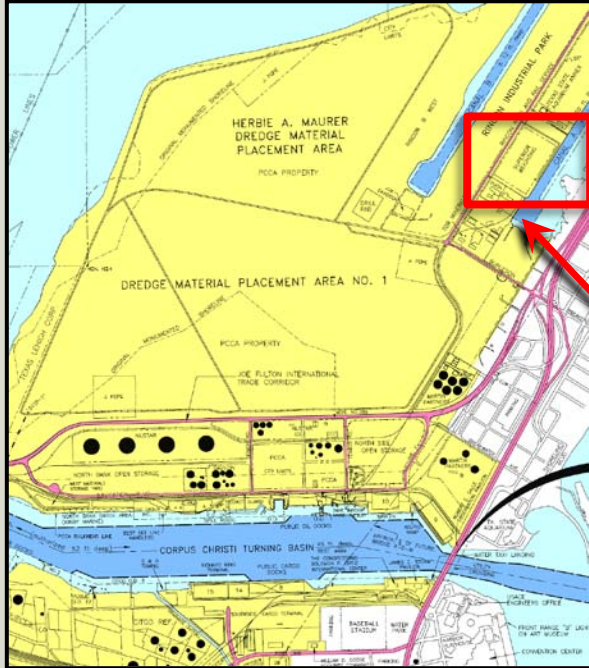
**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)





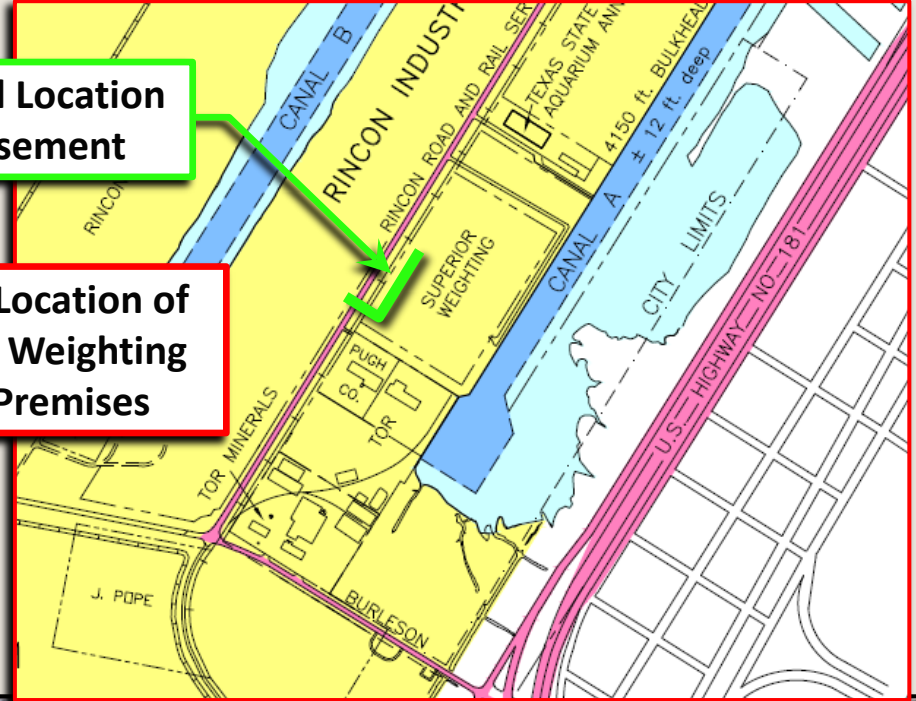
# AEP Texas Central Company Easement and Right of Way Agreement to Superior Weighting Products, LLC

AGENDA ITEM NO. 15-B



General Location  
of Easement

General Location of  
Superior Weighting  
Lease Premises



Construction Site (View from Canal A)



Construction Site (View from Rincon Rd)



(CORP) CP 460-OH/UG REV. 05/12

Town: Corpus Christi      Description: Install OH/UG to serve Superior Weighting @ 3040 Rincon Rd  
County: Nueces              W.R. #51134811              Submitted by: rcm              Date: 05/22/2015

**EASEMENT AND RIGHT OF WAY**

**PORT OF CORPUS CHRISTI AUTHORITY** (“Grantor”), for and in consideration of Ten & 00/100 Dollars (\$10.00), and other good and valuable consideration to Grantor in hand paid by **AEP TEXAS CENTRAL COMPANY**, a Texas corporation, whose address is P.O. Box 2121, Corpus Christi, Texas 78403 (“Grantee”) the receipt and sufficiency of which is hereby acknowledged and confessed, has **GRANTED, SOLD, and CONVEYED**, and by these presents does **GRANT, SELL, and CONVEY** unto Grantee, its successors and assigns, a non-exclusive easement and right of way for electric distribution lines, consisting of poles made of wood, metal, or other materials, crossarms, static wires, guys, wire circuits, underground cables and conduits, communication circuits, metering equipment and all necessary or desirable appurtenances (including, but not limited to, transformers, meters, vaults, and service pedestals) over, under, across, and upon the following described land located in Nuece County, Texas, to wit:

SEE EXHIBIT “A & B”, ATTACHED AND MADE A PART HEREOF AND INCORPORATED HEREIN (the “Easement Area”);

Together with the right of ingress and egress over, under, across and upon the Easement Area and Grantor’s adjacent land for the purpose of constructing, operating, reconstructing on poles or burying and replacing underground cables and conduits (including necessary ditching and backfilling), enlarging, inspecting, patrolling, repairing, maintaining, upgrading and removing said lines, circuits, underground cables and conduits, poles, wires and appurtenances; which lines shall maintain a minimum clearance of 36 feet at the lowest point of the conductor; the right to relocate along the same general direction of said lines, cables, and conduits; and the right to remove from the Easement Area all structures, obstructions, and trees and parts thereof, using generally accepted vegetation management practices, (whether from the Easement Area or that could grow into the Easement Area) which may, in the reasonable judgment of Grantee, endanger or interfere with the safe and efficient operation and/or maintenance of said lines, cables, conduits or appurtenances or ingress and egress to, from or along the Easement Area.

Grantor reserves the right to use the Easement Area subject to said Easement and Right of Way in any way that will not interfere with Grantee’s exercise of the rights hereby granted. However, Grantor shall not construct or permit to be constructed any house or other aboveground structure on or within the Easement Area containing Grantee’s improvements without the express written consent of Grantee.

Upon Grantee’s cessation of use of the Easement Area, or abandonment of same for a period of twelve (12) consecutive months, this Easement and Right of Way shall automatically cease and terminate, and the rights herein granted shall revert automatically to Grantor. Upon written request received from Grantor, within sixty (60) days of termination of this Easement, Grantee will file a document releasing the Easement and Right of Way in the Real Property Records of Nueces County, Texas.

**TO HAVE AND TO HOLD** the above described easement and rights unto the Grantee, its successors and assigns for so long as this agreement remains in force and effect. Grantor binds itself, assigns, and legal representatives to warrant and forever defend all and singular the above described easement and rights unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2015

**GRANTOR:**

**PORT OF CORPUS CHRISTI AUTHORITY**

By: \_\_\_\_\_  
John P. LaRue, Executive Director

**ACKNOWLEDGMENT**

**STATE OF TEXAS     §**  
**COUNTY OF NUECES §**

This instrument was acknowledged before me on this \_\_\_\_ day, \_\_\_\_\_, 2015, by John P. LaRue, Executive Director of the Port of Corpus Christi Authority.

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

Commission Expires: \_\_\_\_\_

**AFTER RECORDING, PLEASE RETURN TO:**

**AEP**  
**% Distribution Right-Of-Way Agent**  
**P.O. Box 2121**  
**Corpus Christi, Texas 78403**

**AEP EASEMENT  
LEGAL DESCRIPTION  
7,569 SQUARE FEET TRACT**

**EXHIBIT "A"**

**BEING** a 7,569 square feet tract out of a 158.04 acre tract, as recorded in Volume 1242, Pages 190-199, Deed Records, Nueces County, Texas, said AEP easement being more particularly described as follows:

**COMMENCING** at a found 5/8 inch iron rod with a Govind cap for the southeast corner of a 12.07 acre lease site from the Port of Corpus Christi Authority of Nueces County, Texas to Superior Weighting Products, LLC, said lease agreement signed on August 13, 2013; Thence North 58°25'33" West, with the south line of said 12.07 acre lease site, a distance of 391.87 feet to **THE POINT OF BEGINNING**;

**THENCE** North 58°25'33" West, with said south line, at a distance of 198.72 feet, pass the southwest corner of said 12.07 acre lease site, same being the east right-of-way of Rincon Road, continue for a total distance of 298.72 feet to a calculated point on the west right-of-way of said Rincon Road, for the southwest corner of the herein described tract;

**THENCE** North 31°34'27" East, with said west line, a distance of 10.00 feet to a calculated point for a corner of the herein described tract;

**THENCE** South 58°25'33" East, a distance of 288.60 feet to a calculated point for an interior corner of the herein described tract;

**THENCE** North 30°54'55" East, a distance of 27.88 feet to a calculated point of the herein described tract;

**THENCE** North 35°07'36" East, a distance of 59.38 feet to a calculated point of the herein described tract;

**THENCE** North 34°43'20" East, a distance of 84.35 feet to a calculated point of the herein described tract;

**THENCE** North 30°06'10" East, a distance of 33.82 feet to a calculated point of the herein described tract;

**THENCE** North 27°51'04" East, a distance of 72.80 feet to a calculated point of the herein described tract;

**THENCE** North 27°09'28" East, a distance of 20.10 feet to a calculated point of the herein described tract;

**THENCE** North 32°11'06" East, a distance of 118.95 feet to a calculated point for an interior corner of the herein described tract;

**THENCE** North 58°23'34" West, a distance of 7.15 feet to a calculated point for a corner of the herein described tract;

**THENCE** North 32°04'21" East, a distance of 15.00 feet to a calculated point for the northwest corner of the herein described tract;

**THENCE** South 58°23'34" East, a distance of 27.19 feet to a calculated point for the northeast corner of the herein described tract;

**THENCE** South 31°24'25" West, a distance of 15.00 feet to a calculated point for a corner of the herein described tract;

**THENCE** North 58°23'34" West, a distance of 10.21 feet to a calculated point for an interior corner of the herein described tract;

**THENCE** South 32°11'06" West, a distance of 118.61 feet to a calculated point of the herein described tract;

**THENCE** South 27°09'28" West, a distance of 19.72 feet to a calculated point of the herein described tract;

**THENCE** South 27°51'04" West, a distance of 73.05 feet to a calculated point of the herein described tract;

**THENCE** South 30°06'10" West, a distance of 34.42 feet to a calculated point of the herein described tract;

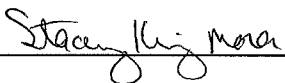
**THENCE** South 34°43'20" West, a distance of 84.79 feet to a calculated point of the herein described tract;

**THENCE** South 35°07'36" West, a distance of 59.04 feet to a calculated point of the herein described tract;

**THENCE** South 30°54'55" West, a distance of 37.63 feet to the **POINT OF BEGINNING** and containing 7,569 square feet.

**NOTE:**

ALL BEARINGS ARE GRID BEARINGS BASED ON THE TEXAS COORDINATE SYSTEM FOR THE LAMBERT SOUTH ZONE NAD 1983.

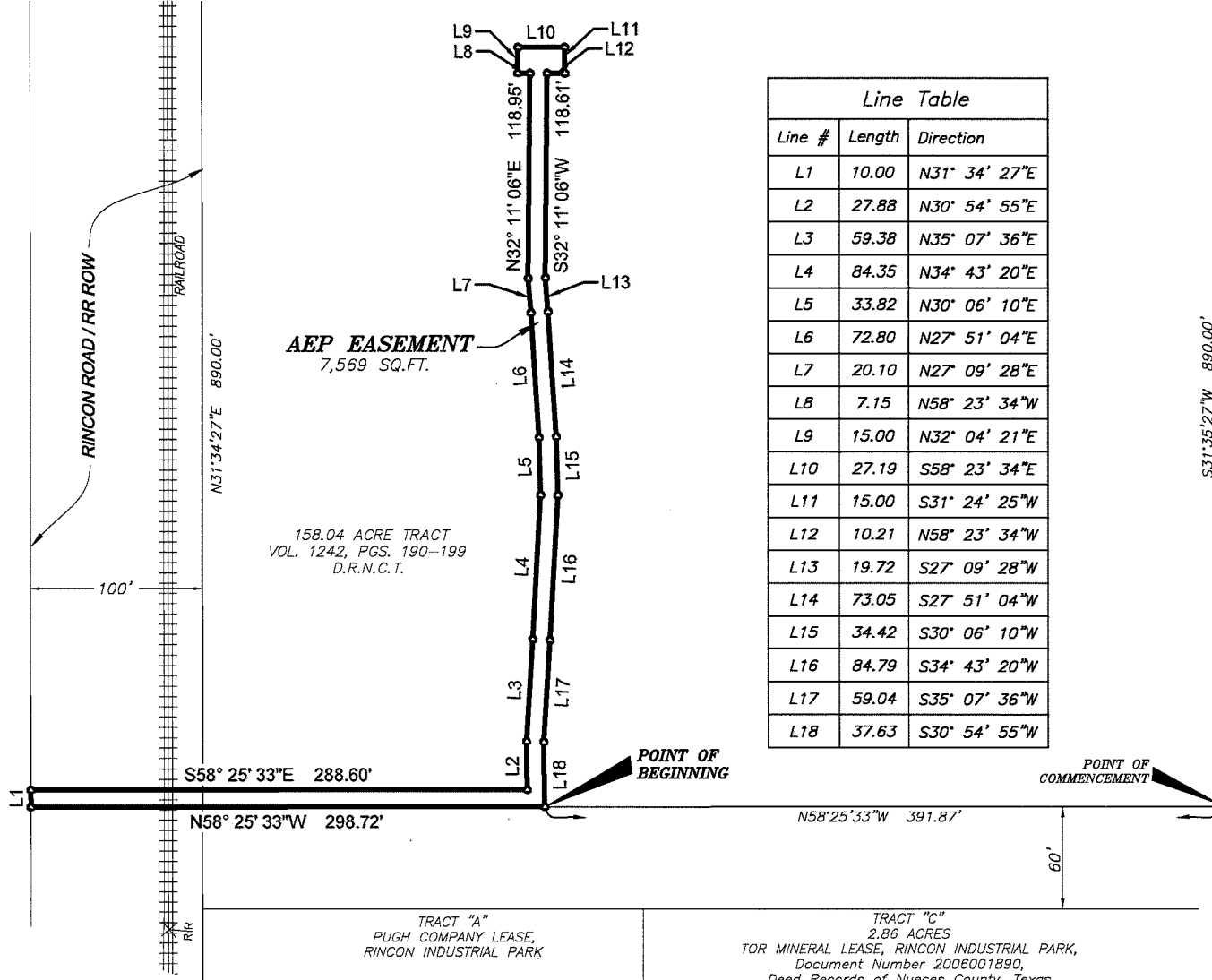
  
\_\_\_\_\_

**Stacey King Mora, RPLS**  
**Registered Professional Land Surveyor**  
**Texas Registration No. 6166**  
**Naismith Engineering, Inc.**



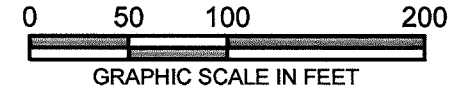
**TBPE F#355    TBPLS F# 100395-00**

**Date:** June 10, 2015



Line Table

Line #	Length	Direction
L1	10.00	N31° 34' 27"E
L2	27.88	N30° 54' 55"E
L3	59.38	N35° 07' 36"E
L4	84.35	N34° 43' 20"E
L5	33.82	N30° 06' 10"E
L6	72.80	N27° 51' 04"E
L7	20.10	N27° 09' 28"E
L8	7.15	N58° 23' 34"W
L9	15.00	N32° 04' 21"E
L10	27.19	S58° 23' 34"E
L11	15.00	S31° 24' 25"W
L12	10.21	N58° 23' 34"W
L13	19.72	S27° 09' 28"W
L14	73.05	S27° 51' 04"W
L15	34.42	S30° 06' 10"W
L16	84.79	S34° 43' 20"W
L17	59.04	S35° 07' 36"W
L18	37.63	S30° 54' 55"W



**LEGEND:**

- GOVIND 5/8" IRON ROD FOUND
- ⊙ CALCULATED POINT
- RR RAILROAD
- SQ.FT. SQUARE FEET
- VOL.. VOLUME
- PGS. PAGES
- D.R.N.C.T. DEED RECORDS, NUECES COUNTY, TEXAS

EXHIBIT "B"

I, Stacey King Mora, Registered Professional Land Surveyor, hereby certify that this survey substantially complies with the current standards adopted by the Texas Board of Professional Land Surveying.

*Stacey King Mora*  
Stacey King Mora  
Registered Professional Land Surveyor  
Texas Registration No. 6166



Naismith Engineering, Inc.

Date: June 10, 2015

**SURVEYORS NOTES:**  
BEARINGS ARE BASED ON GPS OBSERVATIONS TEXAS STATE PLANE, SOUTH ZONE, NAD83 US FOOT.

**METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS EXHIBIT.**

**NE Naismith Engineering, Inc**  
ARCHITECTURE ■ ENGINEERING ■ ENVIRONMENTAL ■ SURVEYING

4501 GOLLIHAR ROAD 600 W 8TH SUITE 300 789 E WASHINGTON 405 W POWER AVE  
CORPUS CHRISTI, TX 78411 AUSTIN, TX 78701 BROWNSVILLE, TX 78523 VICTORIA, TX 77901  
PH: (361) 814-9900 PH: (512) 708-9322 PH: (956) 541-1155 PH: (800) 677-2831  
TBAE F-13553 ■ TBPE F-355 ■ TBPG F-50017 ■ TBPLS F-100395-00 ■ NAIMSMITH-ENGINEERING.COM

**AEP EASEMENT**  
7,569 SQ. FT. TRACT, OUT OF A 158.04 ACRE TRACT FROM THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS TO SUPERIOR WEIGHTING PRODUCTS, LLC

Drawn By: RMC	Appr. By: SKM	Scale: 1"=100'	Dwg. No.: 8968-AEP-ESMT
Checked By: SKM	Project No.: 8968	Date: 06-09-15	Rev.: 1

Sheet 1 of 1

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-C***

**Approve Professional Services Contract with  
Burns & McDonnell Transportation Inc. for Engineering Services  
Associated with the Tule Lake Bridge Foundation Removal Project**

After mechanical, structural and safety issues forced the closing of the Tule Lake Lift Bridge, the Port Commission authorized its removal in 2007. In 2008, the PCCA completed the removal of the center lift spans and two support towers. To finalize the removal of the bridge, staff developed a project to remove the large concrete substructures, steel H-beam foundation piles, fender system and the approach embankments. Removal of these elements would allow the PCCA to widen the channel from 200' to 400', eliminating the restriction to navigation that has existed between the towers of the lift bridge span.

The removal project was originally designed and bid in 2010. The PCCA received only one bid at that time and that bid significantly exceeded the budgeted amount. Consequently, a contract was not awarded. In late 2014, PCCA began a pre-solicitation process to gather information and ideas from experienced demolition contractors to better understand the risks and how to structure the bids to get the most competitive and competent bids. Now that the pre-solicitation process has been completed, the final demolition plans and contract documents can be prepared.

The PCCA would like to retain Burns & McDonnell to complete the engineering and design necessary for the demolition phase of the project.

Staff recommends approval of a Professional Services Contract for engineering services with Burns & McDonnell Transportation Inc., in an amount not to exceed \$76,200 to provide engineering services through the bidding phase including the preparation of restructured plans, specifications, and contract documents for the demolition of the remainder of the Tule Lake Lift Bridge and fender systems. Burns & McDonnell is a bridge design firm from Kansas City that has performed numerous engineering services for the PCCA over the years associated with the Tule Lake Life Bridge including the demolition project to remove the bridge towers and superstructures in 2008.

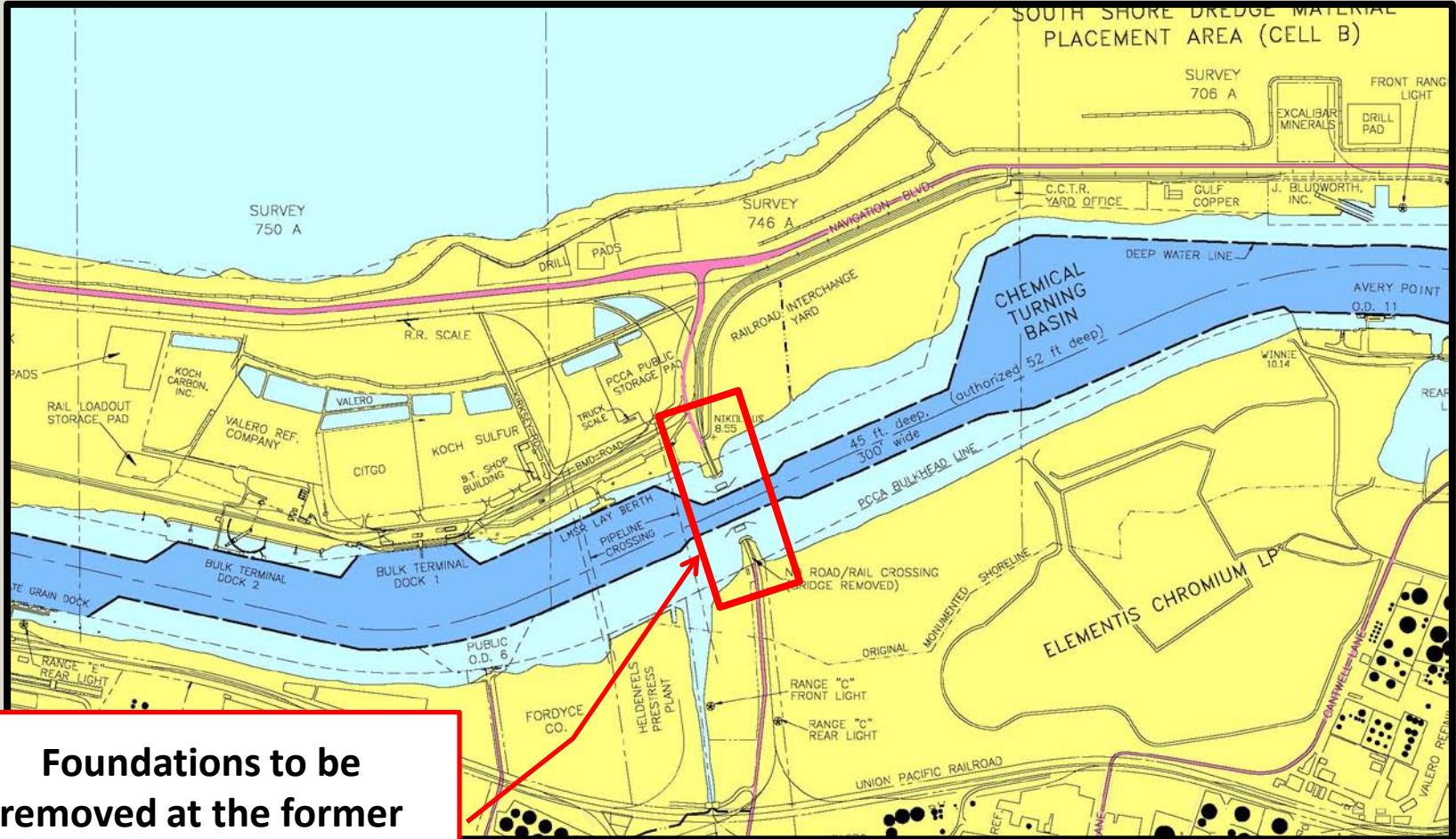
The 2015 budget included \$1,000,000 for this project. Staff anticipates that the contract documents will be completed and a U.S. Army Corps of Engineers permit will be received in the next few months, enabling the PCCA to solicit bids for this project before the end of the year.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)



# Tule Lake Bridge Foundation Removal Project

AGENDA ITEM NO. 15-C



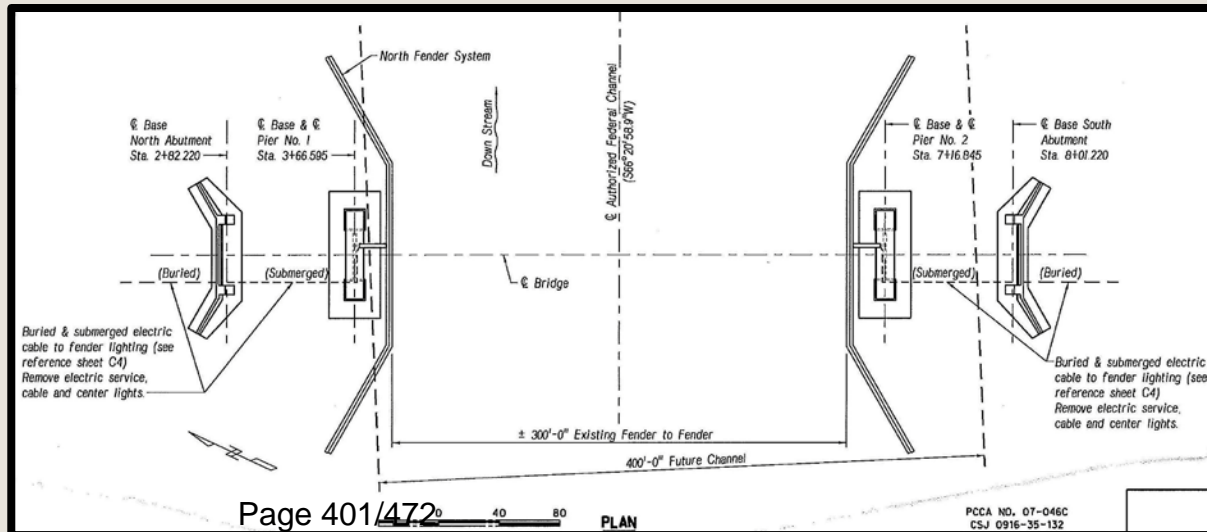
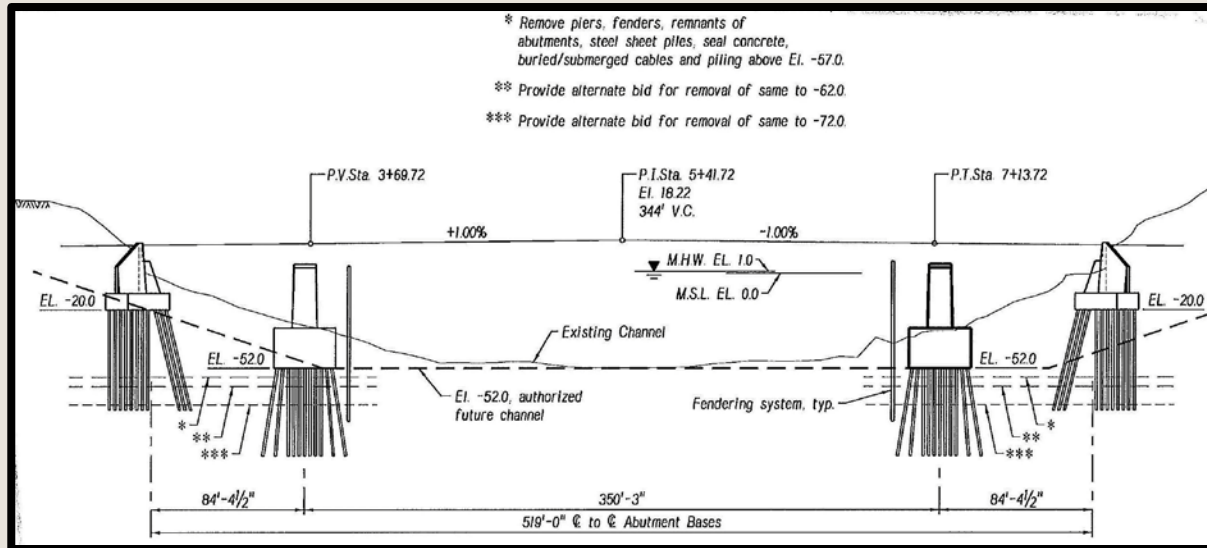
**Foundations to be removed at the former Tule Lake Lift Bridge**





# Tule Lake Bridge Foundation Removal Project

*AGENDA ITEM NO. 15-C*



**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-D***

**Award Contract to Trelleborg Marine Systems USA Inc., the  
Lowest and Best Bidder Based on Bids Received on  
May 29, 2015, for the Purchase of Dock Fenders**

The PCCA maintains an inventory of ship and barge dock fenders to ensure that damaged Port-owned waterfront facilities can be quickly and efficiently repaired and returned to service. When practical, staff ensures that fender systems are similarly and consistently designed for different docks, thereby reducing the amount of required fender inventory. Each year, staff reviews the current inventory and recommends a budget for additional components to maintain the PCCA's fender and fender panel stock.

For 2015, staff determined that eight rubber dock fender components and associated chains and hardware were required to replenish the current inventory. All eight fenders are a type of modular MV fender consisting of a compression molded high performance polymer that is used at docks for berthing large ships. This is a configuration that has become standard for many of the existing and newly designed docks. See attached exhibit.

On May 29, 2015, we received three responsive bids to our Notice to Bidders (see attached bid tabulation). The apparent low bidder was Trelleborg Marine Systems USA Inc. with a total bid amount of \$52,500.00 for the fenders and associated hardware. Trelleborg has furnished fenders to the PCCA in the past with positive results.

Staff recommends that a contract be awarded to Trelleborg Marine Systems USA Inc. for the purchase of eight dock fenders with associated hardware at a total cost of \$52,500.00.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)



**BID TABULATION FOR  
PURCHASE OF DOCK FENDERS  
PROJECT NO. 15-014A  
Bid Opening: May 29, 2015 at 2:00 pm**

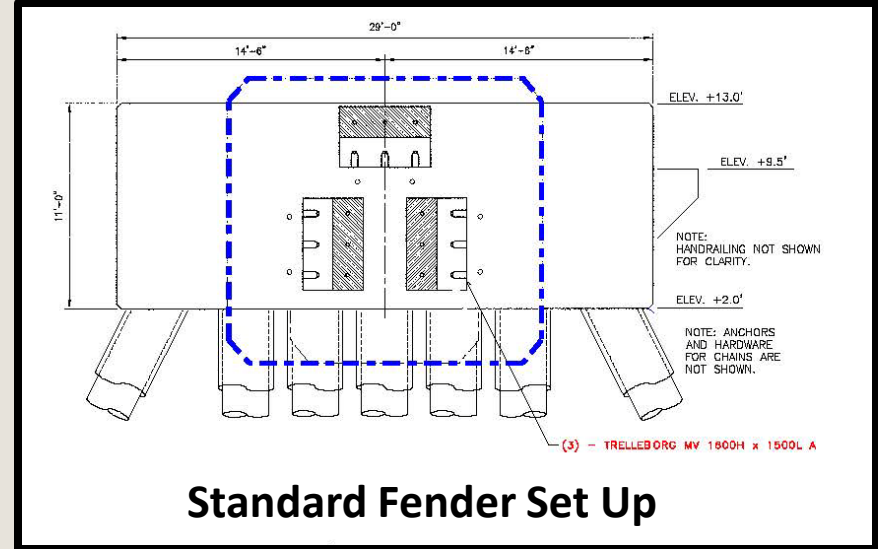
Company Name	Base Bid <sup>A</sup>	Time of Delivery*
Trelleborg Marine Systems USA, Inc.	\$52,500.00	70-80
Kirti International Inc. Galveston, TX	\$65,528.10	75-80
Maritime International	\$81,656.00	98

\*In calendar days

<sup>A</sup> BASE BID: Lump sum price for the purchase of eight (8) units of MV 1600 x 1500A Fender Element Bodies and four (4) set of associated hardware.

Read By: David L. Krams, P.E.  
Tabulated By: David L. Michaelsen, P.E.  
Checked & Prepared By: Melinda Maldonado  
Date: May 29, 2015

# Purchase of Dock Fenders



Typical MV Fender



**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-E***

**Award Contract to Corpus Christi Freightliner, the Lowest and Best Bidder Based on Bids Received on May 29, 2015, for the Purchase of a Crane Truck**

The PCCA currently owns a 1998 F700 crane truck with a 95-foot reach and 22-ton lifting capacity, which the Maintenance Department uses for grounds maintenance and operations. See attached exhibit. The truck-mounted crane is utilized for reaching the high mast lights at cargo yards, accessing multi-floor buildings to perform repairs, lifting barge and ship dock fender systems in hard to access locations, accessing and lifting materials and equipment on the elevated components of the Bulk Terminal gantry crane, ship loader, and conveyor belt systems, and accessing high mounted cameras for repair and replacement. This crane truck is 17 years old and has been experiencing frequent engine and crane component breakdowns. In addition, the truck has lost horsepower. The truck also has an older diesel engine that is not environmentally clean burning. Due to the truck's age and condition, the 2015 budget included \$340,000 to replace the existing crane truck with a similar unit, which will have the newer, cleaner Tier 4 diesel engine.

On May 29, 2015, we received four responsive bids to our Notice to Bidders (see attached bid tabulation). Corpus Christi Freightliner was the apparent low bidder for a model 114SD Freightliner truck with an 8100D National crane in the amount of \$230,357.00, which includes a \$28,000 trade-in for the existing crane truck. The Corpus Christi Freightliner dealership is located in the Corpus Christi area and has furnished equipment to the PCCA in the past, such as the Bulk Terminal water truck in 2014 and tandem dump truck in 2013.

Staff recommends that a contract be awarded to Corpus Christi Freightliner in the amount of \$230,357.00 for the purchase of one 114SD Freightliner truck with 8100D National crane.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)



**BID TABULATION FOR  
PURCHASE OF CRANE TRUCK  
PROJECT NO. 15-008D  
Bid Opening: May 29, 2015 at 3:00 pm**

Company Name	Manufacturer	Model	Bid Amount	Less Trade-In	Total Bid <sup>^</sup>	Time of Delivery*	Addendum No. 1
Corpus Christi Freightliner	Freightliner/National	114SD/8100D	\$258,357.00	<\$28,000.00>	\$230,357.00	210	X
Rush Enterprises, Inc.dba Rush Crane Systems	Peterbilt/National Crane	Peterbilt 348/National Crane 8100D	\$260,083.00	N/A	\$260,083.00	120	X
Laguna Crane Services	Manitex	30102 WL	\$295,470.00	<\$25,000.00>	\$270,470.00	145	X
Grande Truck Center	Western Star	Western Star 4700	\$305,076.00	<\$20,000.00>	\$285,076.00	240	X

\*In calendar days

<sup>^</sup>BASE BID: Lump sum price for the purchase of a crane truck less trade-in of 1998 Ford F700 Crane Truck Unit #264.

Read By: David L. Krams, P.E.  
 \_\_\_\_\_  
 Tabulated By: David L. Michaelsen, P.E.  
 \_\_\_\_\_  
 Checked & Prepared By: Melinda Maldonado  
 \_\_\_\_\_  
 Date: May 29, 2015  
 \_\_\_\_\_

# Purchase of Crane Truck

Proposed



Existing



**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-F***

**Award Contract to SATX CCTV, LLC, the Lowest and Best Bidder Based on Bids Received on May 29, 2015, for the Purchase of Camera System under Security Grant 14 – Security Equipment Maintenance and Upkeep Project**

The long-range thermal pan/tilt/zoom camera that is part of our Vessel Tracking Information System (VTIS) located at the La Quinta Terminal area has failed. This camera was put into service approximately 10 years ago and the original manufacturer has changed hands several times since the camera was put into service. General Dynamics has provided poor turn-around time and expensive repair costs in the past. Therefore, staff recommends replacing this camera and also migrating to “FLIR” thermal camera and “MOOG” pan/tilt platform products. FLIR Systems Inc. is a recognized leader in thermal cameras and MOOG Inc. is a recognized leader in high performance pan/tilt platforms.

On May 29, 2015, we received three responses to our Notice to Bidders (see attached Bid Tabulation) for the purchase of one FLIR Ranger III LR thermal camera and one MOOG QPT-501C pan/tilt platform. The apparent low bidder for the camera purchase was SATX CCTV, LLC, in the amount of \$75,827.00. Staff's estimate for the cost of the system was \$67,000.00. SATX CCTV, LLC, is located in San Antonio, Texas.

Staff recommends that a contract be awarded to SATX CCTV, LLC, in the amount of \$75,827.00 for the purchase of one MOOG QPT-501C pan/tilt platform and one FLIR Ranger III LR thermal camera with associated software, documents, cables and connectors. All equipment comes with a one-year parts and labor warranty. This camera is compatible with existing analog monitoring and control equipment and will allow the Port to migrate to a high definition IP platform in the future. Installation will be done by Port staff. Some additional miscellaneous materials totaling less than \$1,000.00 will need to be purchased separately through other vendors to complete installation.

This purchase is eligible for funding through the Port Security Grant 14 Security Equipment Upkeep project. This grant requires a 25% match; therefore, the Port will be responsible for \$18,956.75 of the total purchase amount.

**LEAD CONTACT:** Tom Mylett; 885-6180; [tom@pocca.com](mailto:tom@pocca.com)





**BID TABULATION FOR  
SECURITY GRANT 14 - PURCHASE OF CAMERA SYSTEM  
PROJECT NO. 14-060B  
Bid Opening: May 29, 2015 at 2:30 pm**

Company Name	Bid Item 1 <sup>A</sup>	Time of Delivery* for Bid Item 1	Bid Item 2 <sup>A</sup>	Time of Delivery* for Bid Item 2
SATX CCTV, LLC	\$10,617.00	52	\$65,210.00	52
Graybar Electric	No Bid	-	\$65,652.63	60
Metroplex Control Systems dba Argyle Security Group	\$13,677.00	60	\$69,791.00	60

\*In calendar days

<sup>A</sup> BID ITEM 1: Lump sum price for the purchase of one (1) MOOG 7-6100B-MWS QPT-501 C Pan / Tilt Platform or approved equal.

<sup>B</sup> BID ITEM 2: Lump sum price for the purchase of one (1) FLIR Ranger III LR Thermal Camera or approved equal.

Read By: David L. Krams, P.E.  
 \_\_\_\_\_  
 Tabulated By: David L. Michaelsen, P.E.  
 \_\_\_\_\_  
 Checked & Prepared By: Melinda Maldonado  
 \_\_\_\_\_  
 Date: May 29, 2015  
 \_\_\_\_\_

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-G***

**Approve a Service Order with Govind Development, LLC, under  
Its Professional Services Master Agreement, for Engineering Services  
Associated with Improvements to the Fire Protection Systems  
at Oil Docks 4, 7, and 11**

The 2015 Budget included \$400,000 for design and construction of proposed improvements to the fire protection systems at Oil Docks 4, 7, and 11. This is a follow-up project to the major improvements completed in 2014, where the PCCA upgraded the dry fire protection system to a pressurized, on-demand system which included the construction of a new fire water storage tank and pump system. These improvements, however, did not increase the fire suppression coverage at the docks. Dock customers have requested that additional landside fire monitors be installed at Oil Docks 4, 7 and 11 to enhance fire protection by increasing the system coverage from the two monitors per dock currently in place. This project will analyze the fire protection system and identify optimal locations and quantity of fire monitors needed at each of the three ship docks to provide an increased level of fire protection requested by the customers. See attached exhibit.

Through the 2015 Engineering Department's annual Request for Qualifications, staff reviewed statements of qualifications from engineering firms interested in this project and selected Govind Development, LLC, to design this project. Staff has negotiated a scope of services that includes evaluating the adequacy of existing fire protection systems to identify whether relocating the existing fire monitors, adding new monitors, or a combination of these approaches will be most effective in providing expanded fire suppression at Oil Docks 4, 7 and 11. The scope also includes preliminary and final engineering including the preparation of contract documents for the proposed improvements.

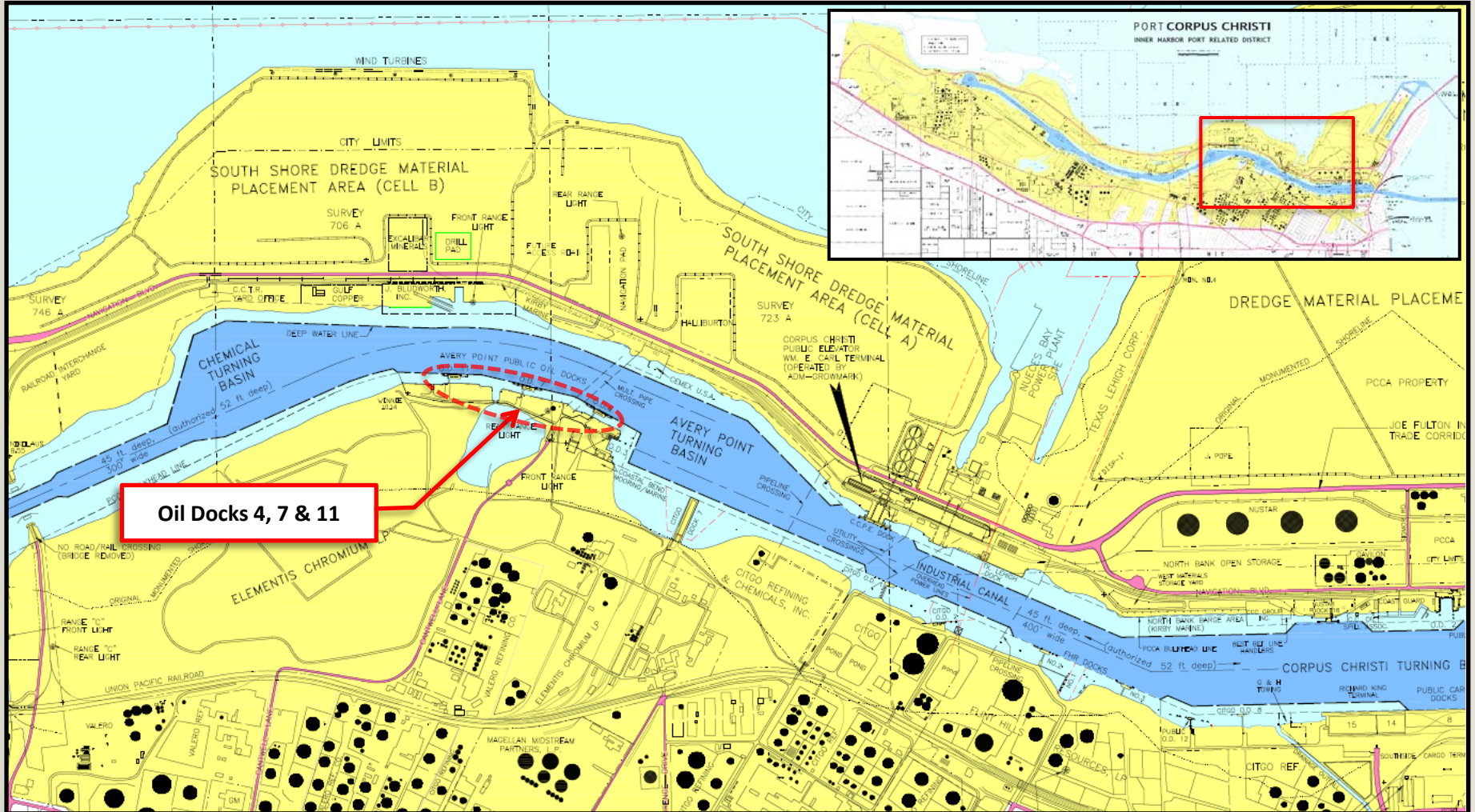
Staff recommends approval of a service order with Govind Development, LLC, under a current Professional Services Master Agreement, for engineering services related to improvements to fire protection systems at Oil Docks 4, 7, and 11 at a cost not to exceed \$53,400.00. Staff further recommends that the Director of Engineering Services be granted a 5% contingency (\$2,670.00) should it be required for any minor changes in the scope of work during the design phase of the project.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com).



# PCCA Oil Docks 4, 7, and 11 Improvements to Fire Protection Systems

AGENDA ITEM NO. 15-G



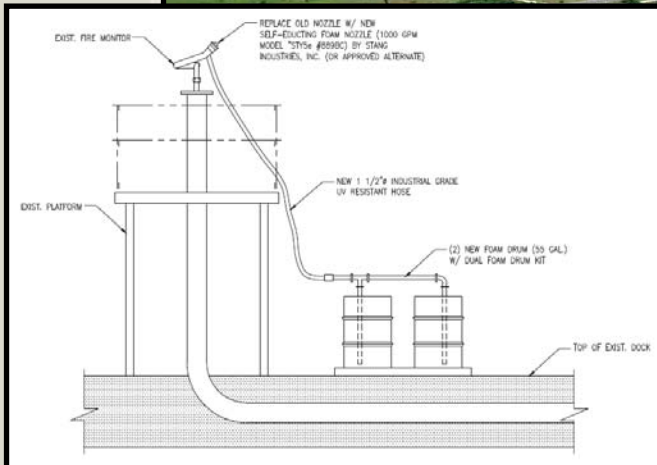
# PCCA Oil Docks 4, 7, and 11 Improvements to Fire Protection Systems



**Fire Water Storage Tank**



**Oil Docks 11, 7 & 4**



**Typical Fire Monitor System**

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-H***

**Approve Service Order with HDR Engineering Inc., under  
Its Professional Services Master Agreement, for  
Engineering Services for Settlement at Cargo Dock 2**

Cargo Dock 2, which supports a portion of the Congressman Solomon P. Ortiz International Center, was built in the late 1920s. In 2004, after noting some apparent differential movements at the Ortiz Center between the pile-supported structure and what is supported solely on land, staff began monitoring possible settlement or movement at this dock. The initial study concluded with the recommendation to install three inclinometers along the dock to monitor any future dock movement. The inclinometers were subsequently installed and have been regularly inspected since installation. See attached exhibit. Late in 2014, while performing maintenance on the inclinometers, staff found that one inclinometer was damaged beyond repair.

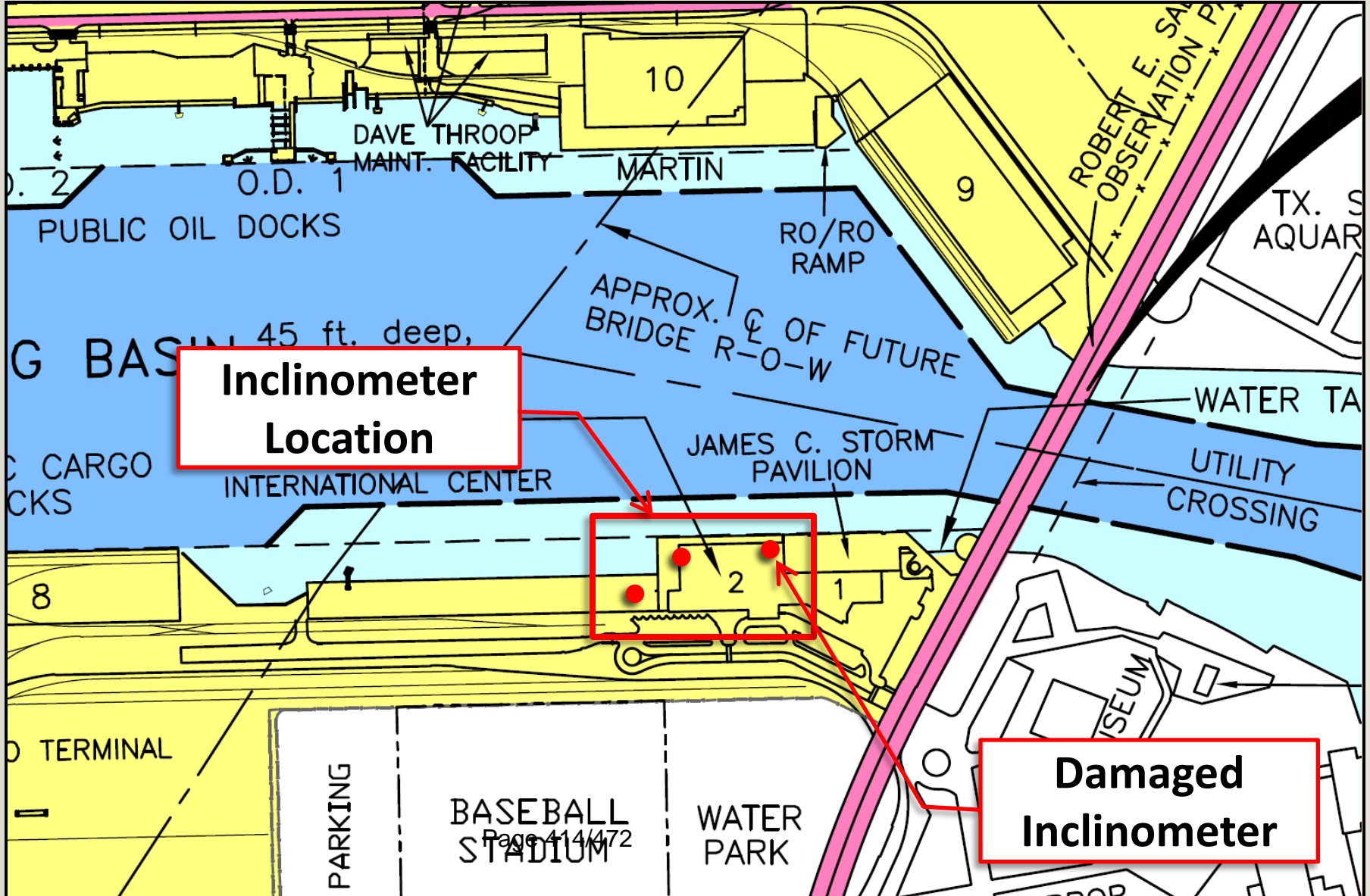
HDR Engineering Inc. has been working with the PCCA on the settlement investigation since the initial study began in 2004. HDR recommends replacement of the damaged unit. Staff negotiated a service order with HDR that includes the design and installation of a new inclinometer. The design will include additional support brackets to prevent the damage that resulted in the loss of the originally installed inclinometer. This service order has a total not-to-exceed amount of \$22,150.

Since the PCCA entered in a \$34,000 contract with HDR in August 2014 for continued monitoring of Cargo Dock 2, staff believes the new service order requires Commission approval. Staff recommends approval of an additional service order with HDR Engineering Inc. in the total amount of \$22,150 to amend the original scope of work on Cargo Dock 2 to include design and installation of a new inclinometer.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)



# Settlement Investigation at Cargo Dock 2



**Inclinometer  
Location**

**Damaged  
Inclinometer**

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-I***

**Approve a Service Order with LNV Inc., under its Professional Services Master Agreement, for Engineering Services Associated with Landscape Enhancements**

The 2015 budget included \$250,000 to provide an initial design for proposed landscaping improvements at various Port properties to improve storm water quality, facilitate less frequent and easier maintenance, and improve the aesthetic appeal using drought tolerant vegetation. Priority locations for landscape improvements include sites that are difficult to access, have safety issues, require a high frequency of maintenance operations, or have storm water quality issues. See attached exhibit.

Through the 2015 Engineering Department's annual Request for Qualifications, staff reviewed statements of qualifications from engineering firms interested in this project; staff selected LNV Inc. as the best suited firm to perform this project. A service order to perform this design work was negotiated for an amount not to exceed \$145,000 and will be completed in two phases. Phase I services include developing a prioritization criteria, surveying PCCA property, and subsequent prioritization of selected areas, design of landscape enhancements, and preparing construction contract documents for up to five high priority areas. Phase II services include the design of five additional standard landscape design alternatives, which can be applied with little modification to additional Port properties in future years.

Staff recommends approval of a service order with LNV Inc., under its existing Professional Services Master Agreement, for professional engineering services associated with the design of landscape improvements at various PCCA properties in an amount not to exceed \$145,000. Staff further recommends that a 7% contingency be granted should it be required during the performance of the project.

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)

# Landscape Enhancements at PCCA Properties



**Examples of Areas Needing Landscape Enhancement**



**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-J***

**Approve a Service Order with Golder Associates Inc., under its Professional Services Master Agreement, for Environmental Services Associated with a Pipeline Removal/Relocation Project at PCCA's La Quinta Property**

Early last year, during the pipeline relocation activities that were performed in accordance with our lease agreement with voestalpine Texas Holding, LLC, hydrocarbon contamination was discovered above TCEQ protective concentration limits. In response to this situation, staff engaged Golder Associates Inc. to complete horizontal and vertical delineation of the soil and characterization of impacts to groundwater. The work included the installation of several monitor wells in coordination with voestalpine to minimize the disruption to their construction activities. To date, staff has expended \$45,300 to meet our obligation to voestalpine.

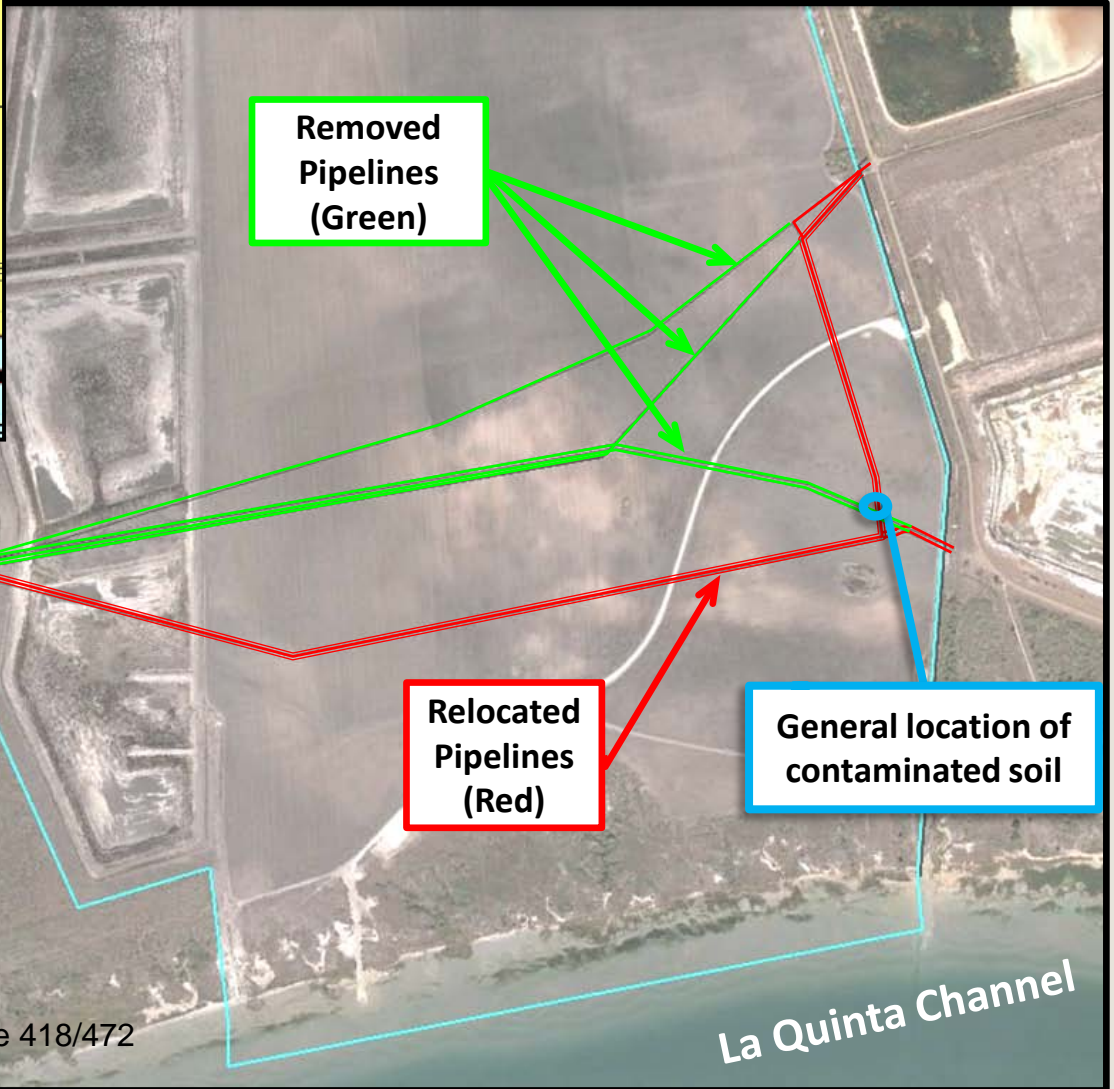
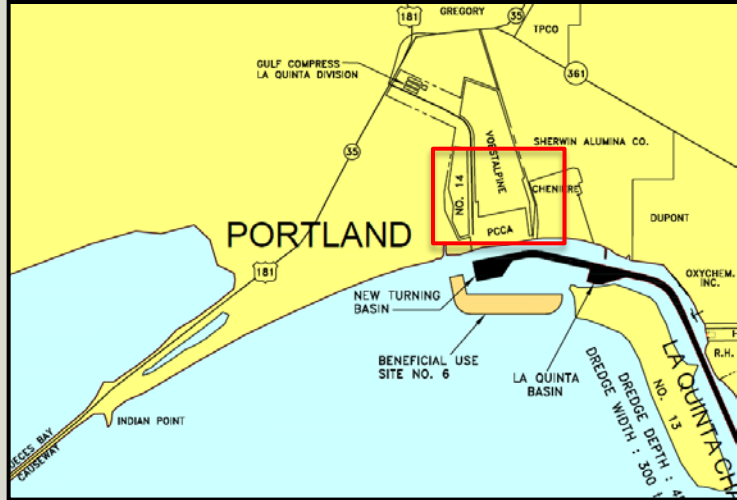
The 2015 budget included \$450,000 for a complete evaluation of the contamination through the Texas Risk Reduction Program (TRRP) under the Texas Commission on Environmental Quality, including submittal of an Affected Property Assessment Report, and, if possible, fingerprinting analyses of the contamination to aid in identifying the source of the material compared to the pipelines that were relocated. To initiate this additional work, staff negotiated a service order with Golder to collect a soil sample for fingerprinting analyses, collect groundwater samples and perform well tests for determining well yield for groundwater classification, complete the Affected Property Assessment Report evaluation and a Drinking Water Survey Report in accordance with TRRP guidelines, and provide options for site closure with associated costs of each option. Compensation for this work will be performed on a time and material basis at a cost not to exceed \$74,949.

Staff recommends approval of a service order with Golder Associates Inc., under its existing Professional Services Master Agreement, in an amount not to exceed \$79,949 for consulting services associated with further site assessment and reporting activities in accordance with TRRP.+

**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)



# Environmental Services Associated with the La Quinta Pipeline Removal / Relocation Project



Removed Pipelines (Green)

Relocated Pipelines (Red)

General location of contaminated soil

La Quinta Channel

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

***AGENDA ITEM NO. 15-K***

**Approve a Professional Engineering Services Contract with Alan Plummer Associates Inc. for Engineering Services Associated with the Design of Storm Water System Improvements at the Maintenance Facility**

The 2015 Budget included \$250,000 for the design and construction of storm water runoff improvements at the two-acre Maintenance Facility site located on the north side of the inner harbor at the corner of Navigation Boulevard and Texaco Road. See attached exhibit. These proposed upgrades are necessary to improve the quality of storm water runoff and manage the storm water runoff from the facility, which ultimately drains into the ship channel. These improvements were recommended from an evaluation conducted in late 2014 and include items such as installing containments around construction materials and aggregates stored within the yard, providing bio-retention areas at the facility, and evaluating surface conditions to minimize ponding and enhance surface flow to inlets or bio-retention areas.

Through the 2015 Engineering Department's annual Request for Qualifications, staff reviewed statements of qualifications from engineering firms interested in this project. Staff selected Alan Plummer Associates Inc. as the company best suited for the design of this project. A Professional Services Engineering Contract to complete the scope of work was negotiated for an amount not to exceed \$56,033. The scope of work includes design of storm water bio-retention and filtration, design of pavement grade modifications to enhance surface flow, design of a containment area for aggregate storage, and evaluation of storm water filtration system options on an uncontrolled outfall.

Staff recommends approval of a Professional Services Engineering Contract with Alan Plummer Associates, Inc. in an amount not to exceed \$56,033 for professional engineering services associated with the design of storm water system improvements at the Maintenance Facility.

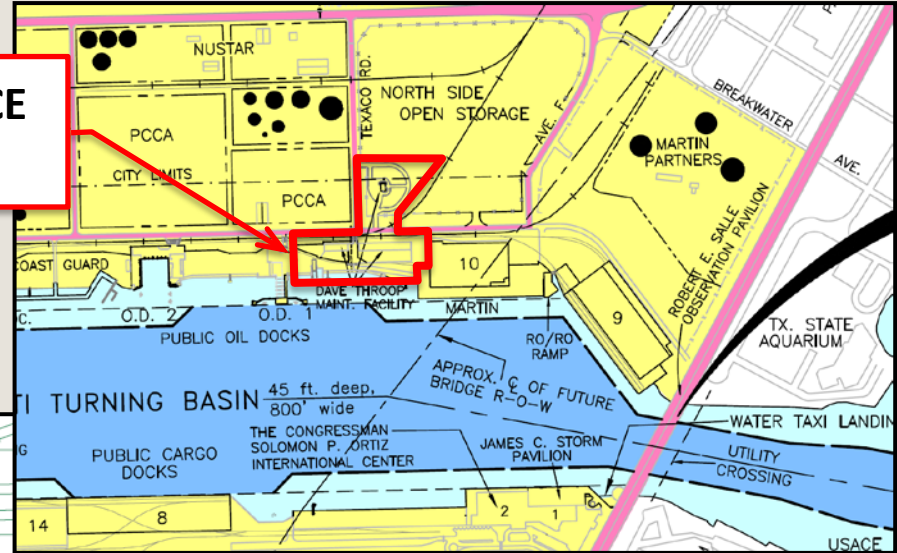
**LEAD CONTACT:** David Krams; 885-6134; [krams@pocca.com](mailto:krams@pocca.com)



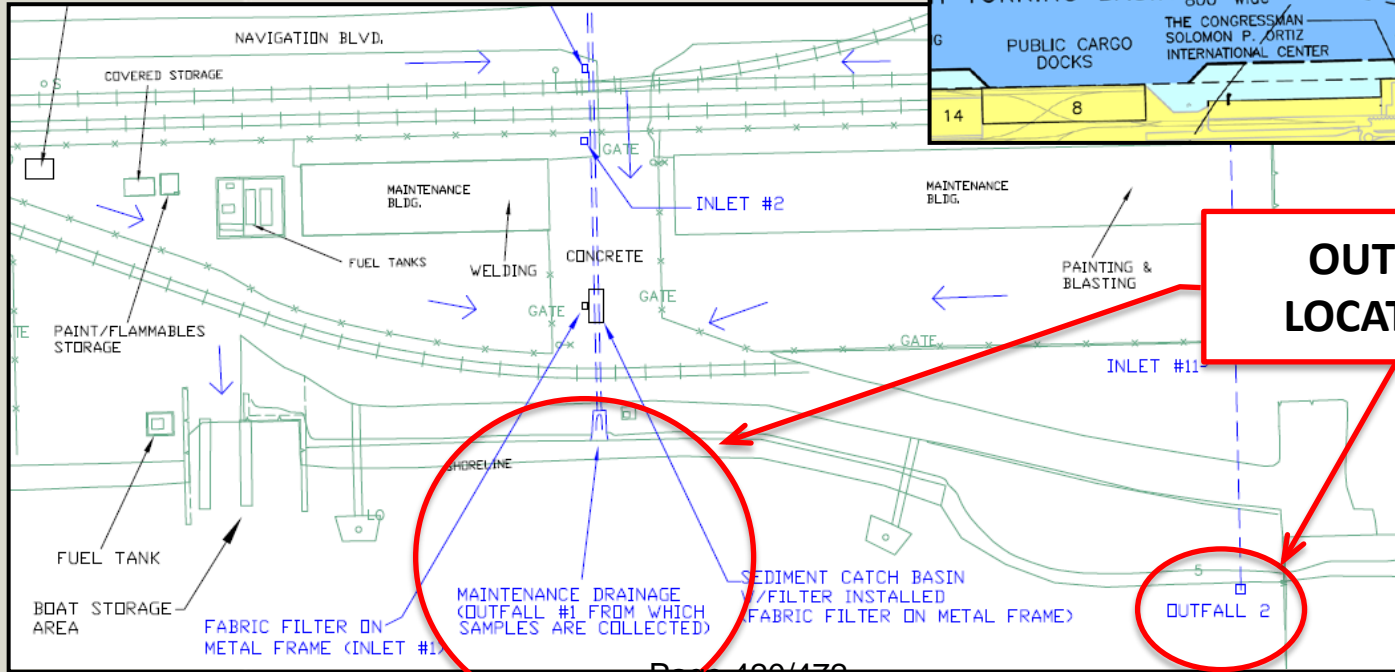
# Storm Water System Quality Improvements at the PCCA Maintenance Facility

AGENDA ITEM NO. 15-K

**MAINTENANCE FACILITY**



**OUTFALL LOCATIONS**





**AGENDA MEMORANDUM**  
for the Port Commission Meeting of  
June 16, 2015

**DATE:** June 16, 2015

**FROM:** John LaRue; 885-6189; [john@pocca.com](mailto:john@pocca.com)

**AGENDA ITEM NO. 16**

**EXECUTIVE DIRECTOR'S REPORT**

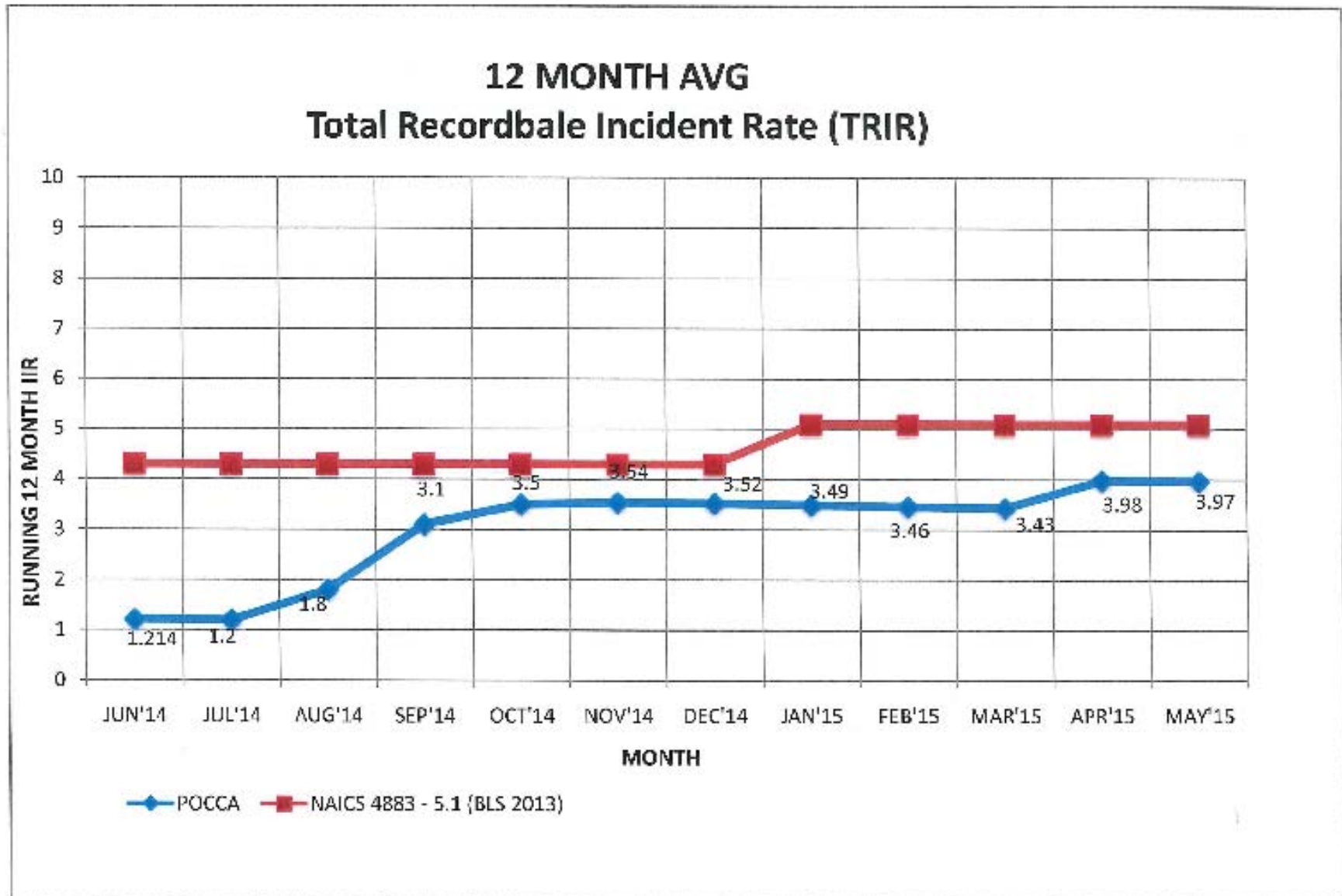


**Port of Corpus Christi Authority**

Monthly Safety Data Report  
May 2015

Safety	POCCA Employees Total		BMD Personnel		Maintenance Personnel		PD Personnel		Admin. & Annex Personnel	
	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD
Number of Employees	190		23		41		51		75	
Work Hours	78,996	144,021	4,073	19,973	5,454	27,868	7,967	37,727	11,502	58,453
First Aid Cases	0	8	0	2	0	4	0	2	0	0
Recordable Injuries	1	4	1	2	0	0	0	2	0	0
Recordable Illnesses	0	0	0	0	0	0	0	0	0	0
Lost Time Cases	0	0	0	0	0	0	0	0	0	0
Number of Days Lost	0	0	0	0	0	0	0	0	0	0
Restricted Cases	0	0	0	0	0	0	0	0	0	0
Number of Days Restricted	0	0	0	0	0	0	0	0	0	0
<b>TOTAL RECORDABLES</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>INCIDENT RATE (YTD)</b>		<b>5.55</b>		<b>20.03</b>		<b>0.00</b>		<b>10.60</b>		<b>0.00</b>
<b>Types of Injuries</b>										
Slips/Trips/Falls	1	4	1	1	0	0	0	1	0	0
Struck By	0	2	0	1	0	1	0	0	0	0
Strains/Sprains	0	4	0	1	0	1	0	1	0	0
Cuts/Lacerations/Punctures	0	1	0	0	0	1	0	0	0	0
Back Injuries	0	0	0	0	0	0	0	0	0	0
Heat Stress	0	0	0	0	0	0	0	0	0	0
Insect Bites	0	1	0	1	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>1</b>	<b>12</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Days Since Last Lost Time</b>	<b>Hours Since Last Lost Time Case</b>		<b>Days Since Last Recordable Injury/Illness</b>				<b>Hours Since Last Recordable Injury/Illness</b>			
109	872		58				464			
<b>Date of Last Lost Time Case</b>	<b>Date of Last Recordable</b>		<b>12 Month Rolling Average</b>							
Thursday, February 12, 2015	Saturday, April 04, 2015		June 2014 - May 2015:				352,477 Manhours Worked			
			Total Recordable Incident Rate (TRIR):				3.97			







# SAFETY COMMUNICATIONS



## Did You Know?

### What is a JHA?

A JHA (Job Hazards Analysis) is a process that if utilized correctly can answer the question "How do I know if I am doing my job safely." It is a tool used to identify and eliminate workplace hazards BEFORE they can cause harm.

The JHA process initially focuses on describing hazards that are associated with specific tasks. Then the process assists in identifying ways to prevent and/or control the hazards identified. This process is called Hazard Mitigation.

Proper hazard mitigation needs to include (in order of importance): Engineering Controls, Administrative Controls and Personal Protective Equipment. One example of Engineering Controls is utilizing automotive or self-maintenance equipment. Examples of Administrative Controls is implementing policies or procedures and Personal Protective Equipment is any gear placed on the body to lessen the degree of injury severity.

It is important to understand that PPE is THE LAST OPTION in the process because it does NOT reduce or eliminate the hazards, it only lessens the potential severity.

### \*\*Safety Incentive\*\*

First 10 employees to call, text or email the Safety Manger with why PPE is the last option in the JHA process will have their name put into a drawing for a safety incentive. Please be sure to include YOUR NAME!!!

## MAY SAFETY SUGGESTION WINNER IS: BURRELL LEMON



# Safety Suggestions

- Suggestion 1.** Put anti-skid and visibility markings on new steps at the back of Admin building.  
Category – Other  
Benefit – Improve visibility and traction  
Status: Update. Engineering looking to include stairs and handrail for Water Street Access!
- Suggestion 2.** For Port Employees who visit or work at or near docks to wear natural fiber clothing.  
Category – PPE  
Benefit – Natural fiber materials do not melt like polyester and woad sties to body if flames burn happens.  
Status: Need Clarification. Natural fiber materials is an excellent suggestion for workers who work the majority of their shift on or near docks that have a high potential for this hazard. The safety committee is not aware of any Port employees that fall within this category, where Port employees are more transient in nature. More information regarding this concern is needed.
- Suggestion 3.** Staircase in the Admin building needing tightened.  
Category – House Keeping  
Benefit – Personal Safety  
Status: Closed
- Suggestion 4.** Replenish snakebite kits in enter facilities.  
Category – Safety Equipment  
Benefit – NONE  
Status: Remove All Snakebite Kits From Port. Snakebite kits were intended for use when medical response is hours away or unavailable all together. This is not the case at the Port. Additionally, staff are not trained to use kits and are more likely to cause more harm than good.
- Suggestion 5.** Place skid resistant tape to permanent ladder rungs.  
Category – Safety Equipment  
Benefit – Accident reduction  
Status: Closed Ladder rungs are designed for use with work boots that have heels. Additional attempts to improve traction may actually contribute to worsening the skidless traction. Over time, exposure to weather would degrade anything applied to the surface causing more harm than good.
- Suggestion 6.** Add permanent grounding wire (cable) station at Maintenance.  
Category – Safety Equipment  
Benefit – Fire/Explosion Prevention  
Status: Need additional information
- Suggestion 7.** Dielectric testing needed for mobile electrical equipment.  
Category – Safety Equipment  
Benefit – Fire/Explosion/Electrocution Prevention  
Status: Need additional information
- Suggestion 8.** Invest in purchase, training and use of L2S personal and area monitors.  
Category – Safety Equipment  
Benefit – Exposure Prevention  
Status: Need additional information

### Did You Know? WINNER!

**Samuel Esquivel**

Port TRIR: 3.98  
2015 Injuries:  
Slips/Trips/Falls = 3  
Struck By = 2  
Strain/Sprain = 4  
Cuts/Lacerations = 1

Picture This!



COMMUNITY RELATIONS

Internal events:

- Memorial Day Remembrance  
Community Relations Department sent out an email to employees with a message from the Port of Corpus Christi commemorating Memorial Day. Employees were also treated to cupcakes.

Administration Building



Bulk Terminal



Environmental Management Systems



Port Security



Harbormaster's Office



Engineering Services





***May Meetings:***

- TIGER grant meetings with Nelda Olivo, Don Rodman, Leslie Ruta, Scott Harris and Brett Flint
- City of Corpus Christi City Council Meeting (Harbor Bridge presentation)
- City of Ingleside City Council Meeting ( Harbor Bridge presentation)
- Erin Wilder, Executive Director, American Heart Association (Heart Walk-kickoff)
- Port Industries Public Affairs Meeting
- Teresa Rodriguez, Justice Greg Perkes, Commissioner Barbara Canales-Corpus Christi Hispanic Chamber of Commerce (Trade Mission)
- Corpus Christi Regional Economic Development Corporation (CCREDC) Investor's Breakfast Meeting
- Nueces County Commissioner's Court Meeting (Harbor Bridge presentation)
- Judge Loyd Neal
- Paulette Kluge, CVB (4<sup>th</sup> of July Celebration)
- Mayor Nelda Martinez and Nelda Olivo
- Leah Olivarri (Plains)
- Port Presentation: Port Secretary Barbara Canales and Jim Wells Judge Pete Trevino
- Carrie Dalton, Divisional Director and Sandra Pearson, Area Director, MDA (Annual Gala)
- Iain Vasey, President/CEO, CCREDC
- Corpus Christi Hispanic Chamber of Commerce Executive Board Meeting & Board of Directors Meeting
- Corpus Christi Medical Center-Board of Trustees Meeting

***Events/Sponsorships:***

- Westside Business Association-Cinco de Mayo Celebration
- Mayor's Prayer Breakfast
- Instituto de Cultura Hispanica International Dinner
- Young Business Professionals IDEAS Week luncheon featuring Port Chairperson Judy Hawley
- CVB Annual Luncheon
- Portland Breakfast Club featuring Port Chairperson Judy Hawley
- Eagle Ford Shale Consortium featuring Port Secretary Barbara Canales
- Tri-Chamber Buenos Dias Corpus Christi-Corpus Christi Hispanic Chamber of Commerce featuring Ted Phelgar, Senior Counselor at Workforce Freedom Initiative, U.S. Chamber
- It's Your Life Foundation Annual 5k Walk/Run Event

## COMMUNICATIONS

***MAY planned, attended and/or coordinated staff & employee participation events:***

- AWEA Tradeshow & Expo 2015
- Strategic Planning Meeting
- POCCA Resiliency Pilot Program Review
- Visit to M&G
- Go Red for Women
- Laredo Chamber 100th Anniversary
- LNG Global Americas Conference preparation meetings
- START Meeting in San Antonio
- Wellness Training, and Monthly committee meeting & luncheon
- Various PMOP Positive Engagement Campaign meetings
- Port Commission Mtg.
- CVB monthly meeting
- VCS Board Meeting

***Multimedia Coverage For May:***

- NEW MARKETING MEDIA MANAGEMENT
  - PortOfCorpusChristi.com
    - Our Broadcasts/SEACASTS news feed stories are original content; written to inspire organic growth with search engines.
      - [\*Continued progress of voestalpine Texas at La Quinta Trade Gateway\*](#)
      - [\*Ports and Energy - Espo 2015\*](#)
      - [\*Cheniere's Corpus Christi Liquefaction project receives key federal licenses for LNG export\*](#)
      - [\*The Street highlights mega investment in South Texas\*](#)
    - Website Analytics (May 1 – 31, 2015)
      - 13,414 Sessions
      - 28,676 Page Views
      - 7,499 Unique Users

➤ User Profiles

<b>Country</b>	<b>Sessions</b>	<b>% Sessions</b>
1. United States	12,112	90.29%
2. Mexico	124	0.92%
3. Brazil	123	0.92%
4. India	104	0.78%
5. Canada	103	0.77%
6. United Kingdom	73	0.54%

➤ Top Traffic Sources

<b>Source</b>	<b>Sessions</b>	<b>%New Sessions</b>
1. Organic Search	6,702	55.07%
2. Direct	5,060	35.49%
3. Referral	1,455	60.27%
4. Social	188	64.36%

- Social Media – Huge reach for paid and organic posts!
  - Facebook (May 1 – 31, 2015)
    - 895 Likes
    - 137,060 Total Reach!
    - 13,271 Organic
    - 123,789 Paid
  - Twitter
    - 889 Followers
    - 10,300 Impressions (Organic)
    - 30 Retweets
    - 20 Favorites
    - 19 Replies
- Photo/Video/Documentary
  - Cargo Dock project cargo/wind cargo
  - Chief Simpson procession
  - PMOP Profiles
  - Jim Wells County visit
  - May Commission Meeting
- MEDIA/MARKETER/COMMUNITY/PUBLIC RELATIONS
  - Coordinate May Our Port newsletter
  - Coordinate lunch and learn with Judy Hawley with Young Business Professionals
  - Assist with Japan Times representative visit
  - Assist Port PD w/creating @PoccaPD twitter
  - Media Advisories/Press Releases
    - Floyd Simpson Resolution
    - New CCO/COO
  - Media Mentions/Web Stories (April 30 – May 31, 2015)
    - 16 (See attached PortCCNews5\_2015)

***Marketing – MDR:***

In May, MDR assisted the Communications Department and the Port Security Department with finalizing the racial profiling and biased based policing brochure. See below for a screenshot of the brochure. We are also in the process of designing new retractable banners for the upcoming Expo Carga conference. The Communications Department will begin distributing a business eNewsletter, with a new design and name, *On The Move*. The People Move Our Port campaign is developing nicely and we're planning the summer media, to include sponsorship of a movie series with Ride-In-Theater, pole banners near the port, a wall wrap and RTA bus wrap. Facebook and online ads are receiving great response.

**May 2015 /Media Editorial/ Focus Ad Content:**

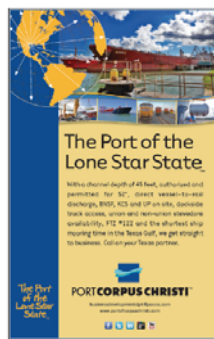
- Breakbulk Magazine /Various /Take a load off.
- Expansion Solutions /Ports Section /The Port of the Lone Star State.
- SHALE Magazine /Various/ Bigger. Better. Booming.
- T21 Revista/ Various /Mejoramos su cadena logistica.
- 2015 WINDPOWER Daily/ WINDPOWER Conference/We're a fan of wind
- aapa-ports.org /Homepage Banner The Port of the Lone Star State
- ajot.com /Run of Site/ Ready for the big and long haul
- centralamericadata.com /Transportation & Logistics Channel /Su Puerto en Texas
- drycargomag.com /Homepage Banner /The Port of the Lone Star State
- expansionsolutionsmagazine.com /Homepage Banner /Come Grow With Us
- ITJ Daily/ ITJ Daily eNewsletter /Banner Take a load off
- T21.com.mx/ Run of Site/ Mejoramos su cadena logística

**June 2015/ Media Editorial /Focus Ad Content:**

- American Journal of Transportation /Gulf Coast Ports /The Port of the Lone Star State.
- Global Trade America's /Top Breakbulk Cargo/ Take a load off.
- aapa-ports.org/ Homepage Banner/ The Port of the Lone Star State.
- drycargomag.com /Homepage Banner /The Port of the Lone Star State.
- expansionsolutionsmagazine.com /Homepage Banner /Come Grow With Us.
- ITJ Daily/ ITJ Daily eNewsletter Banner /Take a load off.
- T21.com.mx /Run of Site /Mejoramos su cadena logística.
- SHALE Magazine Podcast: In June, Eddie Martinez, Business Development, will sit down with SHALE Magazine to do a podcast for Port Corpus Christi. As an advertiser in SHALE, the podcast is an added value.

**Current Marketing Developments:**

- START Initiative
- 2015 Media
- Various Media and Community Ads
- Account Advising
- People Move Our Port Campaign
- Strategic Plan Action Team
- AAPA Award Entries
- Racial Profiling Brochure
- On The Move eNewsletter
- Expo Carga Retractable Banners



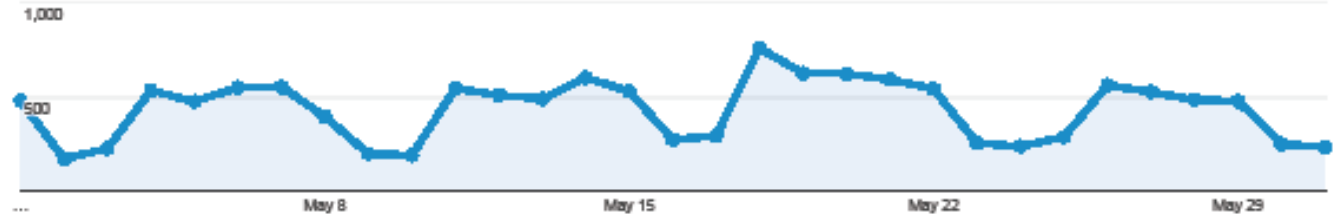
**Audience Overview**

May 1, 2015 - May 31, 2015

All Sessions  
100.00%

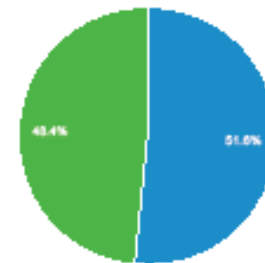
**Overview**

**Sessions**



<b>Sessions</b> 13,414	<b>Users</b> 7,499	<b>Pageviews</b> 28,676
<b>Pages / Session</b> 2.14	<b>Avg. Session Duration</b> 00:02:24	<b>Bounce Rate</b> 56.56%
<b>% New Sessions</b> 48.37%		

**Returning Visitor** **New Visitor**



Country	Sessions	% Sessions
1. United States	12,112	90.29%
2. Mexico	124	0.92%
3. Brazil	123	0.92%
4. India	104	0.78%
5. Canada	103	0.77%
6. United Kingdom	73	0.54%
7. Panama	62	0.46%
8. Italy	46	0.34%
9. Spain	37	0.28%
10. Denmark	34	0.25%

## **GOVERNMENT AFFAIRS**

### **LOCAL**

- Held briefings/meetings with Community Relations for local elected officials and various organizations to gain support for the TIGER—La Quinta Dock grant application that is due June 5<sup>th</sup>.

### **STATE**

- Held meetings with state delegation and consultants to advance port's legislation. Governor Abbott signed the Port's overweight permit legislation on May 28<sup>th</sup>. It is effective immediately. HB 1716 that allows Texas ports to increase lease terms from 30 to 50 years as been sent to Governor for his signature.
- Held meetings with budget conference committee members that will decide HB 1 funding for 2016-2017 budget. The final committee report includes \$20 million for the Port Access Account Fund. The \$209.4 billion two-year budget has been sent to Governor.

### **FEDERAL**

- The Senate Appropriations Committee approved the FY2016 Corps of Engineers funding bill. It included \$50 million for WRRDA Section 2106 donor and energy transfer ports. Next steps will be to maintain funding levels in the final House-Senate conference bill.
- Congress passed a two month extension of MAP 21 that runs through July 31<sup>st</sup>. Without any action by Congress, current authorization of surface transportation programs would expire on May 31<sup>st</sup>.
- Working with congressional offices and consultants to monitor FY 2016 Appropriation bills, National Freight Policy provisions, Harbor Maintenance Trust Fund reform, DERA Program, US Coast Guard, Port Security Grant Program funding, etc.



**MEMORANDUM**

**To:** Nelda Olivo  
**From:** Hugo Berlanga  
**Re:** May Activity Report  
**Date:** June 9, 2015

---

Below, please find an update on issues of interest to the Port. Also, please find a brief summary of those activities conducted by Berlanga Business Consultants on behalf of the Port:

The Port of Corpus Christi and Texas Ports in general had a very successful legislative session. I want to thank the Port staff, Nelda Olivo; Executive Director, John LaRue and especially Jimmy Welder, General Counsel, for their support in dealing with members of the legislature. Speaker Joe Straus has announced he will seek a 5<sup>th</sup> term as Speaker of the House. That should keep our delegation in a great position. Our delegation continues to really develop and work well together. Lt. Governor Dan Patrick was a huge factor in our favor with Windstorm issue, along with Speaker Straus.

Commissioner Charlie Zahn led the TWIA effort, which finally passed for the benefit of the entire coastal bend. Special thanks to Chairman Todd Hunter for the extraordinary effort on its behalf during the debate.

Twenty million dollars was appropriated by the legislature for the benefit of Texas Ports into the Port Access Account, to be overseen by TXDOT. Our Executive Director, John LaRue, is chair of the Port Authority Advisory Committee along with TxDOT. Special thanks to Sen. Hinojosa for his efforts as Vice-Chair of Senate Finance, as well as a senate conferee on the State Budget.

HB 1716, by Rep. Rene Oliviera (D), of Cameron, and Sen. Lucio (D), of Brownsville allows Ports to negotiate 50 year leases on their behalf with tenants.

The overweight trucks corridor legislation SB 1059 by Rep. Abel Herrero (D), Nueces, and Senator Hinojosa (d) of Hidalgo, was passed allowing the Port along with TxDOT to set up the regulation and fees for potential users, when needed.

HB 1422 by Rep. Jim Lozano (D) Kingsville, and Sen. Judith Zaffirini (D) of Laredo, reauthorizing the San Patricio rail district with the power of eminent domain, which had

expired. The legislation will ultimately benefit the Port of Corpus Christi in the future. Special thanks to Sen. Judith Zaffirini and Rep. Jim Lozano for this effort.

SB 1894 by Sylvia Garcia (d) of Harris, relating to the powers and duties of navigation districts, port authorities and board of trustees of municipal port facilities, which was the Port of Houston's omnibus port bill failed to pass.

Despite having a new Governor in Greg Abbot and Lt. Governor Dan Patrick, the learning curve was very good. Both offices were extremely helpful when needed.

Lightning rod legislation that passed this session included the state budget, a 25 percent tax cut for the franchise tax, a \$10,000 raise so the homestead exemption, open carry, a watered down version of campus carry, and appropriation of \$800 million to DPS for border security, a constitutional amendment sent to the voters to dedicate \$2.5 billion of the sales tax and mother vehicle sales tax to the state highway fund, and finally a bill enforcing existing laws that protect pastors and clergy from lawsuits for not performing ceremonies for same-sex marriages.

Legislation that did not pass this session include, decreased funding for "sanctuary cities", ethics reform, school vouchers, school finance reform, and a ban on texting and driving.

Lawmakers not seeking re-election:

Rep. Sylvester Turner (D) Harris  
Rep. Allen Fletcher (R) Harris  
Rep. Joe Farias (D) Bexar  
Rep. Jimmie Don Aycock (R) Bell  
Sen. Troy Raser (R) Horseshoe Bay

- Attended numerous lunches and dinners with members of the legislature in Austin;
- Attended numerous Transportation Committee hearings which were held in Austin;
- BBC will continue to work with Port staff to coordinate all legislative lobbying efforts;
- BBC will continue communication with the members and staff of Senate IGR, Senate Natural Resources, Senate State Affairs, the Lt. Governor's office and House Transportation & Speaker's Office;
- BBC will continue to send notices regarding meetings and articles of interest to the Port via fax and/or e-mail.



**Memorandum for Nelda Olivo  
Director of Government Affairs, Port of Corpus Christi Authority**

From: **Brian Yarbrough** and Janiece Crenwelge  
Date: May 31, 2015  
Re: Activities on behalf of Port Corpus Christi during May 2015

---

**May 7:** Meeting with Sen. Juan Hinojosa for Nelda Olivo regarding HB1 and the Texas budget process. Discussion regarding discrepancy between the House and Senate budget recommendations for funding the Port Access Account. House version had reduced the amount to \$0.00. Meeting with John Roby regarding Port capital funding recommendations.

**May 8:** Conferences with responsible staff in the offices of Sen. Paul Bettencourt, Sen. Robert Nichols, Sen. Sylvia Garcia, Sen. Larry Taylor regarding San Patricio County Rural Rail District and support for HB 1422 (Lozano) in the Senate Intergovernmental Affairs Committee. Consultation with Sen. Kolkhorst office regarding potential exemptions in SB 1812 relating to transparency in eminent domain authority and the creation of an eminent domain authority database.

**May 11:** Attendance and monitor at the Senate Intergovernmental Relations Committee hearing on HB 1422 and consultation with San Patricio County Lynn Spencer and John Barrett regarding follow up actions with committee members after hearing on the bill.

**May 12:** Meeting with Local Calendars committee staff in the office of Chair Senfronia Thompson to request placement of the Port oversize/overweight legislation HB 3722 (Herrero) /SB1059 (Hinojosa) on the local calendar for consideration and vote.

**May 13:** Attendance and monitor the Senate Transportation Hearing on HB 1716 regarding extended port leases with Frank Brogan; Consultation with Senator Robert Nichols regarding finance recommendations to the Port Access Fund in HB1 for port capital improvement projects. Monitor Senate Transportation hearing on HB 13 (Pickett) regarding unanticipated negative testimony against the Harbor Bridge Project from two Nueces County residents.

**May 15:** Conferences with the offices of Sen. Troy Fraser, Sen. Charles Perry, Sen. Robert Nichols, Sen. Van Taylor, Sen. Larry Taylor, Sen. Paul Bettencourt to solicit support of HB 1422 (Lozano) on the Senate Floor. The measure required 21 Senate votes in favor to take effect.

**May 18:** Preparation of Port legislation summary for Port Commission meeting to be held on May 19. Consultation with Chief of Staff and policy advisors in the office of Sen. Judith Zaffirini regarding Senate floor vote counts on HB 1422.

**May 21:** Preparation of correspondence to offices of Sen. Judith Zaffirini and Rep. J.M. Lozano regarding passage of HB 1422. Coordination with Lynn Spencer and San Patricio County Rural Rail District regarding the same. Update to delegation members on the passage of the bill and delivery of Port correspondence to delegation members offices from John LaRue.

**May 25:** Meeting with the office of Gov. Greg Abbott policy staff regarding Port oversize/overweight legislation SB 1059 (Hinojosa) to support the legislation and request signature. Preparation of supporting policy information and research from the Texas Transportation Code for same.

**May 27:** Research on Texas state budget and the port infrastructure funding recommendation in the final bill version (HB1).

**May 29:** Conferences with legislative and policy staff in the office of Gov. Abbott to support HB 1422 (Lozano) rural rail transportation bill. Conferences with legislative and policy staff in the office of Gov. Abbott to support HB 1716 (Oliveira) that would extend term limits on the length of time a navigation district may lease land to third parties.

**May 30:** Research and review of final version of SB 709 (Fraser) relating to environmental permitting procedures for applications filed with the Texas Commission on Environmental Quality.

**May 1-31:** Conferences with Sen. Hinojosa, Reps. Hunter, Lozano and Herrero, and staffs, regarding port issues. Daily review of and legal research on filed legislation for potential impact to Port of Corpus Christi activities and operations. Weekly transmission of current bill tracking list to John LaRue and Nelda Olivo on filed legislation and committee hearings.

BORSKI ASSOCIATES, LLC

4463 East Thompson Street  
Philadelphia, PA 19137  
(215) 327-5600 (Cell)

805 15th Street, N.W.  
Suite 1101  
Washington, DC 20005  
(202) 459-0804 (Office)

---

MEMO

**To: Port of Corpus Christi**  
**From: Borski Associates**  
**Date: June 5, 2015**  
**Re: Monthly Report**

***FY16 Budget***

The Senate Appropriations Committee reported its version of the FY16 Energy and Water Appropriations bill before the Memorial Day recess. The bill includes \$1.6 billion for Army Corps of Engineers construction programs, which is over \$500 million more than requested by the President. It includes an additional \$112 million for navigation construction, which will be distributed by the Corps via a work plan. It also includes \$50 million for donor and energy transfer ports - the Port of Corpus Christi is considered an energy transfer port. Finally, the bill includes \$8.75 million for maintenance dredging the Corpus Christi Ship Channel.

However, the bill faces a veto threat, as do all of the FY16 appropriations bills. The White House has indicated that the Budget Control Act caps (sequestration) must be lifted in order to fund domestic discretionary programs at higher levels. This situation sets up an endgame that results in either an omnibus bill or a continuing resolution. We expect to know more in the coming months about how the Republican congressional leadership plans to respond to this veto threat.

The bill has not been considered on the Senate floor yet.

***Ex-Im Bank***

It appears increasingly likely that Congress will pass some sort of extension to the Export Import Bank's authorization. The Bank's authorization is set to expire on June 25th and Senate Majority Leader Mitch McConnell has promised a vote to extend the Bank. However, there are few legislative days to conduct such a vote and any Senator can delay the process.

There has been some discussion about attaching an extension on to must-pass legislation, such as another extension of surface transportation programs. To date, however, it is unclear how the Senate will address this looming deadline given the complexities of passing legislation.

Once the Senate is able to pass an extension, Speaker John Boehner will also have to decide how to proceed. The Bank has become a target of conservative groups, who argue that it interferes with free market capitalism. While an extension would certainly pass the House, it would only do so with minority Republican support - putting the Speaker in an uncomfortable political position. The Speaker has committed to bringing a Senate-passed bill to the floor and open the bill to amendments. However, it appears increasingly unlikely that can happen before June 25th. We will continue to monitor and advise.

***TIGER***

TIGER grants are due June 5th. We anticipate awards to be announced in early September.

**CASSIDY & ASSOCIATES**

733 TENTH STREET, N.W., SUITE 400  
WASHINGTON, D.C. 20001-4886

Tel: (202) 347-0773

Fax: (202) 347-0785

www.cassidy.com

Firm Client: Port of Corpus Christi Authority, Texas  
Primary Client Team: Barry Rhoads, Steven McKnight, Andrew Forbes, and Kaleb Froehlich  
Services Period: May 1-31, 2015

---

Summary of Services on behalf of Port of Corpus Christi Authority, Texas:

- Substantive consulting on federal government issues on behalf of PCCA
  - ▶ Participated in conference call and other liaison with American Association of Port Authorities on funding for donor and energy ports
  - ▶ Researched statutes and legislative history on WRDA definitions impacting funding for donor and energy ports
  - ▶ Discussed upcoming PCCA's application for Department of Transportation's TIGER Grant competition
- Legislative Liaison and Monitoring
  - ▶ Engaged in liaison with Congressional staff on nature of projects potentially eligible for funding under provisions for donor and energy ports, and provided questions on issue for upcoming hearing on
  - ▶ Held follow-up meetings with Congressional offices on delegation letters to Coast Guard regarding need for action on Aids to Navigation
  - ▶ Drafted Questions for the Record relating to Corps/OMB position on separable elements issue for Congressional submission post-subcommittee hearing
  - ▶ Provided information about June 10<sup>th</sup> House subcommittee hearing on implementation of WRRDA 2014
  - ▶ Provided information about future timeline for action on Senate comprehensive energy legislation
- Client Contact and Team Coordination
  - ▶ Discussed Port issues with other Port consultant and AAPA to coordinate actions
  - ▶ Engaged in regular telephone and e-mail contact on PCCA matters with Executive Director John LaRue, Government Relations Manager Nelda Olivo, and Director of Engineering Services David Krams
  - ▶ Reviewed news media coverage of new developments at Port and other PCCA activities and discussed same with PCCA representatives

## **BUSINESS DEVELOPMENT**

- For the past two years we have increased the wind energy imports/exports through our Port. Thus, in order to continue with this trend we returned to Denmark and Germany to meet with the various clients within their Headquarter offices. Overall, the meetings proved successful as we received information corroborating the steady flow of wind cargo, via PCC for Q3/4, 2015; throughout 2016; into 2017.
  - At the writing of this report, 95% of our entire port, lay-down areas, are full with wind components. We are receiving an average of seven vessels per month with towers and blades. In addition, via rail, we are receiving blades for export into South America and soon to Europe.
- Attended and presented PCC within the Project Professionals Group (PPG). This organization is composed, mostly, with international freight forwarders.
- Attended and participated the AAPA's Executive Management Conference. This was the first of the classes required to attend in order to obtain the Professional Port Manager Certification.
- The "Regular Liner Service" project, from PCC into Colombian ports has encountered some delays. However, we were invited to meet with a Shipping Line who presently has various vessels trading in the Caribbean and are seeking to expand their services. The meeting went quite well and there will be a second meeting in PCC the second week of June. Within mentioned meeting the shipping line will be present and we will have the Laredo, San Antonio and local exporters-importers to exchange information on freight costs and revenues. We anticipate that after said meeting a monthly Liner Service could start from the month of July.
- Met with a delegation of Chinese investors seeking land-sites for investments and construction of manufacturing plants. Presently, they already have some investments in Panama. We will closely monitor this future opportunity.
- We continue assisting the Port of Santa Marta engineers and executives with the dismantling operations of the refrigerated warehouse. Their "dismantling" contractor has not been working as fast as anticipated. Nevertheless, the Colombians continue with the plans to ship-out the refrigerated components by end July, latest.
- This month we received, from Korea, 4,500 tons of unfinished steel pipe for TPCO as well as 2,500 tons for another client. Anticipate continuing with these types of shipments for the rest of the year.
- Attended and participated (assisting in the organization, leading the Logistics Panel) within the 4<sup>th</sup> Eagle Ford Consortium Conference. Commissioner Barbara Canales was also in attendance and spoke on PCC's substantial growth and opportunities.
- Met with a group from Spain who is interested in investing and developing desalinization projects for industries within the region.

- As part of the Executive Board within the local World Affairs Council, invited the members to have the yearly meeting within our premises. With the assistance of the State Department we will continue to have excellent International presenters/speakers for the rest of the year.
- Maintenance work for Port Tariff 100-A & Bulk Terminal Tariff 1-A continues in conjunction with support for accurate billing of general industrial and wind cargoes received.
- We continue to receive project cargo shipments for the various industries constructing their plant facilities within our area. These, coupled with the wind energy vessels had had our two general cargo docks quite busy. Nevertheless, occasionally we still receive frac sand in barges.

## **HUMAN RESOURCES**

### ***General***

- New Hires
  - Rudy Gomez, Maintenance Worker/Groundskeeper
  - Roberto Griffith, Maintenance Worker/Groundskeeper
  - Alejandro Reyes, Senior Maintenance Worker/Electrician
  
- (3) Pre-Placement Physical Evaluations Conducted
- (5) drug tests conducted
  - (3) random
  - (1) post accident

There were additional meetings held with staff to discuss:

- Human Relations
- Recruitment
- Staffing
- Employee Development
- Payroll Administration/Compensation

### ***Contract Participation:***

At the end of April 2015, (639) were registered on the established E-Bid System web site for businesses doing and those wanting to do business with PCCA. Of the vendors registered (227) vendors are Target Group Vendors. The Target Group Vendors are: Disadvantaged Business Enterprise (DBE), Historically Underutilized Business (HUB), Minority Business Enterprise (MBE), Woman Owned Business (WOB), and Small Business Enterprise (SBE).

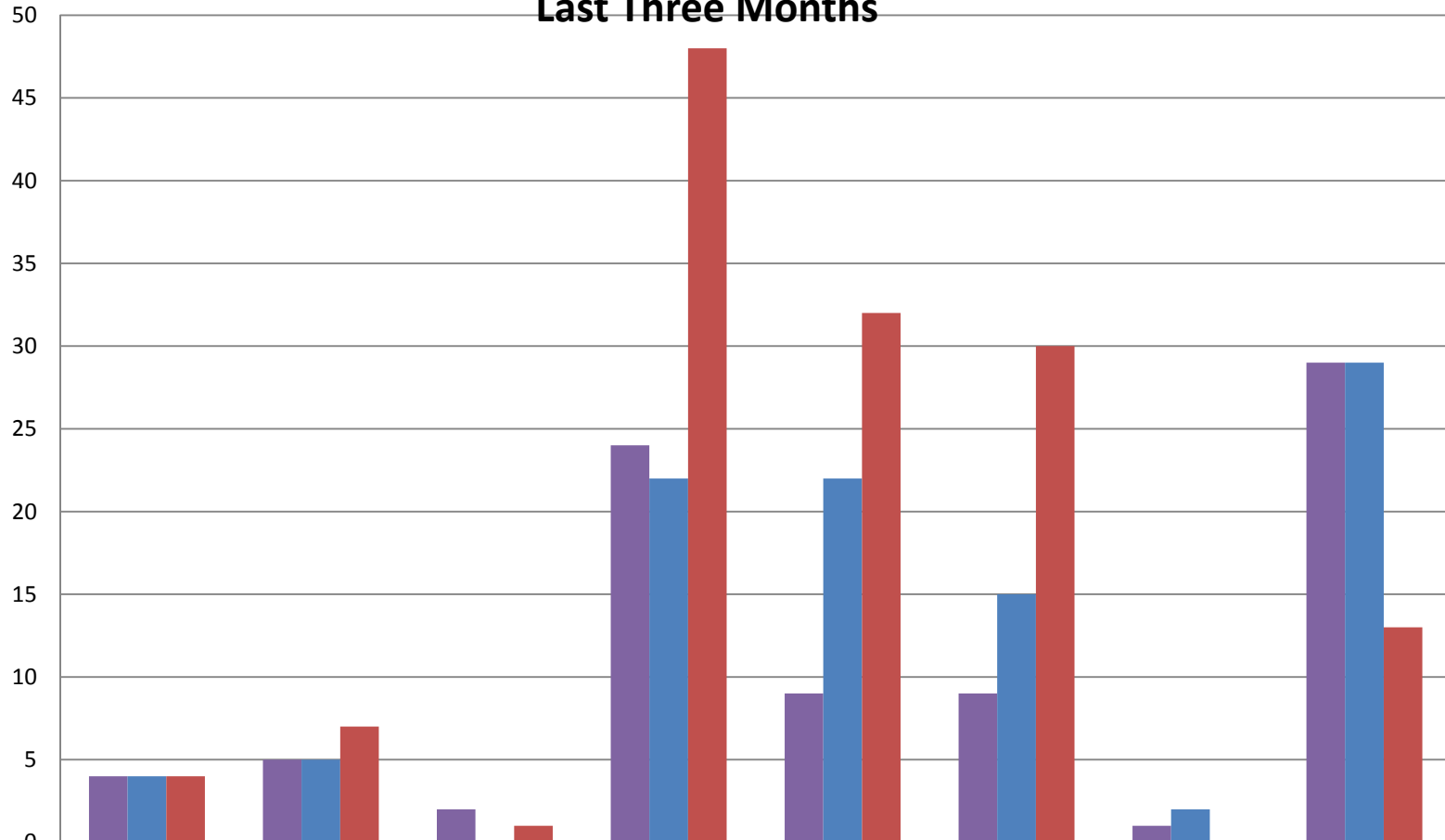


**Port of Corpus Christi Authority  
Organizational Chart  
May 31, 2015**

<b>DEPARTMENTS</b>	<b>Exempt</b>	<b>Non-Exempt</b>	<b>Temporary</b>	<b>Total</b>
Executive Director	3	0	1	<b>4</b>
Human Resources	2	3	1	<b>6</b>
Managing Director	1	0	0	<b>1</b>
Engineering Services	18	4	0	<b>22</b>
Finance & Admin.	1	1	0	<b>2</b>
Accounting	3	6	0	<b>9</b>
Information Tech	8	0	0	<b>8</b>
Business Development	4	0	0	<b>4</b>
Community Relations	2	0	0	<b>2</b>
Communications	3	0	0	<b>3</b>
Operations	6	0	0	<b>6</b>
Maintenance	2	39	0	<b>41</b>
Harbormaster's Office	1	8	0	<b>9</b>
Bulk Handling Facility	3	20	0	<b>23</b>
Security/Police Dept.	4	47	0	<b>51</b>
<b>TOTAL</b>	<b>61</b>	<b>128</b>	<b>2</b>	<b>191</b>

E - EXEMPT  
 NE - NON-EXEMPT  
 H - HOURLY  
 T - TEMPORARIES

### 2015 Port Police Calls - PICC Last Three Months



	Total Arrests	Subjects Taking Pictures (PC)	Security Breach (SB)	Suspicious Vehicle (UV)	Suspicious Persons (SU)	Suspicious Activity (SA)	Disturbance (DS)	Investigation / Other (OT)
■ 15-Mar	4	5	2	24	9	9	1	29
■ 15-Apr	4	5	0	22	22	15	2	29
■ 15-May	4	7	1	48	32	30	0	13

**OPERATIONS**

**HARBORMASTER**

**Ship Arrivals**

<u>May 2015</u>			<u>2014</u>		
<u>Tankers</u>	<u>Freighters</u>	<u>YTD Ships</u>	<u>Tankers</u>	<u>Freighters</u>	<u>YTD</u>
124	31	715	105	32	600

**Barge Arrivals**

<u>May 2015</u>			<u>2014</u>		
<u>Tank Barges</u>	<u>Freight Barges</u>	<u>YTD Barges</u>	<u>Tank Barges</u>	<u>Freight Barges</u>	<u>YTD Barges</u>
395	18	2514	556	25	2622

**Shifting**

<u>May 2015</u>		<u>May 2014</u>	
<u>Tankers</u>	<u>Freighters</u>	<u>Tankers</u>	<u>Freighters</u>
25	2	25	6
<u>Tank barges</u>	<u>Freight Barges</u>	<u>Tank barges</u>	<u>Freight Barges</u>
963	10	992	19

**Average Daily Vessel Arrivals**

	<u>2015</u>	<u>2014</u>
Ships:	5.00	4.42
Barges:	15.48	18.74

**Channel Disruptions**

**May 2015:**

There were 45.09 hours of disruption. 7.0 hours for a rig movement, 5.25 hours for high winds, 15.34 hours for set (cross currents at jetties) and 17.50 hours for a range light not working. 14 outbound and 11 inbound vessels were delayed due to these disruptions.

**May 2014:**

There were 32.92 hours of channel disruption. A total of 31.17 hours of fog and 1.75 hours for a rig movement. 11 outbound and 10 inbound vessels were delayed during these disruptions.

**BULK TERMINAL**

- Current Projects:
  - Replacing three-quarter belt covers with full belt covers
  - Dust control for all pads and roads
  - Preparing for pad resurfacing and paving projects
  - Installing cable tray along CB# 2
  - Storm Water MGMT
- Current Activity
  - Railcars:
    - Loaded: 58 cars - Total of 4,872.16 Short Ton pet coke
    - Unloaded: 0
  - Bulk Dock #2:
    - 128,569.76 Short Tons Pet Coke
    - 40,222.38 Short Tons Sulfur
  - Pads:
    - 120,964.21 Short Tons Pet Coke
    - 1,450.00 Short Tons Sulfur

**OPERATIONS COORDINATOR**

- Emergency Communications:
  - Tested the Port Alert System (PAS) the week of May 18. Lessons learned will be presented at the Port Wellness luncheon on June 10<sup>th</sup>. There are operation issues that are on-going that will require the systems designer to correct.
- Insurance:
  - Handled routine insurance matters.
- Miscellaneous:
  - Completed the first of several National Incident Management System (NIMS) classes.
- Port Damage Claims:
  - Total recovered to date (2010 – 2014) is \$71,008

**MAINTENANCE**

- Miscellaneous:
  - Performed preventative maintenance (PM) on vehicles, safe boat and equipment at the Maintenance Department
  - Performed routine inspection and PM on lights, water outlets
  - Performed grounds keeping port wide
  - Performed monthly a/c service port wide
  - Over saw janitorial service on all port facilities
  - Picked up and storage rail road ties from NRRY as per Dave Michaelsen
  - Removed gates next to Al Speight yard as per Dix Fairway

- Assisted with deliver on chairs for the Police officer memorial
- Assisted Bays and Estuaries with delivery and removal of recycled paper bins
- Replaced broken pillar light lens at water taxi area
- Ortiz Center:
  - Replaced thermostat, cleaned evaporator coil and cleared drain line in walk in cooler.
  - Painted driveway curves, loading area and fire lines, installed additional handicapped parking spaces with poles and signs
  - Repaired kitchen oven, repaired refrigerator and they also bring up a/c chillers after power outage
  - Assisted with fire alarm reset, continued with lighting repairs to the front of building
  - Reinstalled and reinforced mounting of garbage disposal in main kitchen
- Guard House:
  - Adjusted and lubricated carousel personnel entrance gate at Stroman
  - Installed window tint on doors and repaired lighting and serviced exhaust fan at Viola
  - Replaced lift station sewer pump at Ave F and also repaired a/c unit at Ave F
  - Replaced door hinges at BMD
- Admin:
  - Painted Rosie Collin's office and also hung wall frame and map
  - Assisted Public Relations with float set up for buc parade
  - Assisted accounting dept. with storage and shredding of documents
  - Contracted completed repairs to front awning tile
  - Inspected and tightened bolt and screw on spiral staircase
  - Conducted monthly inspection and test of emergency lighting
- Annex:
  - Adjusted a/c damper in engineering office to raise room temperature
  - Serviced a/c units at HMO and IT's computer room
  - Conducted monthly inspection and test of emergency lighting
  - Replaced wheel caster on Mr. Alejandro's office chair
  - Repaired lose section of carpeting on 3rd floor hallway
- BMD:
  - Repaired water sampler unit as requested by environmental
  - Conducted inspection on back flow device at BMD
- Cargo Dock:
  - Conducted annual fire hose testing at CD 14 and 15
  - Conducted monthly potable outlet inspection and flush
  - Conducted monthly inspection of fire alarm and panels on all warehouse
  - Fabricated new potable outlet cover at CD 14
  - Repaired water meter at CD 10
- Oil Dock:
  - Completed repairs to fire pump piping and re-established water pressure to fire system
  - Conducted monthly inspection and flush of potable water outlets
  - Conducted inspection on back flow devices at OD 4, 7, and 11

- Removed and serviced a/c unit at OD 11
- Repaired light fixture housing and re-lamped at OD 9
- Reinstalled fallen light pole at OD 3
- Roadways:
  - Temporarily repaired Avery Point Road
  - Replaced or installed various signs throughout JFTC, LA Quinta, Navigation and BMD roads
- Fire Boat:
  - Removed rain water accumulated in thruster compartment
  - Conducted weekly PM's
  - Repaired emergency light on deck house
  - Participated in barge fire response drill
  - Assisted RTFC with fire monitor valve replacement
- Gates:
  - Repaired wind damaged gate 80c
- Maint Shop:
  - Repaired hinges and roller on bay 4 over door
  - Installed inline vent on kitchen sink of Admin office
  - Serviced and repaired maintenance lunchroom a/c

### **FOREIGN TRADE ZONE**

- A preliminary site visit of the recently approved voestalpine site was done with Customs and FTZ Manager on Thursday, May 29. Security, access and project timeline was reviewed to ensure the operation would be in compliance with all FTZ requirements for upcoming cargo scheduled for later this year.
- Work continues with M&G on their incoming cargo and FTZ operation within the two Port warehouses on Port Avenue.
- FTZ Manager continues working with M&G and voestalpine on their activation package for Customs approval of their site operations.

### **ORTIZ CENTER**

May was a slower month than we had anticipated; however, even with missing our sales goal for the month, we able to pass a higher than anticipated profit for the month.

In May, we hosted several high profile events to include the Buccaneer Commission Crowning and Pre-Parade Party, Corpus Christi Education Foundation's First in Family Banquet, the American Heart Association's Go Red for Women Luncheon, Beach to Bay Registration event, the Corpus Christi Hispanic Chamber's Women in Energy Forum, the Corpus Christi Chamber of Commerce Cyber Security Luncheon and the Texas A&M Maritime Academy Reception.

We were also proud to host the Fallen Police Officers Memorial Service on May 11<sup>th</sup>. This event marks the beginning of the Peace Officers Memorial Week, a time when local law enforcement agencies honor those who have died in the line of duty.

As part of our continued commitment to the community, we are pleased to report that the Ortiz Center has provided almost \$17,000 in discounts and sponsorships to numerous not for profit and Community Based Organizations during the May. The support given by the Ortiz Center assists these wonderful organizations in their ability to generate the resources needed to provide services throughout the Coastal Bend region.

Below are 2014 totals and numbers to-date for 2015 activity

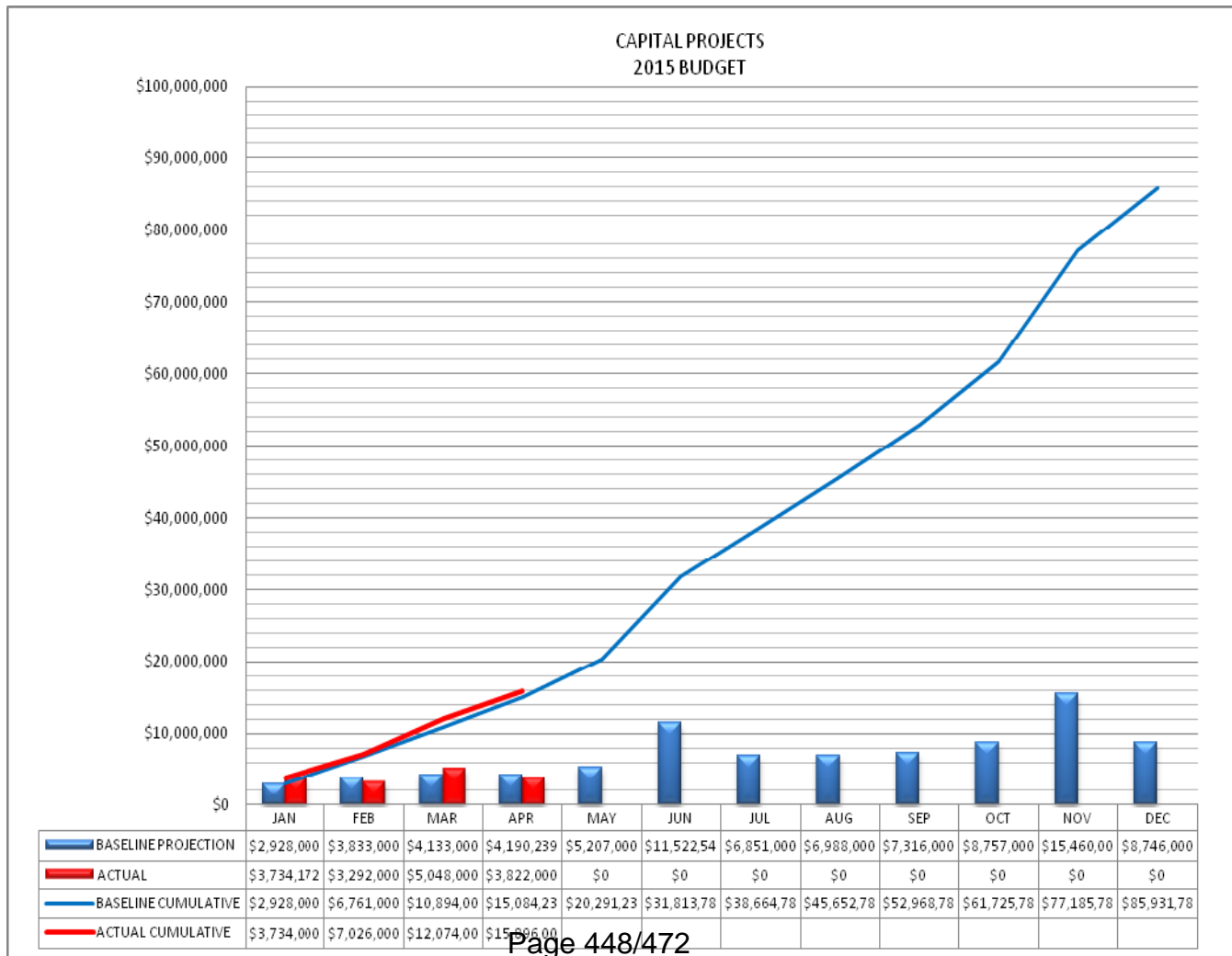
<b>2014</b>	<b>Guest Attendance</b>	<b>Number of Events</b>	<b>Revenue</b>	<b>2015</b>	<b>Guest Attendance</b>	<b>Number of Events</b>	<b>Revenue</b>
January	3,955	36	\$142,352	January	5,113	42	\$216,694
February	4,911	33	\$114,327	February	2,639	27	\$75,227
March	4,086	38	\$127,300	March	5,397	40	\$197,604
<b>1st Quarter</b>	<b>12,952</b>	<b>107</b>	<b>\$383,979</b>	<b>1st Quarter</b>	<b>13,149</b>	<b>109</b>	<b>\$489,525</b>
April	6,953	53	\$216,269	April	5,046	53	\$187,262
May	4,980	42	\$163,023	May			
June	2,878	39	\$128,631	June			
<b>2nd Quarter</b>	<b>14,811</b>	<b>134</b>	<b>\$507,923</b>	<b>2nd Quarter</b>			
July	3,290	44	\$132,152	July			
August	2,147	27	\$82,718	August			
September	3,766	29	\$144,026	September			
<b>3rd Quarter</b>	<b>9,203</b>	<b>100</b>	<b>\$358,896</b>	<b>3rd Quarter</b>			
October	5,838	50	\$190,869	October			
November	4,121	31	\$233,592	November			
December	3,897	44	\$312,556	December			
<b>4th Quarter</b>	<b>13,856</b>	<b>125</b>	<b>\$737,017</b>	<b>4th Quarter</b>			
<b>Totals</b>	<b>50,822</b>	<b>466</b>	<b>\$1,987,815</b>	<b>Totals</b>			

## ENGINEERING SERVICES

As of May 31, 2015 (billing through April 30, 2015), the Port of Corpus Christi Authority Department of Engineering Services had completed 22 projects and has 101 projects in progress. These projects consist of 64 Capital, 33 Maintenance, and 26 Professional Service projects. During May, \$4,103,000 was invoiced for ongoing work. To date this year approximately \$17,124,000 has been invoiced for work performed. Below is a table detailing the 2015 budget amount and the “to date” cost, for the capital, maintenance and professional services and year-end forecasts.

<b>Engineering Services April 2015 Report</b>				
<b>Project Type</b>	<b>No. of Projects</b>	<b>2015 Budget Amount</b>	<b>Expended to Date</b>	<b>End of Year Forecast</b>
Capital	98	\$85,931,786	\$15,896,000	\$71,695,000
Maintenance	42	\$7,155,000	\$753,000	\$6,307,000
Professional Services	41	\$2,004,500	\$475,000	\$2,005,000
<b>Total</b>	<b>181</b>	<b>95,091,286</b>	<b>\$17,124,000</b>	<b>\$80,007,000</b>

Below is a graph representing the 2015 Capital Project Budget and a forecast of monthly project expenditure of the capital projects throughout the year. An actual monthly project expenditure tracking line is included to follow the progress as the year develops.





The status of the following listed projects currently in progress is provided for your information:

**CAPITAL PROJECTS**

***Security Grant Improvements Projects***

Grant Thirteen: La Quinta/GIWW Surveillance project (13-054C) - the drill piers have been installed at both sites and the contractor is working on the foundations/camera pole bases. Southside Emergency Power project (13-054D) - Contractor has begun construction for underground and foundations. Purchase of Camera System and Equipment project (13-054E) - Notice to proceed has been issued for the two replacement PTZ thermal cameras for the east end and west ends of the inner harbor. Delivery due by July 25th.

***Nueces River Rail Yard – Phase II (13-043A)***

Commission authorized award at the May 19th commission meeting to W.T. Byler for the Base Bid and Additive Bid Items 1 and 2 in the amount of \$24,208,830.10. Waiting for TxDOT to provide concurrence letter before the Notice of Award letter is issued.

***Permian Yard Drainage Improvements (09-041A)***

Contractor re-mobilized on May 26, 2015 and has begun dewatering existing excavation to continue installing outfall box culverts.

***Permian Yard Drainage Improvements – Phase II (09-041B)***

Project is 100% complete. Notice of Final Acceptance has been issued. No further report will be made.

***Public Oil Dock 14 (13-032A)***

The contractor has installed approximately 75% of the H-beam anchor piles for the bulkhead tieback system and begun installing the pile caps and the front steel sheet pile wall starting at the east side working west. The project is approximately 20% complete.

***Oil Dock 14 Entrance Road (15-050A)***

Design drawings and contract documents are under final review.

***West Barge Mooring Area (13-051A)***

Contractor continues dredging the barge fleeting area and is placing revetment mats on bank slope.

***Resurface Public Storage Pads at Bulk Terminal (14-030A)***

Freese & Nichols was selected as the consultant for the design phase. Preliminary plans are under staff review.

***Construct 8" Water Line at La Quinta (14-045B)***

Design is 50% complete to complete the water line loop to serve the PCCA's La Quinta property. Completion of final design is pending while easement is being coordinated and obtained by City of Portland.

***New Fire Barge Dock (12-027A)***

Design is being finalized for a dedicated berth for the Port's Fire Barge. This will be located at the west end of Cargo Dock 2 (Ortiz Center). COE permit has been approved. Consultant is finalizing design plans for review.

***Port Area Signage & Landscaping Improvement (14-039A)***

Naismith Engineering has completed the preliminary study. Final design of signage components is to be completed by August, 2015.

***Gregory Relief Rail Bypass (14-040A)***

This project is on hold.

***Replacement of Dock House on Oil Dock 10 (14-041A)***

Design drawings and contract documents have been finalized. Staff incorporated other dock improvements/repairs into this project contract. The project is currently scheduled to be advertised in June.

***New Port Office Facility (14-036A)***

Staff and WKMC are evaluating additional alternatives.

***Construction of Multi-purpose Ship and Barge Dock & 15 Acre Storage Yard at La Quinta Gateway Terminal (14-037A)***

Design began in September 2014. Anticipate design to be completed in summer, 2015.

***Oil Dock 3 Upgrades (14-058A)***

Staff is evaluating additional options and addressing navigation and property limitations.

***Remove Tule Lake Lift Bridge Foundations (07-046C)***

Pre-Solicitation Phase is complete. Consultant is now to begin preparing the Bid Package. Project expected to bid in the fall. An extension of time has been requested for the permit with the USACE.SAP submitted for approval; re-application in preparation; regulatory EOT pending.

***Maintenance Building Relocation (14-061A)***

WKMC is preparing an updated cost estimate and architectural site renderings.

***Surplus Sale of Cold Storage Warehouse (14-062A)***

Contractors for the new owner are on site and removal work is underway, interior work is near complete and removal of the building structure is expected to begin in early June.

***Inner Harbor Rail Upgrades and Improvements (14-016A)***

Contractor has completed all track work, however ancillary work continues. Drainage improvements just west of BMD-2 were delayed due to inclement weather.

***Design of New Public Oil Docks at Viola (14-044A)***

HDR has submitted the conceptual design report. Staff has received and reviewed Final Conceptual Study. Staff and consultant are developing for review a 3 dock layout.

***La Quinta Terminal Aquatic Habitat Mitigation (12-031A)***

Project was awarded at April commission meeting to Apollo Environmental Services, LLC and Notice of Award was issued on May 5th, 2015. CHE will be performing construction management/inspection. Contractor scheduled to mobilize on site on May 20, 2015.

***Purchase of Vehicles (15-009A)***

PCCA has received 7 of the 12 vehicles purchased. All remaining are scheduled for delivery by July 2015.

***Purchase and Installation of Additional AEI Readers (15-055A)***

PCCA is currently awaiting a proposal from Hatch Mott McDonald. Upon finalizing negotiations, design will begin.

***Improvements to Fire Protection Systems at Oil Docks 4, 7 and 11 (15-041A)***

Consultant selection complete through RFQ process. Professional services contract with Govind Development to be presented at the June Commissions meeting for approval.

***Storm Water System Quality Improvements -Bulk Terminal (15-046A)***

Consultant selection process completed through RFQ process and Service Order No. 3 with Lockwood, Andrews and Newman, Inc. approved by Port Commission at May 2015 Commission Meeting. Fieldwork for topographic studies and geotechnical soil borings will be completed in early June. Cost analysis for other recommended improvements will be completed by July.

***Purchase of Software Application for EMS Recording (15-057A)***

A service order was negotiated with E2 ManageTech, Inc. to assist with development of specifications, RFP process, and selection of vendor. Workshop with consultant occurred in late May to identify requirements for specification development. Upon completion of specifications, consultant will prepare bid package for advertisement.

***Storm Water System Quality Improvements- Maintenance (15-059A)***

Consultant selection process completed through RFQ process and a Professional Services Agreement is currently being negotiated with Alan Plummer and Associates, Inc.

***Landscape Enhancements (15-051A)***

Consultant selection process completed through RFQ process and a Service Order is currently being negotiated for Commission approval with LNV, Inc.

**MAINTENANCE PROJECTS**

***Maintenance Painting at Bulk Terminal (13-049A)***

Maintenance painting is being performed at Bulk Terminal on an as needed basis. New contract was awarded to JM Davidson, Ltd. at the May Commission meeting and staff issued a Notice of Award.

***Inner and Outer Harbor Land Management (15-019A)***

Requesting purchase order for survey and volume calculations.

***Fire Line Improvements at OD-2 (15-039A)***

Maverick Engineering, Inc. is performing field investigation at Oil Dock 2.

***General Improvements at OD-6 (15-030A)***

Colwell and Associates is performing field investigation at Oil Dock 6.

***Replace Conveyor Idlers (15-033A)***

Applied Industrial Technologies was awarded all bid items at the April 21<sup>st</sup> commission meeting. Notice to Proceed was issued and all items anticipated for delivery by July 2015.

***Upgrades & Repairs to Bulk Dock 2 Marine Structures (15-035A)***

Staff is currently negotiating a service order with CH2M Hill to perform this work.

***Replace Fire Alarm Panels at Ortiz Center (15-036C)***

PCCA consultant is currently finalizing plans. Project will bid in June and is scheduled to be presented for approval at the July commission meeting.

***Repair Port Bridges (15-037A)***

PCCA consultant is currently finalizing design to begin initial review. Project plans to bid in July and be presented for approval at the August commission meeting.

***Savage Lane Railroad Drainage Improvements (15-022A)***

CH2M Hill is preparing a draft design report and began surveying in May. The design report is scheduled to be complete in June 2015.

***Purchase of Dock Fenders and Panels (15-014A)***

Project was bid on May 26, 2015 and will be presented to commission for award at the June commission meeting. See commission letter for details.

***Joe Fulton Corridor Waterline Extension (15-065)***

LNV provided Notice to Proceed with hydraulic modeling to determine preliminary line size design alternatives.

***Stockpile Management (15-024A)***

A service order was negotiated with RPS to perform waste characterization of various stockpiles throughout the Port area. All results indicate that the stockpiled materials may be disposed of in a Class II landfill so materials are currently being profiled for disposal at El Centro Landfill in Robstown, Texas. Bid documents are also being prepared for the loading and transportation of the stockpiled material.

***Storm Water System Maintenance (15-028A)***

Consultant selection process completed through RFQ process and a Service Order is currently being negotiated for Commission approval with ICE, Inc.

***General Electrical Consumption Reduction Projects (13-013A)***

Electrical consultant gathering data to prepare bid documents to upgrade storage yards to LED lighting.

**ENVIRONMENTAL/PROFESSIONAL PROJECTS**

***Environmental Management System (14-025A)***

Our EMS Program is ISO 14001 certified for the seventh year. Current initiatives under the EMS Program include measures to reduce impacts to storm water runoff from our operations and partnerships with Port users. Active partnerships in EMS exist with Dix Fairway, PCT, Gulf Stream Marine, and Corpus Christi Terminal Railroad. Other initiatives resulting from the EMS program include the Gulf Port's Environmental Summit and the Growing Greener Initiative.

***Widen CCSC and Additional Barge Shelves (14-043A)***

Consultant has developed options and potential approvals to permit or authorize and fund. Draft planning matrix reviewed in July 2014. Path is forward pending PPA to construct CCSC-CIP 52' project. PCCA is pursuing amending La Quinta PPA and accelerating funds to widen upper bay of CCSC and construct barge shelves. USACE is completing an economic update to the LRR.

***Underwater Inspections of Various Waterfront Facilities (14-035A)***

RVE has completed underwater inspection field work for Oil Docks 2, 3, 10; Cargo Docks 1, 2, 8, 9; and Bulk Material Docks 1 and 2. RVE has provided PCCA with draft report for review.

***2015 Tiger Grant La Quinta Multipurpose Dock (15-063A)***

Pre-application submitted to Department of Transportation on May 1, 2015. Final application submitted on June 4, 2015.

***NuStar Pipeline Construction (15-067A)***

NuStar initiated hydro excavation of existing utility locations, construction staking and mobilizing to site first week in June. PCCA's construction inspector, AGCM, initiated construction coordination.

***Geographic Information System Maintenance and Upgrades (15-017A)***

The scope of work for 2015 improvements and upgrades to the PCCA's GIS is currently being negotiated with Brown and Caldwell, Inc. under the existing terms and conditions.

***Ozone Advance Project Participation (14-074A)***

In 2014, the Port Commission approved funding of the emissions inventory for Port related activities and construction activities in Nueces and San Patricio Counties to complete the regional inventory for our area. The emissions from the Port related activities have been completed and a draft report provided to PCCA for review and comment. The evaluation of emissions from construction equipment has not been completed at this time because coordination with Associated Builders and Contractors for appropriate information has been unsuccessful.

***Investigation & Remediation of Contamination from La Quinta Removal/Relocation (14-002B)***

A service order for consulting services for performing additional groundwater sampling, sampling for fingerprint analyses of contamination, and the development of Affected Property Assessment Report for submittal to TCEQ is currently being negotiated with Golder Associates, Inc. for Commission approval.

***Investigation of Former J.L Hailey Property (11-002B)***

Affected Property Assessment Report submitted to TCEQ for review in March 2015. Comments on report received from TCEQ in May 2015. Additional groundwater samples and two surface soil samples are required and a certificate of completion for property is expected by August 2015.

***Investigation of Property Near Tule Lake Lift Bridge (14-002C)***

Additional sampling to determine leaching characteristics of contaminants in soil was conducted in February 2015. Results indicated that further evaluation of the site is necessary so an Affected Property Assessment Report is being prepared for submittal to the TCEQ in July 2015. It is expected at this time that deed recordation for limiting the property to commercial/industrial land use will be necessary.

***Storm Water Drainage Study (15-013A)***

Consultant selection process completed through RFQ process and a Master Agreement with a Service Order is currently being negotiated for Commission approval with ICE Engineers, Inc.

**DREDGING**

***Channel Improvement Project (98-012A, 04-027A, 09-048B/C)***

In November 2007, Congress passed WRDA of 2007 authorizing the Port's Channel Improvement Project.

The project includes the following improvements:

1. Widening the CCSC to 530' from Port Aransas to the Harbor Bridge.
2. Adding 200'-wide barge shelves on both sides of the ship channel across Corpus Christi Bay.
3. Extending La Quinta Channel by 7400' at a depth of -39' MLT.
4. Deepening all reaches of CCSC (excluding La Quinta) from -45' MLT to -52' MLT.
5. Constructing Ecosystem Restoration projects near Port Aransas and Ingleside on the Bay.

Project received congressional appropriation in FY2009 for the construction phase of the project, officially ending the Pre-Construction Engineering and Design phase. A Project Partnership Agreement (PPA) was executed in October 2009 for the La Quinta Channel Extension & Ecosystem Restoration. Construction of Contract No. 1 was completed in 2010 to construct DMPA 14. Fifty-eight million in federal funds were appropriated in May 2011 enabling the COE to solicit additional construction contracts. COE awarded two (2) contracts in September 2011; one to extend the La Quinta Ship Channel and the other to construct the Ecosystem Restoration project adjacent to Ingleside-on-the-Bay, Texas. The dredging associated with La Quinta Ship Channel Extension and the Ecosystem Restoration project is 100% complete.

Deepening and widening of the CCSC and the addition of barge shelves underwent re-evaluation and the studies were complete in early 2013. The re-evaluation confirmed these two project components are still in the Federal interest. The COE Director of Civil Works approved the re-evaluation report (all components) and recommended the project to Congress to increase the authorized project cost to \$344,610,000. The channel improvement project was re-authorized in May 2014 by the Water Resources Reform and Development Act of 2014. Based on guidance from OMB and the ASA, USACE is completing an economic update to the LRR. The target date for completion is Summer of 2015.

**ENGINEERING  
MASTER AGREEMENTS AND SERVICE ORDERS**

Listed below are the Master Agreements implemented including values of Service Orders issued per year:

	2014	2015
HDR, Inc. (13-01)	\$793,500	\$316,396
Freese and Nichols, Inc. (13-02)	\$407,191	\$140,071
Govind Development, LLC (13-03)	\$249,450	
Naismith Engineering, Inc. (13-04)	\$45,000	\$34,750
CH2M Hill (13-05)	\$2,613,470	\$75,000
RVE, Inc. (13-06)	\$472,329	
LNV, Inc. (13-07)	\$105,500	\$159,398
Lockwood, Andrews and Newnam, Inc. (14-01)	\$62,694	
Maverick Engineering (14-02)	\$58,000	
Coast & Harbor Engineering (14-03)	\$193,645	\$107,931
WKMC Architects (14-04)	\$115,000	
Worley Parsons (15-01)		

**ENVIRONMENTAL  
MASTER AGREEMENTS AND SERVICE ORDERS**

Listed below are the Environmental Master Agreements implemented including Service Order Values:

	2014	2015
Golder & Associates (01-14)		
	\$45,300	
RPS, Inc. (02-14)		\$101,300
Trinity Consultants (03-14)		\$44,000
	\$49,000	
E2 Manage Tech (05-14)		
\$82,043	\$37,030	
Apex Tritan, Inc. (06-14)		\$86,040
	\$28,140	
RSA, Inc. (09-14)		\$178,958

**UPCOMING BID OPENINGS**

Replacement of Dock House at Oil Dock 10 (14-041A)	June 30, 2015
Replace Fire Alarm System at Ortiz Center (15-036C)	June 30, 2015





**PORTCORPUSCHRISTI**

# **Port of Corpus Christi Authority**

## **Monthly Financial Summary**

**April 30, 2015**

**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**STATEMENT OF NET POSITION HIGHLIGHTS:**

**Assets:**

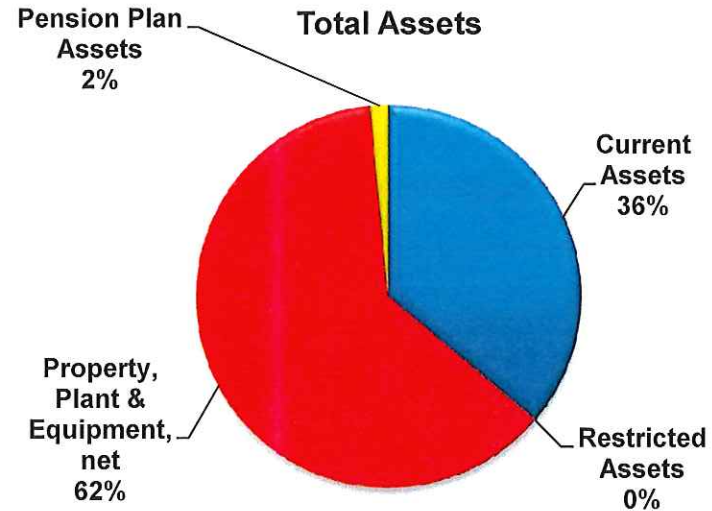
Current Assets:	
Unrestricted Cash:	
Cash in Bank	\$ 6,204,945
Investments	\$ 156,030,955
Unrestricted Cash	\$ 162,235,900
Accounts Receivable	\$ 8,193,204
Other	\$ 5,186,240
Current Assets	\$ 175,615,344
Restricted Assets	\$ 35,526
Property, Plant & Equipment, net	\$ 302,294,374
Pension Plan Assets	\$ 7,439,501
<b>Total Assets</b>	<b>\$ 485,384,745</b>

**Liabilities:**

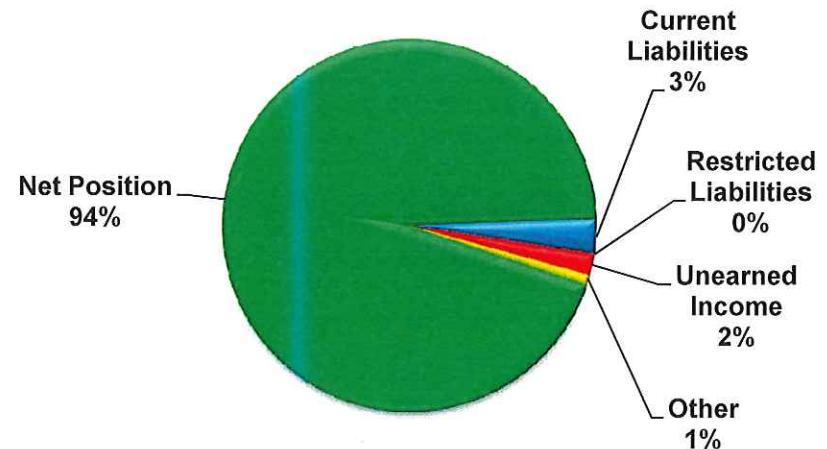
Current Liabilities	\$ 14,535,324
Restricted Liabilities	\$ 323
Unearned Income	\$ 8,965,939
Other	\$ 3,982,596
<b>Total Liabilities</b>	<b>\$ 27,484,182</b>

**Net Position:**

Investment in Net Assets	\$ 293,328,435
Restricted Net Position	\$ 35,526
Unrestricted Net Position	\$ 164,536,602
<b>Total Net Position</b>	<b>\$ 457,900,563</b>



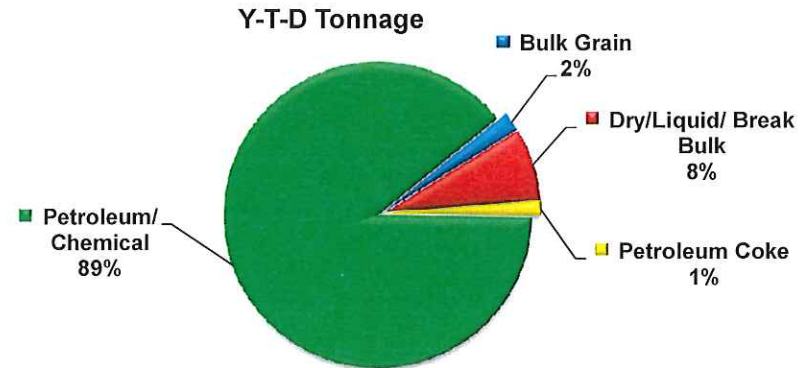
**Total Liabilities/Net Position**



**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**OPERATIONS:**

<u>Tonnage (Short Tons):</u>	<u>Month</u>	<u>2015 Y-T-D</u>	<u>2014 Y-T-D</u>
Bulk Grain	53,936	674,974	757,210
Break Bulk	(1,600)	34,576	77,421
Dry Bulk	518,290	2,243,900	2,380,835
Liquid Bulk	15,522	308,597	194,587
Chemicals	196,631	584,103	751,512
Petroleum Coke	56,748	482,191	317,156
Petroleum	7,484,657	29,515,018	24,247,794
<b>Total</b>	<b>8,324,184</b>	<b>33,843,359</b>	<b>28,726,515</b>



	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
<b>Operating Revenue:</b>			
Month	\$ 6,544,749	\$ 6,526,823	\$ 17,926
Y-T-D	\$ 26,951,948	\$ 25,786,490	\$ 1,165,458

<b>Operating Expenses:</b>			
Month	\$ (2,956,656)	\$ (3,744,702)	\$ 788,046
Y-T-D	\$ (11,890,386)	\$ (14,881,978)	\$ 2,991,592

<b>Operating Income (Loss) Before Depreciation:</b>			
Month	\$ 3,588,093	\$ 2,782,121	\$ 805,972
Y-T-D	\$ 15,061,562	\$ 10,904,512	\$ 4,157,050

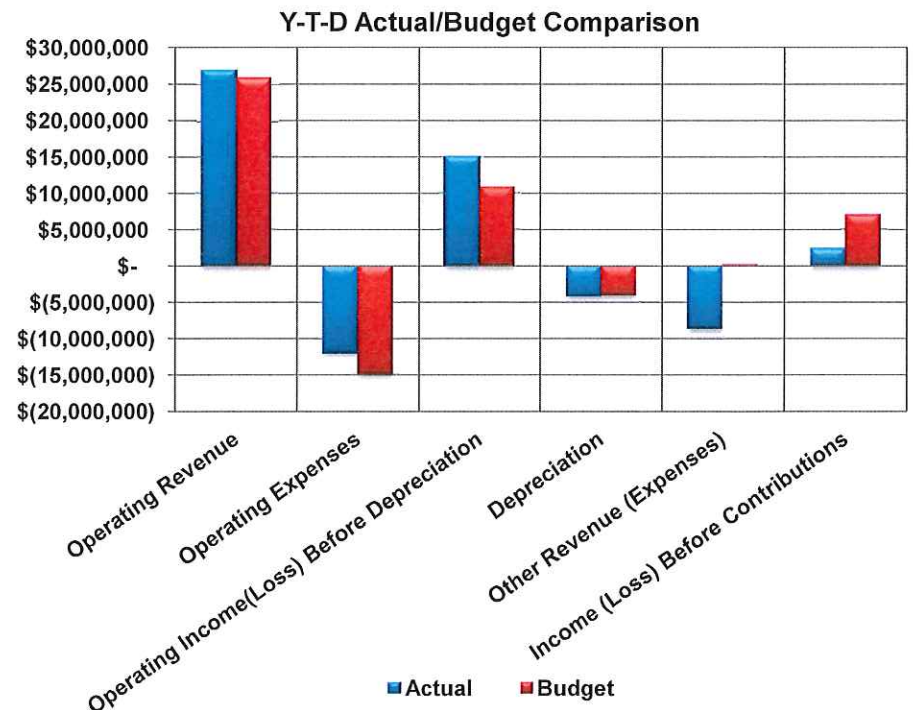
<b>Depreciation:</b>			
Month	\$ (1,013,408)	\$ (1,004,905)	\$ (8,503)
Y-T-D	\$ (4,072,278)	\$ (4,019,629)	\$ (52,649)

<b>Other Revenue (Expenses):</b>			
Month	\$ 115,409	\$ 66,575	\$ 48,834
Y-T-D	\$ (8,583,308)	\$ 184,986	\$ (8,768,294)

<b>Income (Loss) Before Capital Contributions:</b>			
Month	\$ 2,690,094	\$ 1,843,791	\$ 846,303
Y-T-D	\$ 2,405,976	\$ 7,069,869	\$ (4,663,893)

<b>Capital Contributions</b>			
Month	\$ -	\$ 1,651,725	\$ (1,651,725)
Y-T-D	\$ 1,203,405	\$ 2,959,725	\$ (1,756,320)

<b>Change in Net Assets</b>			
Month	\$ 2,690,094	\$ 3,495,516	\$ (805,422)
Y-T-D	\$ 3,609,381	\$ 10,029,594	\$ (6,420,213)



**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

DIVISION SUMMARY:

	Operating Revenues	Operating Expenses	Operating Income (Loss) Before Depreciation		Other Revenue (Expenses)	Income (Loss) Before Contributions	Budget	Variance
<b>Oil Docks-Public</b>								
Month	\$ 2,766,444	\$ (85,849)	\$ 2,680,595	\$ (97,236)	\$ -	\$ 2,583,359	\$ 2,350,701	\$ 232,658
Y-T-D	\$ 10,799,366	\$ (316,513)	\$ 10,482,853	\$ (388,947)	\$ -	\$ 10,093,906	\$ 9,465,726	\$ 628,180
<b>Oil Docks-Private</b>								
Month	\$ 1,332,640	\$ (3,128)	\$ 1,329,512	\$ -	\$ -	\$ 1,329,512	\$ 1,063,555	\$ 265,957
Y-T-D	\$ 5,180,360	\$ (17,884)	\$ 5,162,476	\$ -	\$ -	\$ 5,162,476	\$ 4,278,693	\$ 883,783
<b>Dry Cargo Docks</b>								
Month	\$ 311,976	\$ (58,855)	\$ 253,121	\$ (159,237)	\$ -	\$ 93,884	\$ 259,937	\$ (166,053)
Y-T-D	\$ 1,869,325	\$ (228,339)	\$ 1,640,986	\$ (636,947)	\$ -	\$ 1,004,039	\$ 1,039,742	\$ (35,703)
<b>Conference Center</b>								
Month	\$ 193,071	\$ (167,201)	\$ 25,870	\$ (25,722)	\$ 91	\$ 239	\$ (40,187)	\$ 40,426
Y-T-D	\$ 692,510	\$ (663,629)	\$ 28,881	\$ (102,889)	\$ 2,476	\$ (71,532)	\$ (203,604)	\$ 132,072
<b>Bulk Terminal</b>								
Month	\$ 704,596	\$ (323,371)	\$ 381,225	\$ (89,111)	\$ 500	\$ 292,614	\$ 248,479	\$ 44,135
Y-T-D	\$ 3,375,412	\$ (1,485,977)	\$ 1,889,435	\$ (355,417)	\$ 500	\$ 1,534,518	\$ 993,631	\$ 540,887
<b>Property and Buildings</b>								
Month	\$ 517,450	\$ (45,871)	\$ 471,579	\$ (304,669)	\$ -	\$ 166,910	\$ (194,636)	\$ 361,546
Y-T-D	\$ 2,070,387	\$ (494,286)	\$ 1,576,101	\$ (1,249,325)	\$ (5,928,929)	\$ (5,602,153)	\$ (1,125,073)	\$ (4,477,080)
<b>Other Facilities</b>								
Month	\$ 175,825	\$ (64,133)	\$ 111,692	\$ (56,821)	\$ -	\$ 54,871	\$ 101,532	\$ (46,661)
Y-T-D	\$ 755,988	\$ (235,331)	\$ 520,657	\$ (229,575)	\$ (3,000,000)	\$ (2,708,918)	\$ 458,888	\$ (3,167,806)
<b>Port Security</b>								
Month	\$ 540,431	\$ (561,815)	\$ (21,384)	\$ (220,957)	\$ 15,001	\$ (227,340)	\$ (169,627)	\$ (57,713)
Y-T-D	\$ 2,179,617	\$ (2,009,504)	\$ 170,113	\$ (876,343)	\$ 15,005	\$ (691,225)	\$ (678,971)	\$ (12,254)
<b>General and Administrative</b>								
Month	\$ 2,316	\$ (1,646,433)	\$ (1,644,117)	\$ (59,655)	\$ 99,817	\$ (1,603,955)	\$ (1,775,963)	\$ 172,008
Y-T-D	\$ 28,983	\$ (6,438,923)	\$ (6,409,940)	\$ (232,835)	\$ 327,640	\$ (6,315,135)	\$ (7,159,163)	\$ 844,028
<b>Total</b>								
Month	\$ 6,544,749	\$ (2,956,656)	\$ 3,588,093	\$ (1,013,408)	\$ 115,409	\$ 2,690,094	\$ 1,843,791	\$ 846,303
Y-T-D	\$ 26,951,948	\$ (11,890,386)	\$ 15,061,562	\$ (4,072,278)	\$ (8,583,308)	\$ 2,405,976	\$ 7,069,869	\$ (4,663,893)

**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**CAPITAL PROJECTS:**

Project Description	Annual Budget	Y-T-D Actual	Balance Remaining
<b><i>Authority Oil Docks</i></b>			
Design & Construction of OD 14 (M & G)	\$ 17,500,000	\$ 3,862,734	\$ 13,637,266
New Public Oil Dock-Viola	2,000,000	20,007	1,979,993
Oil Dock 3 Expansion	1,000,000	-	1,000,000
OD 1 Improvements	750,000	-	750,000
Hoist Foundation & Gangway Support at OD's 4 & 7	600,000	-	600,000
Improvements to Fire Protection Systems at OD's 4,7, & 11	400,000	-	400,000
Replace Dock House at OD 10	300,000	-	300,000
Security Grant #14-Oil Dock 14 Access Control	419,142	-	419,142
North Bank Oil Dock-Preliminary & Permitting Phase	250,000	-	250,000
Fire System Pressurization at Oil Docks	150,000	-	150,000
New Fire Barge Dock	100,000	8,412	91,588
	<b>23,469,142</b>	<b>3,891,153</b>	<b>19,577,989</b>
<b><i>Canals and Basins</i></b>			
West Barge Mooring Area	7,000,000	980,665	6,019,335
Security Grant #13 - La Quinta/GIWW Surveillance	2,170,239	58,587	2,111,652
Tule Lake Foundation Removal	1,000,000	13,177	986,823
Rincon B Mitigation Design, Construction & Monitoring	660,000	-	660,000
Relocation of Suntide DMPA Drainage to Viola Turning Basin	610,000	-	610,000
New Access Road to Good Hope DMPA	310,000	-	310,000
Security Grant #14 - Security Equipment Upkeep	285,000	-	285,000
Security Grant #13 - Emergency Power	230,405	27,602	202,803
Security Grant #13 - Equipment Upkeep	228,000	103,861	124,139
CCSC Bay Reach Widening & Barge Shelves	100,000	-	100,000
Replacement of Generator System for VTIS at Harbor Island	70,000	50,474	19,526
	<b>12,663,644</b>	<b>1,234,366</b>	<b>11,429,278</b>

**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**CAPITAL PROJECTS:**

Project Description	Annual Budget	Y-T-D Actual	Balance Remaining
<b><i>Bulk Terminal</i></b>			
Resurface Public Storage Pads	\$ 700,000	\$ -	\$ 700,000
Bulk Terminal Road Extension	700,000	1,138	698,862
Paving of Area Around CB4 & CB8	500,000	11,014	488,986
Storm Water System Quality Improvements-Bulk Terminal	500,000	-	500,000
Equipment Storage Building	370,000	-	370,000
New Operating Bucket for Gantry Crane	300,000	-	300,000
Purchase New Digging Bucket for Gantry Crane	180,000	-	180,000
Bulk Dock 2 Roadway Extension	165,000	167,208	(2,208)
Spill Pan Addition to Bulk Dock 2 Crane Boom Conveyor	150,000	-	150,000
Existing Office Improvements	140,000	-	140,000
Concrete Paving Under Conveyor Belt 2	120,000	-	120,000
Dust Suppression Equipment on Gantry Crane at Bulk Dock 1	90,000	-	90,000
Environmental Improvements/ Enhancements	90,000	-	90,000
Full Covers on All Conveyor Belts	50,000	5,681	44,319
	<b>4,055,000</b>	<b>185,041</b>	<b>3,869,959</b>
<b><i>Conference Center</i></b>			
Chiller Replacement at the Ortiz Center	120,000	-	120,000
Roadway & Parking Lot Repairs-Ortiz Center	-	(3,101)	3,101
	<b>120,000</b>	<b>(3,101)</b>	<b>123,101</b>

**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**CAPITAL PROJECTS:**

Project Description	Annual Budget	Y-T-D Actual	Balance Remaining
<b><i>La Quinta</i></b>			
Terminal Mitigation - Aquatic Habitat	\$ 2,780,000	\$ 57,361	\$ 2,722,639
Design -LaQuinta Gateway Terminal Dock & Storage Yard	2,200,000	680,178	1,519,822
Terminal Mitigation - Terrestrial Buffer Area	500,000	-	500,000
Construction of 8" Water Line at LaQuinta Property	305,000	1,800	303,200
LaQuinta Rail (San Patricio Rural Rail District)	-	23,881	(23,881)
	<b>5,785,000</b>	<b>763,220</b>	<b>5,021,780</b>
<b><i>Property and Buildings</i></b>			
Purchase of Land	10,000,000	-	10,000,000
Entrance Road to M&G/Oil Dock 14	3,000,000	-	3,000,000
Reconstruction of Sam Rankin Road	1,900,000	-	1,900,000
New Port Office Building	1,300,000	-	1,300,000
Relocation of Maintenance Building	350,000	-	350,000
Security Command Center Parking Lot Improvements	250,000	-	250,000
Storm Water System Quality Improvements - Maintenance Facility	250,000	-	250,000
Landscape Enhancements	250,000	-	250,000
Permian Drainage Improvements - Phase II	225,000	208,529	16,471
Permian Yard Drainage Improvements	200,000	32,221	167,779
Prepare Permian Property for Development	200,000	-	200,000
Port Area Signage & Landscaping Improvements	200,000	13,354	186,646
Relocation of CCTR Facilities to Nueces River Rail Yard	100,000	-	100,000
Improve Pad at Former Hailey Site	150,000	400	149,600
Administration/Annex Building Improvements	75,000	-	75,000
Indian Point Mitigation Reserve-Conceptual Design and Planning	50,000	-	50,000
Recertification of City's Storm Protection Levee System	50,000	-	50,000
Development of Northside Storage Yard East	-	129,148	(129,148)
Surface Easement - Ingleside (Security Grant 13 installation of camera)	-	10,000	(10,000)
Roadway & Parking Lot Repairs-Rincon	-	(6,799)	6,799
	<b>18,550,000</b>	<b>386,853</b>	<b>18,163,147</b>

**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**CAPITAL PROJECTS:**

Project Description	Annual Budget	Y-T-D Actual	Balance Remaining
<b><i>Railroads</i></b>			
Nueces River Rail Yard Phase II	\$ 15,000,000	\$ 181,272	\$ 14,818,728
Construction of Nueces River Rail Yard Phase I	1,044,000	2,260,097	(1,216,097)
Rail Infrastructure Planning	1,000,000	-	1,000,000
Gregory Relief (By Pass) Design & Construction	1,000,000	-	1,000,000
Inner Harbor Rail Upgrades & Improvements (2014)	750,000	650,629	99,371
Inner Harbor Rail Upgrades & Improvements (2015)	750,000	-	750,000
Purchase & Installation of Additional AEI Readers	400,000	-	400,000
	<b>19,944,000</b>	<b>3,091,998</b>	<b>16,852,002</b>
<b><i>Port Operations</i></b>			
Purchase of Equipment:			
Crane Truck - Maintenance Department	340,000	-	340,000
6,000 lb & 5,000 lb Forklifts - Maintenance Department	50,000	-	50,000
Industrial Air Compressor - Maintenance Department	30,000	-	30,000
Compact Utility Vehicles (2) - Bulk Terminal	25,000	21,360	3,640
28' Trailer - Maintenance Department	20,000	-	20,000
Compact Utility Vehicles (2) - Maintenance Department	12,000	13,820	(1,820)
16' Trailer - Maintenance Department	8,000	-	8,000
Trailer - Maintenance Department	8,000	-	8,000
60" Riding Mower - Maintenance Department	7,000	7,050	(50)
19,000 lb Forklift - Bulk Terminal	195,000	-	195,000
10,000 lb Forklift - Maintenance Department	80,000	84,737	(4,737)
Crew Truck with Platform Bed - Maintenance Department	100,000	102,485	(2,485)
Winch Truck - Maintenance Department	-	88,863	(88,863)
Air Conditioner - Maintenance Department Office	-	8,279	(8,279)
<b>SUBTOTAL</b>	<b>875,000</b>	<b>326,594</b>	<b>548,406</b>



**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**CAPITAL PROJECTS:**

Project Description	Annual Budget	Y-T-D Actual	Balance Remaining
Purchase of Vehicles:		-	-
Large SUV's (3) - Security Department	\$ 90,000	\$ 90,669	\$ (669)
Large SUV - Operations	30,000	-	30,000
Large SUV - Chief Operating Officer	43,000	-	43,000
Large SUV - Director of Business Development	38,000	37,740	260
Large SUV - (2) Engineering	65,000	37,612	27,388
Large SUV - Executive Director	-	49,367	(49,367)
Pickup Trucks (4) - Maintenance Department	114,000	-	114,000
<b>SUBTOTAL</b>	<b>380,000</b>	<b>215,388</b>	<b>164,612</b>
 VTIS System	 500,000	 -	 500,000
<b>SUBTOTAL</b>	<b>500,000</b>	<b>-</b>	<b>500,000</b>
	<b>1,755,000</b>	<b>541,982</b>	<b>1,213,018</b>
<b>Administration</b>			
Network/Storage Software - Administration	104,400	-	104,400
EMS Recording Software	90,000	-	90,000
Network/Storage Hardware - Administration	71,000	23,993	47,007
<b>Executive Director</b>			
Copier Equipment	-	5,649	(5,649)
<b>Managing Director</b>			
Copier Equipment	6,000	5,230	770
	<b>271,400</b>	<b>34,872</b>	<b>236,528</b>
<b>Total 2015 Capital Budget Expenditures</b>	<b>\$ 86,613,186</b>	<b>\$ 10,126,384</b>	<b>\$ 76,486,802</b>

**Port of Corpus Christi Authority  
Monthly Financial Summary  
April 30, 2015**

**TERMS & DEFINITIONS:**

Current Assets	Unrestricted cash and investments, accounts receivables, grant receivables, accrued revenues, inventory, prepaid expenses
Restricted Assets	Restricted cash and investments for law enforcement seizure accounts and LEOSE (Law Enforcement Officer Standards & Education) funds
Property, Plant & Equipment	Capitalized fixed assets and construction in progress, net of accumulated depreciation
Pension Plan Assets	Contributions made by the Port to the pension plan in excess of the actuarially determined rate
Current Liabilities	Accounts payables, accrued expenses, deferred income, worker compensation claims liability, and estimated incurred but not reported claims on employee health benefits
Restricted Liabilities	Section 125 benefits plan deposits
L-T Unearned Lease Income	Deferred lease revenue - Gulf Compress La Quinta warehouses
Other Long-Term Debt	Accrued vacation and sick leave, and other post-employment benefits
Net Position	Total net position; total assets less total liabilities

**Divisions:**

Oil Docks-Public	Oil docks for public use by Port customers
Oil Docks-Private	Oil docks for exclusive use by private industries
Dry Cargo Docks	Dry cargo docks owned both by the Port and private industries, transfer facility and storage yards
Conference Center	Ortiz Center
Bulk Terminal	Bulk docks 1 and 2, public storage pad and leased storage pads
Property & Buildings	Port property, leased elevator and grain bagging facility, Joe Fulton corridor and other Port roadways, refrigerated warehouse facility
Other Facilities	Service docks owned both by the Port and private industries, bulk docks owned by private industries, railroads, canals and basins, fire fighting response vessel, foreign trade zone, and refinery terminal fire company
Port Security	Port security to include the marine division, Port security guards and Amtex
General & Administrative	Executive director, chief operating officer, communications, community relations, human resources, business development, finance & administration, engineering services, government affairs and operations

**AGENDA ITEM NO. 17**

**NO ATTACHMENT**

**AGENDA ITEM NO. 18**

**NO ATTACHMENT**

**AGENDA ITEM NO. 19**

**NO ATTACHMENT**

**AGENDA ITEM NO. 20**

**NO ATTACHMENT**

**AGENDA ITEM NO. 21**

**NO ATTACHMENT**

**AGENDA ITEM NO. 22**

**NO ATTACHMENT**