

## NOTICE OF MEETING

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The Port Commission (“Commission”) of the Port of Corpus Christi Authority (“PCCA”) will hold a Regular Session Meeting on **Tuesday, April 12, 2011, at 8:30 AM**, at the Solomom P. Ortiz International Center.

*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 at 9:00 a.m. and receive Conflict of Interest Affidavits.  
**AT 8:30 A.M., COMMISSIONERS WILL ATTEND THE OPENING CEREMONIES OF "REMEMBERING OUR SOUTH TEXAS HEROES" EVENT.**
2. Approve the minutes of the March 8 and March 25, 2011 Commission meetings. 4
3. Receive comments from the public. *(Each speaker limited to 3 minutes)*
4. Approve an Exclusive Right to Sell or Lease Contract for the PCCA's Harbor Island property with Cushman & Wakefield of Texas, Inc. 12
5. Approve an extension of the Letter of Intent between PCCA and Canyon Supply and Logistics, LLC, for Canyon's acquisition of approximately 910 acres of upland property on Ingleside Point in San Patricio County, which includes the remaining portion of the former Naval Station Ingleside site and 435 acres of undeveloped land. 20
6. Take action to cancel the award of a lease of the Refrigerated Warehouse to Sherborn Ventures, LLC, on February 8, 2011 and award a Lease Agreement to Sam Kane Meat Processors Inc., based on bids received on March 31, 2011 for the lease of, with an option to purchase, the Refrigerated Warehouse. 23
7. Approve the third and final reading of a Franchise Agreement granting Flint Hills Resources Corpus Christi, LLC ("FHR"), the right of access to the waters of Nueces County and the Corpus Christi Ship Channel from the wharves, piers and other improvements now or hereafter constructed on FHR's 1.72-acre tract of upland property or FHR's 10.906-acre tract of leased submerged land at the former site of Naval Station Ingleside. 94
8. Receive and approve fourth quarter Investment Report for 2010. 114
9. Receive and approve the PCCA Comprehensive Annual Financial Report for the year ended December 31, 2010. 124
10. 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 Commission requests otherwise:

10. A. Approve the first option year of PCCA's contract with LINC Government Services, LLC, for facility maintenance, repair and minor construction services at the former Naval Station Ingleside. 216
10. B. Approve Service Order #2 to a Professional Services Master Agreement with HDR Engineering, Inc. for design services for fender replacement and breasting structure replacement at Oil Dock 6. 217
10. C. Approve a Professional Services Purchase Order with RVE Inc for design and project management services for Security Grant 8. 219
10. D. Approve Change Order #14 to the Command and Control System contract with G4S Technology, LLC on Security Grant 6. 222
10. E. Approve an increase in the contingency amount for standby time for the Oil Dock 9 Allision Repairs contract with CCC Group, Inc. 225
10. F. Approve a Professional Services Order with Professional Services Industries for inspection and testing services on the Fulton Corridor Phase II project. 227
10. G. Approve an amendment to the Harbor Bridge Lighting Advance Funding Agreement with the Texas Deptmt of Transportation and the City of Corpus Christi. 228
10. H. Approve a Lease Agreement with Eslabon Terminal, LLC for vapor recovery facility at Oil Dock 12. 232
10. I. Approve an Easement Agreement with Eslabon Terminal, LLC for 10-inch pipeline to Oil Dock 12.
10. J. Consent to the sublease of 1.54 acres of PCCA property located north and west of the Avery Point Turning Basin by Cemex Construction Materials South, LLC to San Storage, LLC. 284
10. K. Appoint Greg Brubeck as PCCA's representative on the Board of Directors of the City of Corpus Christi Reinvestment Zone No. 2.
10. L. Approve an Extension of the Professional Services Agreement with W.I. Bates Company for Naval Station Ingleside real estate support services. 299
11. Receive report from the Executive Director on upcoming community events, PCCA events and the activities of the following PCCA departments during the preceding month: business development, community relations, government affairs, operations, engineering services, accounting and human resources.
12. Receive comments from Commissioners on any of the agenda items for this meeting, the Port's activities during the preceding month, upcoming PCCA and community events and suggestions for future agenda items. 307
13. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to discuss the terms and conditions on which PCCA would lease various parcels of PCCA property in the vicinity of the Bulk Terminal. 308
14. Approve a lease agreement with Martin Operating Partners (MPO) for approximately 10 acres of PCCA land located on the north side of the Inner Harbor and PCCA's purchase of approximately 10 acres of MOP property. The Port Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the terms of this lease agreement and purchase agreement prior to taking any action on this agenda item. 309
15. The port Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the terms and conditions of a Lease Option Agreement with Cheniere Energy, Inc., for approximately 52 acres of the La Quinta Trade Gateway property and may take action on this Lease Option Agreement in open session. 370
16. Approve termination of the 60-foot private access and utility easement along the eastern 381

boundary of Whataburger Field and amend the Ground Lease between PCCA and the Adame Group, LLC, dated June 11, 2010, which has been assigned to Durlame, LLC ("Durlame Lease"), to include the southern half of the land covered by the foregoing easement. Declare the lease premises under the Durlame Lease, as amended (i.e., approximately 5.1 acres of land along Port Avenue in the vicinity of Whataburger Field), to be surplus land not needed by PCCA for use in connection with its development of a navigation project and authorize PCCA staff to request sealed bids for the purchase of this property, subject to the Durlame Lease. The Port Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the terms and conditions of this sale prior to taking any action on this agenda item.

17. The Port Commission will go into executive session pursuant to §551.071 of the Texas Government Code to consult with its attorney regarding PCCA;'s right sand obligations under the Cross-Conveyance and Settlement Agreements between PCCA and the land owners along the Jewel Fulton Canal. 395
18. The Port Commission will go into executive session pursuant to §551.071 of the Texas Government Code to consult with its attorney regarding Cause No. D-1-GV-09-001901: *State of Texas on behalf of Land Commissioner Jerry Patterson, Plaintiff, v. Port of Corpus Christi Authority of Nueces County, Texas, in the 419th District Court of Travis County, Texas.* 396
19. Approve a Lease Option Agreement with Millenium Bulk Logistics, Inc. for 14.50-acres at the Bulk Terminal. 397
20. Adjourn.

**MARCH 8, 2011**

The Port Commissioners of the Port of Corpus Christi Authority met in regular session on Tuesday, March 8, 2011 at 9:00 a.m., at the Congressman Solomon P. Ortiz International Center located at 402 Harbor Drive, Corpus Christi, Texas.

**Present:** Mr. Mike Carrell  
Mr. Richard M. Borchard  
Ms. Judy Hawley  
Mr. Robert J. Gonzalez, Sr.  
Mr. Francis I. Gandy, Jr.  
Mr. Robert Kostelnik  
Mr. Mike Scott

**Present:** Mr. John P. LaRue  
Mr. Frank Brogan  
Mr. Sandy Sanders  
Mr. Greg Brubeck  
Ms. Patricia Cardenas  
Ms. Sandra Davis  
Mr. Dennis DeVries  
Chief Arch Archambo  
Ms. Sherry DuBois  
Mr. Gustavo Espinosa  
Mr. David Krams  
Ms. Sonya Lopez  
Ms. Nelda Olivo  
Mr. Richard Stroot  
Mr. Dave Throop  
Ms. Maggie Turner  
Mr. Bennie Benavides  
Ms. Peggy Mettlen  
Mr. Bland Chamberlain  
Ms. Michelle Swistak  
Ms. Becky McMillon

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

**Others Present:** Mr. Tom Moore  
Consultant  
Ms. Lillian Riojas  
Valero  
Mr. Pat Veteto  
RVE, Inc.  
Mr. Tom Curlee  
Port Industries

Ms. Nancy Vasquez  
MD&A  
Ms. Sara Foley  
Caller-Times  
Mr. Tim Clower  
TCC  
Mr. Rick DuPriest  
WL Bates  
Mr. Fred Nardini  
Mr. Jim Price  
San Patricio County  
Mr. Roland Mower  
CC Regional Economic Development Assn  
Ms. Nancy Allen  
USO  
Mr. Dick Fuqua  
Mr. Jody Powers  
Mr. Larry Ramming  
Canyon  
Mr. Carl Anderson  
AG/CM  
Mr. William Goldston  
CH2M Hill  
Mr. Don Clark  
Mr. Tom Carlisle  
Carlisle Insurance  
Mr. Pete Rancourt  
Mr. Roy Wilson  
Hugh Wood, Inc.  
Mr. Jim Rimbey  
ZEP  
Mr. & Mrs. Dick Ehmann  
Ingleside on the Bay  
Mr. Jimmie Tryon, Jr.  
ILA #26  
Mr. David Aleyandth  
SafeNet Services  
Mr. Michael Cunha  
Royal Caride  
Ms. Sandy Falck  
Northshore Title  
Ms. Desiree Castn  
CC Chamber of Commerce  
Cmdr. John Pasch  
USCG  
Mr. Pete Perkins  
Mayor – City of Ingleside

Mr. Tripp Batey  
Hose of So. Texas  
Mr. David Crawford  
OxyChem  
Mr. Gordon Morgan  
Ms. Josephine Miller  
San Patricio EDC  
Mr. Willie Vaden  
City of Ingleside  
Mr. John Kelley  
We the People  
Mr. Harry G. Plomarity  
Citizen

**I.**

Chairman Carrell called the meeting to order and asked that any conflict of interest affidavits be submitted. Commissioner Gonzalez submitted an affidavit for items 8D, 8E and 14 stating that he owns real property on Burluson Street in the vicinity of the properties involved in these agenda items. Mr. Carrell submitted an affidavit for item 12 stating that Frost Bank does business with parties involved.

**II.**

On motion made by Mr. Gandy and seconded by Mr. Borchard, the minutes of the February 8 and February 17, 2011 Commission meetings were approved in the form presented to the meeting.

**III.**

Chairman Carrell asked for comments from the public. None were received

**IV.**

On motion made by Mr. Scott and seconded by Ms. Hawley, a Letter of Intent with Canyon Supply & Logistics, LLC for the sale of approximately 910 acres of upland property on Ingleside Point in San Patricio County (a portion of which was formerly occupied by Naval Station Ingleside) and the improvements and personal property thereon; the former Naval Station Ingleside Alpha Pier in Corpus Christi Bay adjacent to the upland property; and an easement on approximately 114 acres of submerged land between the upland property and the Corpus Christi Ship Channel was approved in the form presented to the meeting.

V.

**Note: The Commission did not act on agenda item 5 until after the conclusion of the Executive Session.** On motion duly made and seconded, the Commission voted to reduce PCCA's security surcharge on wharfage and dockage from 10% to 7.5%, effective April 1, 2011. Mr. Gandy and Mr. Kostelnik both abstained from voting on this item.

VI.

In connection with the renewal of the Port's Property Insurance for the period from April 1, 2011, to March 31, 2012, on motion made by Mr. Gonzalez and seconded by Ms. Hawley, the Commission approved the purchase of (i) the \$25,000,000 primary layer of coverage quoted by Lexington for \$907,592, (ii) the quota-shared \$75,000,000 excess layer of coverage quoted by London Syndicates, AXIS Surplus, Westchester, Max Specialty, Landmark American, and Aspen Specialty for \$708,142, (iii) the \$25,000,000 second excess layer of coverage quoted by Allianz for \$61,750, and (iv) the \$25,000,000 terrorism policy quoted by London Syndicates for \$37,243 -- for a total premium of \$1714,727.

VII.

On motion made by Mr. Gandy and seconded by Mr. Kostelnik the Commission awarded a contract to SafeNet Services, LLC, in the amount of \$2,906,878.97 [for the base bid and additive bid items 1, 2, 3, 4, 6, 7, 8, 9, and 10] for the Security Grant 7 Northside Security & Critical Docks Access Control Project as outlined in the staff recommendation furnished to the Commissioners at the meeting; and granted the Director of Engineering Services a 2% contingency allowance for change orders under the contract. Funding for this project will be \$2,180,159.23 of federal security grant funds and \$726,719.74 of PCCA funds.

VIII.

On motion made by Ms. Hawley and seconded by Mr. Kostelnik, all items on the consent agenda were approved in accordance with the respective staff recommendations furnished to the Commissioners at the meeting, by one vote without being discussed separately, although Mr. Gonzalez abstained from voting on Items D and E. These items were as follows:

- A. Award a contract to Caldwell Country Chevrolet, the lowest and best bidder based upon bids received on February 25, 2011, for purchase of a Chevrolet Tahoe 4x4 SSV.
- B. Approve a Professional Services Purchase Order for additional engineering design services on the Security Grant 7 – Northside Security & Critical Docks Access Control Project.
- C. Approve a Professional Services Purchase Order for additional engineering design services for Security Grant 7 – Supplemental Viola Turning Basin Guard Gate and Fencing Improvements to RVE, Inc.
- D. Approve a Second Amendment to a lease agreement with Alta Mesa for a 50' by 100' parking area in the Rincon Industrial Park.

- E. Approve a Third Amendment to a Lease Agreement with H&H Iron & Metal, Inc., for 2.94-acres fronting on Rincon Canal A for the handling of scrap metals.
- F. Approve a Third Amendment of Surface use Agreement and Damage Release with EOG Resources to increase the size of Surface Site 750A at the Bulk Terminal.

#### IX.

The Executive Director reported on the following during his report: Thanked staff for efforts on Canyon Letter of Intent; upcoming meetings with three major railroads; Liability insurance; Exxon Dock; Chamber of Commerce State delegation luncheon; Vietnam Memorial event; and small craft pier contract.

#### X.

The Chairman asked for comments from Commissioners on any of the agenda items for this meeting, the Port's activities during the preceding month, upcoming PCCA events and suggestions for future agenda items.

#### XI.

On motion made by Ms. Hawley and seconded by Mr. Gonzalez, the Commission approved, in the form presented to the meeting, the second reading of a franchise granting Flint Hills Resources Corpus Christi, LLC, the right of access to the waters of Nueces County and the Corpus Christi Ship Channel from its wharves, piers and other improvements now or hereafter constructed on the company's 1.72-acre upland tract and the company's 10.906-acre tract of leased submerged land situated in the southeast corner of the former Naval Station Ingleside site. Mr. Gandy voted against the motion.

*At 9:54 a.m., the Chairman announced that the Commission would go into executive session pursuant to §551.071 and §551.072 of the Texas Government Code to deliberate items 5, 12, 13, and 14.*

*At 11:21 a.m., the meeting reconvened in open session.*

#### XII.

The Commission consulted with its attorney in executive session about the permitted uses under the ground lease between PCCA and the Adame Group, LLC, dated June 11, 2010; Mr. Carrell was not present for this portion of the executive session. There was no discussion or action on this agenda item in open session.

#### XIII.

This item was for executive session only.

**XIV.**

The Commission consulted with its attorney in executive session regarding the General Land Office lawsuit against PCCA; Mr. Gonzalez did not participate in this portion of the executive session. There was no discussion or action on this agenda item in open session.

**XV.**

There being no further business, the meeting adjourned at 11:26 a.m.

**MARCH 25, 2011**

The Port Commissioners of the Port of Corpus Christi Authority met in special session on Friday, March 25, 2011 at 9:00 a.m., at the administrative offices of the Port of Corpus Christi Authority, located at 222 Power Street, Corpus Christi, Texas.

**Present:** Mr. Mike Carrell  
Mr. Richard M. Borchard  
Ms. Judy Hawley  
Mr. Francis I. Gandy, Jr.  
Mr. Mike Scott

**Absent:** Mr. Robert J. Gonzalez, Sr.  
Mr. Robert Kostelnik

**Present:** Mr. John P. LaRue  
Mr. Frank Brogan  
Mr. Sandy Sanders  
Mr. Tony Alejandro  
Ms. Patricia Cardenas  
Ms. Sherry DuBois  
Mr. Gustavo Espinosa  
Mr. Dave Throop  
Ms. Maggie Turner

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

**Others Present:** Mr. Chris Lewis  
Mr. David Harper  
Ports America Stevedoring Co.  
Mr. John Kelly  
We The People

**I.**

Chairman Carrell called the meeting to order and asked that any conflict of interest affidavits be submitted. None were submitted.

**II.**

Mr. Carrell asked for comments from the public. No comments were received.

**III.**

On motion made by Mr. Gandy and seconded by Mr. Scott, the Commission approved a stevedoring and freight handling license for Ports America Texas Inc.

**IV.**

There being no further business, the meeting adjourned at 9:12 a.m.



1. If sold on or before May 1, 2011, and closed by October 31, 2011, a reduced fee of 0.6% of the total sales price.
2. If sold between May 2, 2011, and June 30, 2011, and closed by October 31, 2011, a reduced fee of 1.1% of the total sales price.
3. If sold on July 1, 2011, or later and closed by October 31, 2011, a reduced fee of 1.625% of the total sales price.

Staff recommends approval of the Exclusive Right to Sell or Lease Contract as drafted. This item is included on the agenda of the April 12, 2011, commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

EXCLUSIVE RIGHT TO SELL OR LEASE CONTRACT  
(No Override)

April 5, 2011

Mr. B. Kelley Parker, III, SIOR  
Executive Vice President  
Mr. John F. Littman, SIOR, MAI  
Senior Director  
Mr. Coe Parker  
Cushman & Wakefield of Texas, Inc.  
1330 Post Oak Blvd., Suite 2700  
Houston, Texas 77056

**Re: ±254.24 acres located on Harbor Island fronting on the Corpus Christi Channel on State Highway 361, Nueces County, Texas as identified in Exhibit A attached (the "Premises")**

Gentlemen:

We hereby appoint Cushman & Wakefield of Texas, Inc. ("C&W") as our sole and exclusive agent and grant to C&W the exclusive right to sell or lease all or any portion of the Premises.

C&W's appointment as our sole and exclusive agent shall be upon the following terms and conditions:

1. The term of this agreement shall commence on the date hereof and continue in effect until August 31, 2012. Notwithstanding, we shall have the right to cancel this agreement at our discretion with thirty (30) days advance written notification after March 1, 2012.
2. C&W agrees that it will enlist its commercially reasonable efforts to secure a satisfactory purchaser(s) or lessee(s) for the Premises, and if C&W deems it necessary, C&W will also solicit the cooperation of other licensed real estate brokers.
3. C&W shall prepare a comprehensive offering package consisting of a marketing brochure, web site and electronic data room, which must be approved by us prior to its use. C&W will pay all out of pocket expenses, which it may reasonably incur in the preparation of the offering material(s) and marketing the Property. Such expenses may include, but not be limited to, communications, postage for advertising direct mailings, the cost of special graphics, brochures, photographs, and if we mutually agree to advertise, advertising costs. If approved, we agree to reimburse C&W for all reasonable expenses for advertising up to, but not to exceed \$20,000.00 within thirty (30) days of submission of invoicing. In case requested, C&W will provide written evidence of these costs. In the event C&W is not paid a commission pursuant to this agreement prior thereto however, in the event C&W should subsequently be due a commission pursuant to this agreement, an amount equal to the reimbursement made by us shall be deducted from the amount of the commission. All advertising, whether prepared or issued by C&W or by us, shall identify C&W as our exclusive agent for the Premises during the term of this agreement.

5. During the term of this agreement, we will refer to C&W all inquiries and offerings received by us with respect to the Premises, regardless of the source of such inquiries or offerings, and all negotiations shall be conducted solely by C&W or under C&W's direction, subject to (a) our review and final approval and (b) our right to have an observer present at meetings or listening in on teleconferences where negotiations for the sale or lease of the Premises takes place. C&W shall notify us timely in the event of potential dual agency. In this event, C&W will designate a C&W broker representative to represent us, specifically either B. Kelley Parker, III or John F. Littman.
6. In the event that: (i) at any time during the term of this agreement a sale or lease of all or any portion of the Premises, upon any terms acceptable to us, shall be made with any purchaser or lessee who was procured by C&W, or by us, or by any other person; or (ii) twelve months after the expiration or termination of this agreement a sale or lease of all or any portion of the Premises, upon any terms acceptable to us, shall be made with any purchaser or lessee to whom the Premises were submitted by C&W, or by us, or by any other person during the term of this agreement (defined herein as the "Carryover List"); then, and in either such event, we agree to pay to C&W one (1) full commission computed and payable in accordance with the applicable annexed Schedule. C&W shall within twenty (20) days after expiration or termination of this agreement submit a list (the Carryover List) of all prospective purchasers or lessees who have expressed an interest in the Premises.

Notwithstanding the forgoing, if the Premises is sold (as evidenced by a fully executed Contract) to an Excluded Prospect, then in such event, C&W agrees to accept a reduced fee (net of any fees payable to co-brokers involved, if any) subject to the following:

- a. If sold on or before May 1, 2011 and closed by October 31, 2011, then in such event C&W agrees to accept a reduced fee of six tenths of one percent (0.6%) of the total Sales Price;
- b. If sold between May 2, 2011 and June 30, 2011 and closed by October 31, 2011, then in such event C&W agrees to accept a reduced fee of one and one tenth percent (1.1%) of the Sales Price;
- c. If sold on July 1, 2011 or later and closed by October 31, 2011, then in such event C&W agrees to accept a reduced fee payable in accordance with the attached Schedule of Commissions for Sales Transactions less fifty percent (50%), or 1.625%

"Excluded Prospect" means any of the following companies acting as the Purchaser (as such term is defined in the schedule):

1. Canyon Supply & Logistics, LLC

C&W will provide the same full service brokerage services for Excluded Prospects as for non-excluded prospects, including negotiating and through escrowing the contract through closing and funding if authorized. C&W shall not be responsible or obligated to pay any other brokers or agents retained by an Excluded Prospect out of the fee payable to C&W.

7. If a licensed real estate broker other than C&W is the effective procuring cause of any sale or lease covered by this agreement, C&W shall use its commercially reasonable efforts to have such other broker agree to accept, as its compensation an equitable portion of the commission payable to C&W pursuant to this agreement, and if such other broker so agrees, we will pay to C&W the commission set forth above out of which C&W will pay to such other broker the fee set forth for co-brokers on the applicable attached Schedules, such fee being its agreed upon share and C&W retaining the balance of the commission as C&W's compensation. If the other broker will not agree to accept, as its compensation,

the said portion of C&W's commission, then our written approval will be necessary if the proposal is to be further negotiated. In no event shall C&W be liable for the failure to obtain such other broker's agreement to accept, as its compensation, a portion of the commission exceeding the co-broker fee stated on the attached Schedule.

8. **LIEN NOTICE:** Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the property.
9. This agency shall be binding upon the parties hereto, their respective successors and assigns.

If the foregoing accurately sets forth our agreement, please sign and return the enclosed copies of this letter.

Very truly yours,

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

By: \_\_\_\_\_

Name: John P. LaRue

Title: Executive Director

Address: 222 Power Street  
Corpus Christi, TX 78401  
(361) 885.6130

AGREED AND ACCEPTED:

**CUSHMAN & WAKEFIELD OF TEXAS, INC.**

By: B. Kelley Parker, III, SIOR  
Executive Vice President

By: John F. Littman, SIOR, MAI  
Senior Director

Attachments

**CUSHMAN & WAKEFIELD OF TEXAS, INC. ("C&W")**  
**HOUSTON**  
**SCHEDULE OF COMMISSIONS FOR SALES TRANSACTIONS**

1. **RATES**

For the Property, the following Commission Schedule shall apply:

Three and one-quarter percent (3.25%) of the total Sales Price.

C&W shall at its discretion compensate a Co-Broker out of the above Commission Schedule a limited amount of C&W's fee (we believe this may be beneficial for broader exposure/marketing) if the Co-Broker is not also acting as a principal or employee of the Buyer. The Port of Corpus Christi shall have no obligation to pay any Co-Broker retained by the Buyer.

2. **TIME OF PAYMENT**

The commission shall be paid in full at the time of the closing or transfer of title to the property, except in the case of an installment purchase contract, in which case, the commission shall be paid in full at the time of the execution and delivery of the installment sales contract by and between the seller and purchaser.

3. **COMPUTATION OF SALES PRICE**

The commission shall be computed in accordance with the above rates based upon the total sales price, which shall include any mortgages, loans or other obligations of the seller which may be assumed by the purchaser or which the purchaser takes title "subject to", any purchase money loans or mortgages taken back by the seller, the sales price of any fixtures or other personal property sold by separate agreement between the seller and purchaser as part of the overall sale of the real property, and the current market value of any other real or personal property transferred from the purchaser to the seller.

4. **MISCELLANEOUS**

The terms "Seller" and "Purchaser" shall be deemed to include any subsidiaries, affiliates, successors, assigns and nominees of same.

In the event either party shall commence litigation against the other party to enforce its rights under this agreement and/or schedule, the party prevailing in such litigation shall be entitled to recover from the other party its attorney's fees and disbursements thereby incurred.

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Seller's Initials

**CUSHMAN & WAKEFIELD OF TEXAS, INC. ("C&W")  
SCHEDULE OF COMMISSIONS FOR LEASE TRANSACTIONS – HOUSTON**

1. **RATES**

Four percent (4%) of the aggregate rental for the first fifteen (15) years of the lease term if leased directly by the C&W marketing team of B. Kelley Parker, III, SIOR; John F. Littman, SIOR, MAI; and Coe Parker.

2. **TIME OF PAYMENT**

Fifty percent (50%) of the commission shall be paid at the time of the execution and delivery of the lease by and between the landlord and tenant and the balance of the commission shall be paid at the earlier of the commencement of the lease term, or three (3) months after the date of the execution and delivery of the lease.

3. **COMPUTATION OF RENTAL**

Commissions shall be computed in accordance with the above rates based upon the gross rental set forth in the lease including any percentage or additional rental based upon the gross receipts of, or sales by the tenant, but excluding any additional rental payable pursuant to tax and operating expense escalation provisions.

4. **RENEWALS, EXTENSIONS AND EXPANSIONS**

If a lease is renewed or extended, or if a tenant leases any other or additional space from the landlord as an expansion or substitute space pursuant to an option or right contained in the lease, landlord shall pay additional commissions to C&W equal to four percent (4%) of the rental payable during the renewal or extension term or during the term of the lease of such additional or other space. Any such additional commissions shall be paid at the time of the exercise of the option or right to renew, or to extend the lease term or to lease other or additional space. Where the ultimate terms of a renewal, or extension do not substantially conform to the terms of the option or right contained in the lease, C&W shall not be entitled to a commission for any period or for any space in excess of that set forth in the applicable lease provisions unless, however, C&W participates in the new negotiations.

5. **PURCHASE BY A TENANT**

If the property at which the lease is made is purchased by the tenant pursuant to an option or right contained in its lease, landlord shall pay to C&W in full, at the time of the closing of title, a sales commission as stated in the attached Schedule of Commissions for Sales Transactions less any lease commissions paid for the remaining term of the lease from the date of sale.

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Landlord's Initial

6. **CANCELLATION CLAUSES**

C&W will be paid a commission based upon the entire lease term notwithstanding any right of landlord to cancel the lease. If the tenant has a right to cancel the lease after the term has commenced (and for reasons unrelated to casualty, condemnation, default and the like), the commission will initially be based upon the rental for the noncancellable portion of the lease term plus the amount of any cancellation payment payable by the tenant; if such right is not thereafter exercised, landlord shall promptly pay C&W the balance of the commission. A lease will be deemed cancelled only if the tenant vacates the premises. If a cancellation payment includes the unamortized commission, then C&W shall be paid a full commission as if no right of cancellation existed.

7. **SALE OF LANDLORD'S INTEREST**

In the event of a sale or other conveyance or disposition of the landlord's interest in the property, landlord shall continue to be responsible to pay C&W the commissions due pursuant to this schedule and in addition, landlord shall obtain from the grantee of landlord's interest and deliver to C&W a written agreement pursuant to which the grantee shall assume the landlord's commission obligations under this schedule.

8. **MISCELLANEOUS**

The term "Lease" as used herein shall also be deemed to mean sublease and the terms "Landlord" and "Tenant" shall be deemed to include sublandlord and subtenant and any subsidiaries, affiliates, successors, assigns and nominees of same.

In the event either party shall commence litigation against the other party to enforce its rights under this agreement and/or schedule, the party prevailing in such litigation shall be entitled to recover from the other party its attorney's fees and disbursements thereby incurred.



**AGREEMENT EXTENDING  
CANYON SUPPLY & LOGISTICS LETTER OF INTENT**

This Extension Agreement (the "Extension Agreement") is made effective as of the 12<sup>th</sup> day of April, 2011, by and between the PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS ("PCCA"), and the CANYON SUPPLY & LOGISTICS, LLC, a Texas limited liability company ("Buyer").

WHEREAS, PCCA and Buyer entered into a Letter of Intent dated March 8, 2011 ("LOI"), regarding Buyer's purchase of most of the property formerly occupied by Naval Station Ingleside and PCCA's adjacent 435 acres of undeveloped property; and

WHEREAS, PCCA and Buyer wish to extend the date on which the LOI would terminate but for this Extension Agreement;

NOW, THEREFORE, for and in consideration of the agreements set forth herein, PCCA and Buyer (collectively, the "Parties") hereby agree as follows:

Section 1. The Parties agree that the LOI will remain in effect until the close of business on May 10, 2011, unless sooner terminated as provided in the LOI.

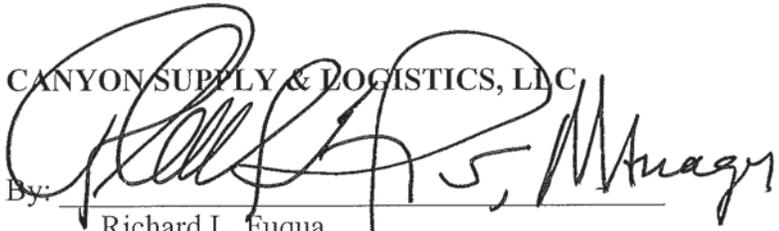
Section 2. All terms and conditions of the LOI, as extended by this Extension Agreement, shall remain in full force and effect. In the event of any conflict between the terms and conditions of this Extension Agreement and those of the LOI, the terms and conditions of this Extension Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Extension Agreement effective as of the date first written above.

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

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

CANYON SUPPLY & LOGISTICS, LLC

By:  \_\_\_\_\_  
Richard L. Fuqua  
Its duly authorized officer or manager

**AGREEMENT EXTENDING  
CANYON SUPPLY & LOGISTICS LETTER OF INTENT**

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WHEREAS, PCCA and Buyer wish to extend the date on which the LOI would terminate but for this Extension Agreement;

NOW, THEREFORE, for and in consideration of the agreements set forth herein, PCCA and Buyer (collectively, the "Parties") hereby agree as follows:

Section 1. The Parties agree that the LOI will remain in effect until the close of business on May 10, 2011, unless sooner terminated as provided in the LOI.

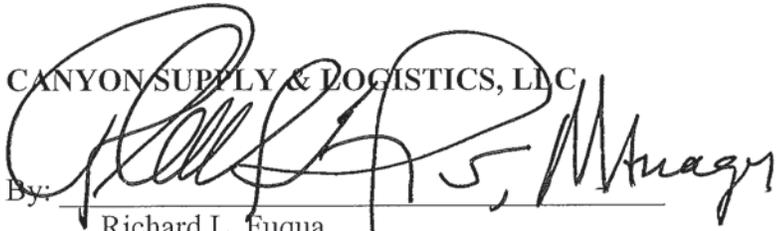
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IN WITNESS WHEREOF, the Parties have executed this Extension Agreement effective as of the date first written above.

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

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

CANYON SUPPLY & LOGISTICS, LLC

By:  \_\_\_\_\_  
Richard L. Fuqua  
Its duly authorized officer or manager



Under the terms of the lease, the Port is obligated to make certain repairs to the building. The Port obtained bids for these repairs and awarded a contract to B.E. Beecroft Company, Inc. on February 8, 2011. We have not issued a notice to proceed for these repairs due to the need to rebid this lease. Once a lease is signed by both parties, we will proceed with these repairs.

The Port received two bid(s) in response to our Notice to Bidders (see attached Bid Tabulation). Sam Kane Meat Processors, Inc. submitted the highest bid in the amount of \$450,000 in base rent (land and building) for the first five years. Sam Kane Meat Processors Inc. is a Corpus Christi based company with a long proven record of business. They have agreed to operate inside the Port's secured perimeter.

Staff recommends approval of a lease with Sam Kane Beef Processors, Inc. Staff further recommends that the Port Commission cancel the prior award (February 8, 2011) of the lease to Sherborn Ventures, LLC. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

Attachment

**RESOLUTION APPROVING LEASE AGREEMENT  
WITH SAM KANE MEAT PROCESSORS, INC., FOR  
REFRIGERATED WAREHOUSE PROPERTY  
AND RELATED MATTERS**

**WHEREAS**, Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”), wishes to lease, as lessor, a ±2.9964-acre tract of land located at 701 E. Navigation Blvd., Corpus Christi, Texas (“Land”), and PCCA’s Refrigerated Warehouse Facility (“Refrigerated Warehouse”) located on the Land; and

**WHEREAS**, in connection with PCCA’s efforts to lease the Land and Refrigerated Warehouse (collectively, the “Refrigerated Warehouse Property”), the following events have transpired:

1. On January 27, 2011, PCCA received one bid to lease the Refrigerated Warehouse Property; the sole bidder being Sherborn Ventures, LLC (“Sherborn Ventures”), a company managed by Chris Hughes.
2. On February 8, 2011, the Port Commission accepted Sherborn Ventures’ bid and approved a lease agreement with Sherborn Ventures for the Refrigerated Warehouse Property (the “Sherborn Lease”).
3. Chris Hughes advised PCCA staff that Sherborn Ventures was unwilling to sign the Sherborn Lease, but that he would form a new company which would execute the Sherborn Lease.
4. PCCA counsel advised staff that only Sherborn Ventures could sign the Sherborn Lease, because Sherborn Ventures had submitted the bid that was accepted by the Port Commission and the Commission had approved a lease agreement with Sherborn Ventures.
5. Staff advise Chris Hughes that PCCA would request new bids to lease the Refrigerated Warehouse Property, with an option to purchase the Refrigerated Warehouse building and PCCA’s equipment located on the leased premises, which it did by a Bid Notice dated March 16, 2011.
6. On March 31, 2011, PCCA received two bids to lease the Refrigerated Warehouse Property, which can be summarized as follows:
  - a. Corpus Christi Cold Storage (Chris Hughes) – Total Base Bid of \$370,000 in rent for five years; and
  - b. Sam Kane Meat Processors, Inc. – Total Base Bid of \$450,000 in rent for five years.
7. Staff has recommended that the Port Commission cancel its approval of the Sherborn Lease and approve a lease agreement with Sam Kane Meat Processors, Inc. (“Sam Kane”) for the Refrigerated Warehouse Property.

**WHEREAS**, the Port Commission has concluded that leasing the Refrigerated Warehouse Property does not constitute a lease of a significant or substantial part of PCCA's dock and wharf and related facilities constituting the Port of Corpus Christi for purposes of Section 12(g) of the resolution ("Bond Resolution") adopted by the Port Commission on March 12, 2002, authorizing the issuance of Port of Corpus Christi Authority of Nueces County, Texas Revenue Bonds, Series 2002-A (AMT) and Series 2002-B (NON-AMT).

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

**Section 1.** The Port Commission's acceptance of Sherborn Ventures' bid to lease the Refrigerated Warehouse Property and its approval of the Sherborn Lease on February 8, 2011, are hereby cancelled and shall have no further force and effect.

**Section 2.** In the opinion of the Port Commission, of the two bids submitted to PCCA on March 31, 2011, to lease the Refrigerated Warehouse Property (which includes an option to purchase the Refrigerated Warehouse building and PCCA's equipment located on the leased premises) the bid submitted by Sam Kane is the most advantageous to PCCA, and the Port Commission hereby accepts Sam Kane's bid to lease the Refrigerated Warehouse Property.

**Section 3.** The Lease Amendment between PCCA and Sam Kane for the lease of the Refrigerated Warehouse Property, which includes an option to purchase the Refrigerated Warehouse building and PCCA's equipment located on the leased premises (the "Lease Agreement"), is hereby approved in substantially the form presented to this meeting, and the Executive Director of PCCA is hereby authorized and directed, for and on behalf of PCCA, to sign and otherwise execute the Lease Amendment with such changes therein as shall be approved by the Executive Director, his execution thereof to constitute conclusive evidence of such approval.

**Section 4.** The Port Commission hereby finds that leasing the Refrigerated Warehouse Property to Sam Kane pursuant to the terms of the Lease Agreement will have a positive impact on PCCA's Net Revenues (as defined in the Bond Resolution) over the term of the Lease Agreement.

**Section 5.** The Executive Director and his designees are hereby severally authorized and directed to do any and all other things they deem necessary to carry out the intent and purposes of this Resolution.



**BID TABULATION FOR LEASE OF  
 PCCA'S REFRIGERATED WAREHOUSE  
 PROJECT NO. 10-030B  
 Bid Opening: March 31, 2011 at 2:00 p.m.**

Company Name	Bid Check	Base Rent						Security Agmt*	Addendum No. 1
		Year 1	Year 2	Year 3	Year 4	Year 5	Total		
Sam Kane Beef Processors Inc.	\$25,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$450,000	Yes	Yes
Corpus Christi Cold Storage, LLC	\$25,000	\$10,000	\$10,000	\$75,000	\$125,000	\$150,000	\$370,000	Yes	Yes

\*Bidder agrees to operate within a PCCA secured area.

Read By: \_\_\_\_\_

Tabulated By: \_\_\_\_\_

Checked & Prepared By: \_\_\_\_\_

Date: March 31, 2011 \_\_\_\_\_

**PORT OF CORPUS CHRISTI AUTHORITY  
LEASE SUMMARY**

Lessee: Sam Kane Beef Processors Inc.

Premises: ± 2.9964-Acre Tract at 701 E. Navigation Blvd.  
97,420 SF Refrigerated Warehouse

Use: Provide refrigerated and freezer warehouse services for handling, shipping, receiving, delivery and storage of chilled or frozen food commodities.

Term: August 1, 2011 – July 31, 2016

Start Date: August 1, 2011

Annual Rent: (Before Purchase - Land and Improvements Rent)  
Year 1 \$90,000.00  
Year 2 \$90,000.00  
Year 3 \$90,000.00  
Year 4 \$90,000.00  
Year 5 \$90,000.00

Lease Options: Option to extend lease for two additional periods – one for five years and the second ending on May 31, 2026.

Annual Rent: (After Purchase – Land Only Rent)  
\$75,000 per year

Previous Annual Rent: N/A

Tenant Business: Refrigeration

Tenant Contact: Charles R. Jackson

Remarks:

1. Tenant has option to purchase improvements at appraised value.
2. Port is required to make initial repairs (max. \$250,000).
3. Until improvements are purchased Port will be responsible for the roof, walls and structural components of the building, and tenant will be responsible for the refrigeration system.

**LEASE AGREEMENT**

Between



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



And

---

*("Lessee")*

APRIL 12, 2011

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## LEASE AGREEMENT

This **LEASE AGREEMENT** (hereinafter called "Lease" or "Lease Agreement") is made effective as of March 1, 2011 (the "Commencement Date"), by and between **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS** (hereinafter called "Authority"), pursuant to authorization by its Port Commissioners, and \_\_\_\_\_, a \_\_\_\_\_, whose principal address is \_\_\_\_\_, \_\_\_\_\_ (hereinafter called "Lessee").

### RECITALS

WHEREAS, Authority owns a ±2.9964-acre tract of land, more or less, located at 701 E. Navigation Blvd., Corpus Christi, Nueces County, Texas (the "Land"), and the improvements situated thereon, including an approximately 97,420-square foot refrigerated warehouse, that Lessee wishes to lease from Authority, and which Authority wishes to lease to Lessee, upon and subject to the provisions of this Lease; and

WHEREAS, under the terms of this Lease Agreement, Lessee will have the option to purchase the refrigerated warehouse and related equipment for their fair market value at the time the option is exercised (the "Purchase Option"); and

WHEREAS, if Lessee purchases the refrigerated warehouse and related equipment pursuant to the Purchase Option, this Lease will continue in effect with respect to the Land only, in which case the term of the Lease, as well as the base rent and additional rent payable under the Lease, will automatically change as provided herein.

### AGREEMENTS

NOW, THEREFORE, for and in consideration of the agreements set forth herein, Authority and Lessee (collectively, the "Parties" and individually a "Party") hereby 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:

"Appraiser" means an MAI certified real estate appraiser with at least ten years of commercial real estate experience and specific experience with appraisals of properties similar to the Refrigerated Warehouse.

"Authority" has the meaning set forth in the preamble of this Lease.

"Authority Owned Equipment" means, as of any given date, all the Original Equipment except for those items of Original Equipment that have been returned to Authority or otherwise removed from the Leased Premises pursuant to the provisions of Section 2.03 on or before such date.

"Authority's Interest" means Authority's fee title to the Land, Authority's fee title to the Refrigerated Warehouse if Lessee has not purchased the Refrigerated Warehouse pursuant to Section 3.07, Authority's reversionary interest in the Land and Refrigerated Warehouse, Authority's right to receive payment of Rent, and Authority's other rights under this Lease.

"Base Rent" has the meaning set forth in Section 3.03 or 3.03A, as the case may be.

"Cargo Dock 9" means the Authority's wharf on the north side of the Corpus Christi Ship Channel between Cargo Dock 10 and the Corpus Christi Harbor Bridge, which is known as Cargo Dock 9.

"Cargo Dock 10" means the Authority's wharf on the north side of the Corpus Christi Ship Channel adjacent to the Refrigerated Warehouse, which is known as Cargo Dock 10. Cargo Dock 10 is approximately 720 feet long and approximately 100 feet wide. Cargo Dock 10 was constructed prior to the construction of the Refrigerated Warehouse. The southernmost 40 feet of the Refrigerated Warehouse and the southernmost 40 feet of the Refrigerated Warehouse parking area was constructed on top of Cargo Dock 10; see **Exhibit A-1** attached hereto. The 60-foot apron of Cargo Dock 10 is depicted on the map attached hereto as **Exhibit A**.

"Commencement Date" means the later of (i) the \_\_\_\_ day of \_\_\_\_\_ 2011 and (ii) the date upon which the Authority has fully completed the repairs and other work listed as "Critical Items" on Exhibit F hereto as confirmed by written notice of such completion from the Authority and acknowledged by Lessee in writing.

"CPI Adjustment Factor" means for any Lease Year or Land Lease Year, as the case may be, the number obtained by dividing (A) the index (U. S. Average, all Urban Consumers, 1982-84 = 100) published for the third calendar month before the calendar month in which such Lease Year or Land Lease Year begins, by (B) the index published for the same month of the prior year; provided, however, that the CPI Adjustment Factor shall never be less than "1." For example, if a Lease Year begins in January, the third calendar month before the month in which the Lease Year begins would be October.

"Event of Default" has the meaning set forth in Section 8.01.

"First Renewal Period" has the meaning set forth in Section 3.02, as the case may be.

"Governmental Authority" means any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority, except the Port of Corpus Christi Authority of Nueces County, Texas.

"Gross Revenue" is defined as the money (revenue) generated by all of the operations of the Lessee and its affiliates at the Leased Premises, before deductions for expenses, allowances, or other items.

"Index" means Table 3, Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics

"Initial Term" has the meaning set forth in Section 3.02 or 3.02A, as the case may be.

"Land" means the surface estate in and to that certain 2.9964-acre tract of land located at 701 E. Navigation Blvd., Corpus Christi, Nueces County, Texas, which is depicted on the map attached hereto as **Exhibit A**, and which is more particularly described by metes and bounds in **Exhibit B** attached hereto.

"Land Lease Year" means, during the Post-Purchase Period, the 12-month period beginning on the first day of the calendar month immediately following the Purchase Date and each 12-month period thereafter during the remaining Term of the Lease.

"Lease Year" means, during the Pre-Purchase Period, the 12-month period beginning on the Commencement Date and each 12-month period thereafter during the term of the Lease; provided, however, that if the Lessee purchases the Refrigerated Warehouse and Authority Owned Equipment in accordance with Section 3.07, the last Lease Year will end on the Purchase Date.

"Leased Premises" has the meaning set forth in Section 2.01.

"Leasehold Estate" means the leasehold estate and Lessee's other rights created by this Lease, including Lessee's ownership interest in the Refrigerated Warehouse during the Term if Lessee purchases the Refrigerated Warehouse pursuant to Section 3.07.

"Lessee" has the meaning set forth in the preamble of this Lease.

"Lessee Owned Equipment" has the meaning set forth in Section 2.03.

"Original Equipment" means all of the personal property and equipment described in **Exhibit C** attached hereto, including the warehouse equipment, fire detection and protection system, tools and equipment, forklifts, office equipment, computer software, office furniture, and miscellaneous items listed on **Exhibit C**.

"Permitted Mortgage" has the meaning set forth in Section 10.01.

"Permitted Mortgagee" has the meaning set forth in Section 10.01.

"Port Commission" means the governing body of the Authority.

"Post-Purchase Period" means the period from the first day of the calendar month immediately following the Purchase Date to the termination or expiration of this Lease.

"Pre-Purchase Period" means the period from the Commencement Date to the first to occur of the following: (i) the termination or expiration of the Lease or (ii) the Purchase Date.

"Purchase Date" means the last day of the calendar month in which the Lessee purchases the Refrigerated Warehouse and Authority Owned Equipment pursuant to Section 3.07.

"Refrigerated Warehouse" means the approximately 97,420-square-foot refrigerated insulated metal building located on the Land, including the concrete foundation, concrete piling, loading dock, concrete paving, metal building frame, insulated wall panels, metal roof, storage rooms, storage room doors, lights, offices, HVAC system, water supply system, electrical supply system, gas supply system, plumbing system, refrigerant systems, and miscellaneous building components, but excluding any portion of Cargo Dock 10. The footprint of the Refrigerated Warehouse is depicted on the map attached hereto as **Exhibit A**.

"Rent" means the Base Rent payable to Authority by Lessee pursuant to this Lease under Section 3.03 or 3.03A, as the case may be.

"Revenue Gain Share" means all of the amounts payable to Authority by Lessee pursuant to this Lease under Section 3.04.

"Second Renewal Period" has the meaning set forth in Section 3.02, as the case may be.

"Series 2002A Bonds" means the Port of Corpus Christi Authority of Nueces County, Texas Revenue Bonds, Series 2002-A (AMT), in the original principal amount of \$10,390,000, the proceeds of which were used to reimburse the Authority for the costs it incurred in constructing and equipping the Refrigerated Warehouse.

"Term" means the period of time beginning with the Commencement Date and ending upon termination of this Lease.

### **Section 1.02 – Other Definitions**

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

### **Section 1.03 – Terminology**

The terms defined in Section 1.01 or in the text of the Lease shall apply throughout the Lease. All references in the Lease to "Section" or "Article" shall refer to a section or article of the Lease, unless otherwise expressly stated. All references to "Exhibits" shall mean the exhibits attached to the Lease. All such Exhibits are incorporated in the Lease by this reference. All references to "herein," "hereof," "hereto," "hereunder" or similar terms shall be deemed to refer to the entire Lease. 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 the Lease shall be for convenience only and shall not affect the interpretation hereof.

**Section 1.04 – Interpretation**

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 any agreement means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof. This Lease Agreement was reviewed and agreed upon between Authority and Lessee with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.

**ARTICLE 2  
LEASED PREMISES AND EQUIPMENT**

**Section 2.01 – Leased Premises**

Authority hereby leases to Lessee, and Lessee hereby leases and rents from Authority, upon the terms and conditions of this Lease, the following described real property situated in Nueces County, Texas:

The Land and, except as provided in Section 2.02, the improvements situated thereon, including the Refrigerated Warehouse (hereinafter called the "Leased Premises").

In addition, Authority hereby grants to Lessee a non-exclusive right (i) to access the Leased Premises through the truck access gate depicted on the map attached hereto as **Exhibit A** and (ii) the use of and access to the railroad tracks depicted on **Exhibit A**.

**Section 2.02 – Excluded Property; Use and Maintenance Thereof**

The Leased Premises does not include Cargo Dock 10 (which the Authority agrees to maintain in good condition and working order), the high-mast lights mounted on top of the Refrigerated Warehouse used to illuminate the dock apron and facilitate loading and unloading of ships and barges, the security cameras mounted on the Refrigerated Warehouse used as part of the Authority's security monitoring system, or the railroad tracks and security gates adjacent to the Leased Premises. The Authority will continue to own, operate, and maintain these lighting and security systems and will either reimburse Lessee for the estimated electrical costs of such systems or install a separate electrical meter.

Authority hereby grants Lessee a non-exclusive, but priority right (except for the movement of military cargoes across the dock) to use Cargo Dock 10 in conjunction with any cargoes moving to or from vessels and the Leased Premises, subject to the payment of Authority's then current tariff fees for a public dock for such cargoes. Lessee also acknowledges that it will be responsible for the operation and the maintenance of the firewater pump station and fuel tank serving the Leased Premises, which are depicted on Exhibit A, during the Term of this Lease.

### **Section 2.03 – Equipment**

Authority and Lessee agree that all of the Original Equipment is located on the Leased Premises on the Commencement Date. Authority agrees not to remove any item of Original Equipment from the Leased Premises during the Term of the Lease without Lessee's written consent unless such item is returned to the Authority pursuant to this Section 2.03. Furthermore, the Authority agrees that Lessee may use the Original Equipment in connection with its operation of the Refrigerated Warehouse, provided Lessee shall maintain, repair and replace the items of Original Equipment it elects to use at Lessee's sole cost. Lessee agrees not to remove any item of Original Equipment from the Lease Premises during the Term of this Lease without the Authority's written consent, except to return it to the Authority pursuant to Section 2.03. If an item of Original Equipment is not needed by Lessee or is to be replaced, Lessee shall return the item to the Authority's Maintenance Department. All machines, appliances, furniture, equipment, and other items of tangible personal property placed on the Leased Premises subsequent to the Commencement Date (collectively, the "Lessee Owned Equipment") will be owned by and title thereto will be vested in Lessee. Lessee shall remove all of the Lessee Owned Equipment within thirty days after the termination of this Lease. Any items of Lessee Owned Equipment that are not removed by Lessee within thirty days after the 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 2.04 – Inspection of Leased Premises**

Subject to the Authority's obligations in Section 2.05 below, Lessee has inspected the Leased Premises, including all improvements, fixtures, equipment and personal property situated on the Leased Premises and has conducted any environmental assessment survey it desires and on the Commencement Date accepts the Leased Premises "As Is, Where Is" and in the condition it existed on that date as reasonably suited and fit for Lessee's intended use of the Leased Premises. Unless expressly stated in this Lease Agreement, Authority has made no express warranties with respect to the Leased Premises, and to the maximum extent permitted by applicable law, Authority hereby disclaims, and Lessee hereby waives the benefit of, any and all implied warranties, including implied warranties of habitability, fitness, or suitability of the Leased Premises for Lessee's purposes.

### **Section 2.05 – Authority Repairs to Leased Premises**

Notwithstanding anything in this Lease to the contrary, Authority shall make the repairs to the Original Equipment and the Leased Premises as listed on **Exhibit F** attached hereto; provided that the cost of such repairs paid by Authority shall not exceed \$250,000.00. The parties and their representatives shall estimate the cost of such repairs prior to commencement of repair work. In the event the estimated repair cost will exceed \$250,000.00, then Lessee shall advise Authority in writing the order in which it wants Authority to make the repairs until the sum of \$250,000.00 has been expended by Authority. The repairs and other work listed as "Critical Items" on Exhibit F shall be completed by the Authority prior to the Commencement Date, and the remaining repair items on Exhibit F shall be completed by the Authority as quickly as reasonably practical based upon diligent good faith efforts until the sum of \$250,000.00 has been expended by Authority.

**ARTICLE 3**  
**TERM, RENT AND PURCHASE OPTION**  
**DURING THE PRE-PURCHASE PERIOD**

**Section 3.01 – Period Covered by this Article 3**

This Article 3 will be operative during the Pre-Purchase Period. If the Lessee purchases the Refrigerated Warehouse and Authority Owned Equipment pursuant to Section 3.07, this Article 3 will cease to be operative after the Purchase Date, and thereafter the Term of this Lease and the Rent payable hereunder shall be governed by Article 3A

**Section 3.02 – Term**

(a) This Lease shall commence on the Commencement Date and shall end on five (5) years thereafter unless extended in accordance with the provisions of this Lease. Such period of time will hereafter be referred to as the "Initial Term".

(b) Lessee shall have the right to extend the Initial Term of this Lease for two (2) renewal periods, each as provided in this Section 3.02(b). The "First Renewal Period" shall be for five (5) years. The "Second Renewal Period" shall be for a period beginning at the end of the First Renewal Period and ending on May 31, 2026. To exercise such rights, Lessee shall give written notice to the Authority not less than 180 days prior to the end of the then effective Term, irrevocably exercising the right to extend the Term. Lessee may not exercise such right if at the time of exercise an Event of Default exists hereunder or an event exists that, with the giving of notice or passage of time, or both, would constitute an Event of Default hereunder. If Lessee affirmatively exercises its right to extend the Term, then this Lease shall continue in full force and effect under all the terms and conditions herein set forth.

**Section 3.03 – Base Rent**

(a) Commencing on the Commencement Date, Lessee shall be obligated to pay to Authority at its offices in Corpus Christi, Texas, an annual base rent ("Base Rent") for each Lease Year during the Term of this Lease. The Base Rent for each Lease Year shall be determined in accordance with this Section 3.03 and shall be paid in monthly installments in advance of the first day of each calendar month in an amount equal to 1/12<sup>th</sup> of the annual Base Rent for that Lease Year. Base Rent for any partial Lease Year during the Term shall be appropriately pro-rated.

(b) The Base Rent payable to the Authority for the Initial Term will be as per **Exhibit D** herein.

(c) The Base Rent payable to the Authority for the First Renewal and Second Renewal Periods will be as per **Exhibit D** herein.

**Section 3.04 – Revenue Gain Share**

(a) In addition to Base Rent, Lessee will pay a percentage of earned Gross Revenue to Authority based on the schedule and conditions set forth in **Exhibit E** of this Lease

Agreement. However, the Lessee is under no obligation to pay the Authority any amounts pursuant to this Section if any of the following conditions apply:

- (i) The Lessee is not generating positive EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization), or
- (ii) The Lessee is not generating EBITDA margins of at least 20%, where EBITDA margins are defined as EBITDA divided by Gross Revenue, or
- (iii) The Initial Term of the Lease, as defined in Section 3.02(a) has expired.

(b) In consideration of Lessee's agreement to the payment of Revenue Gain Share, and other covenants and agreements in this Lease Agreement, Authority will pay to Lessee on a calendar quarter basis beginning the end of the first quarter after the Commencement Date, twenty-five per cent (25%) of Authority's wharfage charges received for cargo moved over Cargo Dock 9 or Cargo Dock 10 which cargo is to be, or has been, stored in the Refrigerated Warehouse. For example, calculated wharfage amounts for the period January 1 – March 31 ("Quarter 1"), shall be paid on or before June 30, but no sooner than 30 days after the close of the Fiscal Year quarter (*i.e.*, April 30). Such payments shall be for a period of time starting with the Commencement Date and ending on the earlier to occur of the fifth anniversary of the Commencement Date or the beginning date of the Post-Purchase period.

#### **Section 3.05 – Timing of Revenue Gain Share Payment**

(a) Lessee shall pay the Authority as per the schedule and conditions set forth in **Exhibit E** of this Lease Agreement and payment shall be made on a quarterly basis prior to the end of the immediately following quarter. For example, calculated Revenue Gain Share amounts for the period January 1 – March 31 ("Quarter 1"), shall be paid on or before June 30, but no sooner than 30 days after the close of the Fiscal Year quarter (*i.e.*, April 30).

#### **Section 3.06 – Place of Payment; Past Due Rent**

(a) The first monthly installment of Base Rent hereunder is due and payable on or before the Commencement Date. Each succeeding monthly installment of Base Rent is due and payable on or before the first day of each succeeding month thereafter at the offices of Authority in Corpus Christi, Nueces County, Texas. Authority may charge Lessee a penalty for late payment of monthly installments of Base Rent, which penalty will be equal to ten percent (10%) per annum on monthly installments of Base Rent that are more than thirty (30) days past due. Such late charges are payable as additional rental and are payable immediately on demand.

(b) Rent must be paid to Authority at its address for notice hereunder or to such other person or at such other address in Nueces County, Texas, as Authority may from time to time designate in writing. Rent must be paid in legal tender of the United States of America without notice, demand, abatement, deduction, or offset.

**Section 3.07 – Purchase Option**

(a) Lessee shall have the option to purchase the Refrigerated Warehouse and the Authority Owned Equipment at any time during the Term of the Lease for a price (the "Option Price") equal to the "fair market value" of the Leasehold Estate in the Refrigerated Warehouse and the Authority Owned Equipment at the time the option is exercised; provided however, the Option Price shall not be less than the then outstanding principal balance on the Series 2002A bonds plus the costs reasonably incurred by the Authority to defease or redeem the Series 2002 A Bonds.

(b) If Lessee chooses to exercise its option to purchase the Refrigerated Warehouse and Authority Owned Equipment, Lessee shall deliver a written notice ("Purchase Notice") to the Authority stating that Lessee is electing to purchase the Refrigerated Warehouse and Authority Owned Equipment pursuant to this Section 3.07.

(c) Upon receipt of the Purchase Notice, the Parties shall jointly select an Appraiser to determine the fair market value of the Leasehold Estate in the Refrigerated Warehouse and Authority Owned Equipment. In the event Lessee and Authority are unable to agree upon a single Appraiser, Authority and Lessee shall each appoint an Appraiser. The two Appraisers shall then, within ten days after their designation, select a third Appraiser. If the two Appraisers are unable to agree on a third Appraiser within such ten-day period, either Authority or Lessee, by giving five days' prior written notice thereof to the other, may apply to the then presiding judge of any of the Nueces County District Courts for selection of a third Appraiser. Within thirty (30) business days after the selection of the third Appraiser, a majority of the Appraisers shall determine the fair market value of the Leasehold Estate in the Refrigerated Warehouse and Authority Owned Equipment. If a majority of the Appraisers is unable to agree upon the fair market value of the Leasehold Estate in the Refrigerated Warehouse and Authority Owned Equipment within such time, the two closest appraisal amounts shall be averaged and the average will be the fair market value. In order to determine the "fair market value," the Appraisers shall consider the price for cash which the subject property interest will bring in a competitive and open market under all conditions requisite to a fair sale with the buyer and seller each acting prudently and knowledgeably (provided that a recent sale of such property or substantially similar property is the best evidence of fair market value), and subtracting therefrom the costs and expenses of such a sale (not otherwise specifically allocated to the buyer or seller hereunder), including, without limitation, commissions and legal fees and assuming such price is not affected by undue stimulus, and further assuming that: the buyer and seller are typically motivated; both parties are well-informed or well-advised and are each acting in what it considers its own best interest; a reasonable time is allowed for exposure on the open market; and payment is made in cash or its equivalent.

(d) The Authority will bear the cost of the Appraisers; provided, however, that the Lessee will reimburse the Authority for the cost of the Appraisers if the Lessee for any reason fails to close the purchase pursuant to this Section 3.07. Should Lessee fail to close the purchase for any reason, Lessee shall continue to have the option to purchase the Refrigerated Warehouse and the Authority Owned Equipment in accordance with the terms and conditions of this Section 3.07.

(e) Should the Lessee fail to close the purchase pursuant to this Section 3.07, the fair market value of the Leasehold Estate in the Refrigerated Warehouse and Authority Owned Equipment determined pursuant to Section 3.07(c) shall only remain in effect for 180 calendar days once the Option Price is established. Any future Purchase Notice following such 180-day period shall require a new assessment of fair market value as per Section 3.07(c).

(f) Unless the Parties agree otherwise, closing of the purchase and sale of the Refrigerated Warehouse and Authority Owned Equipment shall take place at the Authority's principal office on 222 Power Street, Corpus Christi, Texas, ninety (90) days following the Authority's receipt of the Purchase Notice. At the closing, the Authority shall execute and deliver to the Lessee a Bill of Sale in mutually acceptable form, and the Lessee shall deliver the Option Price of the Refrigerated Warehouse and Authority Owned Equipment to the Authority by wire transfer to an account specified by the Authority in a writing delivered to Lessee prior to the closing. Authority will make no representations or warranties to Lessee regarding the condition of the Refrigerated Warehouse and Authority Owned Equipment other than warranty of title. No ownership interest in the Land (other than Lessee's continuing leasehold interest hereunder) will be conveyed to Lessee in connection with the closing. If Lessee fails to close the purchase in accordance with this Section 3.07, such failure shall not constitute an Event of Default under Section 8.01.

(g) Lessee may not exercise the purchase option in this Section 3.07 if at the time of exercise an uncured Event of Default exists hereunder. In addition, Lessee may not exercise the purchase option in this Section 3.07 while any eminent domain, condemnation, or other similar proceedings is pending with regard to the Leased Premises.

(h) Authority represents that it is not in default under any agreements, covenants or representations it has made in connection with the Series 2002A Bonds and agrees that the Series 2002A Bonds will be paid in accordance with the terms of the agreements applicable thereto.

### **Section 3.08 – Proposed Sale or Transfer by the Authority**

In the event the Authority elects to sell, lease, transfer or otherwise convey the Land, the Refrigerated Warehouse, the Leased Premises, or Cargo Dock 10, or any interest in any of them (any of such actions is a "Transfer"), the Authority shall provide written notice ("Transfer Notice") to Lessee of the terms and procedure for the proposed Transfer at least ninety (90) days prior to initiating such Transfer. Upon receipt of such written notice by Lessee, (i) the proviso in Section 3.07(a) above, regarding the minimum Option Price being the amount to defease or redeem the Series 2002 A Bonds, shall be deemed deleted from this Lease Agreement, and (ii) the Authority's Interest in the property that is the subject of the proposed Transfer shall be included as a portion of the property which Lessee has the option to purchase pursuant to Section 3.07 hereof. Whether or not the Authority proceeds with the Transfer of all or part of the Authority's Interest in accordance with the Transfer Notice, then the rights and obligations created in this Section 3.08 shall continue to be enforceable in the event of a subsequent proposed Transfer. Authority shall not Transfer any interest in the Land, the Refrigerated Warehouse, the Leased Premises, or Cargo Dock 10 during the Term of this Lease without first providing Lessee the Transfer Notice and the opportunity to exercise Lessee's rights under Section 3.07 hereof. In the event the Authority does Transfer any of the Authority's Interest, any such Transfer shall be

subject to all terms and conditions of this Lease including, without limitation, Sections 3.07 and 3.08.

**ARTICLE 3A  
TERM AND RENT  
DURING THE POST-PURCHASE PERIOD**

**Section 3.01A – Period Covered by this Article 3A**

This Article 3A will be operative during the Post-Purchase Period. If the Lessee purchases the Refrigerated Warehouse and Authority Owned Equipment pursuant to Section 3.07, Article 3 will cease to be operative after the Purchase Date, and thereafter the Term of this Lease and the Rent payable hereunder shall be governed by this Article 3A.

**Section 3.02A – Term**

The Term of this Lease will continue during the Post-Purchase Period until the thirtieth (30<sup>th</sup>) anniversary of the Purchase Date, unless sooner terminated in accordance with the terms of this Lease Agreement.

**Section 3.03A – Base Rent**

(a) Commencing on the first day of the Post-Purchase Period, Lessee shall pay to Authority at its offices in Corpus Christi, Texas, an annual base rent ("Base Rent") for each Land Lease Year during the remaining Term of this Lease. The Base Rent for each Land Lease Year shall be determined in accordance with this Section 3.03A and shall be paid in monthly installments in advance of the first day of each calendar month in an amount equal to 1/12<sup>th</sup> of the annual Base Rent for that Land Lease Year. Base Rent for any partial Land Lease Year during the Term shall be appropriately pro-rated.

(b) The Base Rent for the initial Land Lease Year will be \$75,000. The Base Rent for each successive Land Lease Year will be determined by calculating the CPI Adjustment Factor as defined in Section 1.01 and applying that factor to the preceding Base Rent amount.

**Section 3.04A – Place of Payment; Past Due Rent**

(a) The first monthly installment of Base Rent hereunder is due and payable on or before the first day of the Post-Purchase Period. Each succeeding monthly installment of Base Rent is due and payable on or before the first day of each succeeding month thereafter at the offices of Authority in Corpus Christi, Nueces County, Texas. Authority may charge Lessee a penalty for late payment of monthly installments of Base Rent, which penalty will be equal to ten percent (10%) per annum on monthly installments of Base Rent that are more than thirty (30) days past due. Such late charges are payable as additional rental and are payable immediately on demand.

(b) Rent must be paid to Authority at its address for notice hereunder or to such other person or at such other address in Nueces County, Texas, as Authority may from time to time

designate in writing. Rent must be paid in legal tender of the United States of America without notice, demand, abatement, deduction, or offset.

#### ARTICLE 4 USE OF LEASED PREMISES

##### Section 4.01 – Use

Lessee agrees that the Leased Premises shall be used only and exclusively to provide refrigerated and freezer warehouse services for the handling, shipping, receiving, delivery and storage of chilled or frozen food commodities, and for no other purpose, unless written permission for other use is obtained from Authority, which will not be unreasonably withheld or denied due to competitive concerns. Lessee acknowledges and agrees that as long as the Series 2002A Bonds are outstanding, the Refrigerated Warehouse will be functionally related to Cargo Dock 10 and governmentally owned within the meaning of Section 142(b) of the Internal Revenue Code of 1986, as amended, and the rulings and regulations promulgated thereunder. Lessee's operations are restricted from having any live animals on the Leased Premises, slaughtering live animals on the Leased Premises, or storing carcasses, hides, or other body parts of animals outside the Refrigerated Warehouse.

Lessee will not:

(a) 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) any 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 (written or oral) 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 activities of any other tenant or occupant of property adjacent to the Leased Premises;

(b) Bring or permit to remain on the Leased Premises any asbestos, petroleum or petroleum products, 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

(c) Commit, or permit to be committed, any action or circumstance on or about the Leased Premises which, directly or indirectly, would or might justify any insurance carrier's increasing the rate of or canceling the insurance policies maintained by Lessee or Authority on

the Leased Premises or improvements thereon, or those of other lessees of Authority's property adjacent to the Leased Premises.

#### **Section 4.01A – Use During the Post-Purchase Period**

Lessee agrees that the Leased Premises shall be used primarily to provide refrigerated and freezer warehouse services for the handling, shipping, receiving, delivery and storage of chilled or frozen commodities. However, should other uses be required by the Lessee during the period covered by Article 3A herein, such use shall not be unreasonably withheld or denied by the Authority, provided that such use complies with all other restrictions as outlined in Section 4.01 hereof.

#### **Section 4.02 – Environmental Representations, Restrictions and Requirements**

(a) Lessee hereby represents and warrants to Authority:

That regarding the operation and use of the Leased Premises and associated equipment, vessels, and other improvements, Lessee shall be the "person in charge" and "owner and/or operator" of the same as those terms are defined under federal, state, and local environmental laws, ordinances, or regulations.

That Lessee's construction of improvements, repairs, occupancy, operation, or use of the Leased Premises will not violate any applicable 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 and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Laws").

That Lessee will apply for the transfer of existing Authority environmental permits and programs into the Lessee's name with the appropriate regulatory agencies simultaneously with the Authority's submittal of notice of termination as operator of said environmental permits and programs, and Authority agrees that it will consent to these transfers. Lessee will also release in writing the Authority as operator as of the Commencement Date and acknowledges that Lessee is the operator and in charge of the Refrigerated Warehouse. Permits currently held by the Authority include TCEQ air permit-by-rule registration 106.373 for installation and operation of an ammonia refrigeration system (Permit ID 43835) and TGLO Oil Spill Prevention and Response Discharge Prevention and Response Certificate (Number 30119) for a 400-gallon fuel storage tank associated with the emergency fire sprinkler system. Lessee will also assume the Authority's Risk Management Program (Program Level 2), Inspection, Testing and Preventative Maintenance Program, and Emergency Shut-Down Procedures and Response Plan from and after the Commencement Date, if Lessee determines that Risk Management Program Level 2 is the appropriate Program Level for their operation of the facility. Lessee will within ten (10) days after the Commencement Date submit the required applications to transfer the existing environmental permits and programs in effect, and documentation of transfers must be provided to the Authority's Environmental

Compliance Manager within 10 days of Lessee's receipt of such transfer documentation. Lessee further acknowledges from and after the Commencement Date that it is acquiring sole responsibility for the operation, maintenance, repair, and compliance with applicable environmental laws for all equipment on the Leased Premises that is in ammonia service (e.g., storage tanks, piping, etc.) and sole responsibility for the notification of any reportable release as required by CERCLA.

That Lessee will review and cooperate with the issuing agencies to modify (to the extent necessary) the environmental documentation, plans, and permits transferred by Authority to Lessee in connection with this Lease Agreement. Upon any future revision, a copy of all such revised documentation, plans, and permits will be provided to the Authority's Environmental Compliance Manager. Emergency Response Procedures will include notification to the Authority's Police Department at 361-882-1182 of any spill or related incident. Lessee will also provide a copy of annual ammonia inventories to the Authority's Environmental Compliance Manager, including any quantities of ammonia purchased during the reporting year.

That, without limitation of Section 4.01(a) above, in its use of the Leased Premises, Lessee will comply with any Applicable Laws 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 Water Code; 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; Texas Hazardous Communications Act, Chapter 502, Texas Health and Safety Code; Texas Community Right-To-Know Acts, Chapters 505-507, Texas Health and Safety Code; and the Texas Water Quality Act, Chapter 26, Texas Water Code.

That Lessee will not intentionally allow the Disposal or other Release of any Hazardous Substance or Solid Waste on or to the Leased Premises except in full compliance with Applicable Environmental Laws—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.

That, in the event Lessee becomes aware of a Release of any environmental contaminants which exceeds permitted levels as defined by any city, state or federal law or regulation, Lessee shall use its best efforts to immediately stop the Release and shall cease any prohibited activities which may be resulting in such Release, and promptly notify the Authority Police Department at its 24-hour telephone number 361-882-1182, and notify Authority within five days in writing of the date, time, and nature of the Release, and if and to the extent required by Applicable Environmental Laws, notify the applicable federal, state, and local environmental and safety agencies of the Release.

In addition, 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:

- A. A general description of the conduct that resulted in the citation, notice of violation, enforcement action or penalty; and
- B. 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.

That Lessee will cooperate, at no substantial cost to Lessee, with the Authority's Tenant Audit Program (the "Program"). 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. The Authority's 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, the Authority's staff will seek to achieve cooperative conservation between Authority and Lessee 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 reasonably determined by the Authority's staff to be necessary. A letter from the Authority's staff setting forth staff's observations will be provided to the Lessee following the audit, and Lessee shall promptly commence any actions reasonably necessary to cure any violation of this Lease Agreement described in such letter and verify it has done so to the Authority's staff.

That Lessee must, if and to the extent required by Applicable Environmental Laws, clean up, remove, remediate, and repair any soil or ground water contamination or damage caused by the release of any Hazardous Substance or Solid Waste in, on, under, or about the Leased Premises first occurring during Lessee's occupancy of the Leased Premises in conformance with the requirements of Applicable Laws or Applicable Environmental Laws. Lessee shall promptly give Authority written notice of any suspected breach of this paragraph, upon learning of the release of any Hazardous Substance or Solid Waste on or from the Leased Premises, or upon receiving any notice from any governmental agency pertaining to any Hazardous Substance or Solid Waste

that may affect the Leased Premises. The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this Lease.

All of the foregoing representations and warranties made by Lessee are continuing and must be true and correct for the entire term of this Lease Agreement, including any extensions hereof, and all of such representations and warranties will survive expiration or termination of this Lease Agreement.

#### **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 use and operate the Refrigerated Warehouse for the purposes permitted hereunder during normal business hours on all days other than legal holidays, except for ceasing operations for scheduled construction of any improvements, maintenance and repair, casualty events, emergencies, or other circumstances beyond Lessee's control. 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 Section 8.02.

#### **Section 4.05 – Utilities and Taxes**

Lessee agrees to pay when due all charges it contracts for (i) water, gas, electricity, and other utilities; (ii) garbage service; (iii) security or guard services; or (iv) railroad services in connection with the Leased Premises. If at Lessee's request or because of Lessee's failure to pay for services to the Leased Premises for which it contracted, Authority provides any such services to the Leased Premises or pays the cost for any such services, Lessee will pay to Authority the cost of such services as additional rent upon receiving Authority's invoice therefor; payment to be made pursuant to the terms of said invoice.

Lessee will also pay as additional rent its *pro rata* share of any utility services provided by Authority as agreed to and documented herein.

During the Term of this Lease, Lessee must pay or cause to be paid when due all taxes, assessments, fees, or charges imposed on the Leased Premises by any Governmental Authority (other than the Authority) by virtue of Lessee's tenancy or upon Lessee's property on, or Lessee's interest in, the Leased Premises

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. When the

contest is resolved, Lessee must pay the tax, penalty, and interest imposed and may use the money deposited with Authority to pay any tax, assessment, fee, or charge, plus any penalty or interest, due under the final resolution and keep any balance of the deposit. If the deposit is insufficient to pay these amounts, Lessee must immediately pay the balance due to the entity imposing the tax, assessment, fee, or charge.

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 Leased Premises or if failing to pay will subject all or part of the Leased Premises to forfeiture or loss.

Any of said taxes, fees, or charges that are payable by Lessee for the tax year in which this Lease Agreement commences, as well as during the year in which this Lease Agreement terminates, 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 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 Commencement Date 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.

### **Section 5.02 – Maintenance and Return of Leased Premises**

Lessee will, throughout the Term of the Lease, at its own expense and risk, maintain the Leased Premises and all improvements and equipment, including refrigeration and freezer systems, on the Leased Premises, other than items noted in Section 5.02 that are the responsibility of the Authority, in a condition that is at least as good as existed on the Commencement Date, except for normal wear and tear, depreciation, and obsolescence. All maintenance, repairs, and replacements required by this Section must be performed promptly when required and so as not to cause depreciation in the value of the Leased Premises.

The Authority, at its own expense and risk, shall maintain the high-mast lights and security cameras mounted on top of Refrigerated Warehouse, railroad tracks and security gates adjacent to the Leased Premises, structural items (*i.e.*, weight-bearing walls of the Refrigerated Warehouse), utility systems outside the Refrigerated Warehouse, Refrigerated Warehouse roof, adjacent wharf area, and all common areas as defined in this Lease Agreement.

If, during the Pre-Purchase Period, Lessee fails to perform its obligation to repair, replace, or maintain as set forth above within a reasonable time after 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 notice to Lessee of the performance and cost of any maintenance, repairs, or replacements under this Section, Lessee must immediately reimburse Authority for the costs incurred by Authority pursuant to this Section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Lessee to Authority.

On the expiration or earlier termination of the Lease during the Pre-Purchase Period, Lessee will surrender the Leased Premises in good order and condition 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. Upon such termination or expiration of the Lease the Authority may, without further notice, enter upon, reenter, possess, and repossess itself of the Leased Premises by force, summary proceedings, ejectment, or otherwise, and may dispossess and remove Lessee from the Leased Premises and may have, hold, and enjoy the Leased Premises and all rental and other income therefrom, free of any claim by Lessee with respect thereto. In the event Lessee remains in possession of the Leased Premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month-to-month at a rental equal to the Rent and Revenue Gain Share herein provided plus fifty percent (50%) of such amount and otherwise subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

### **Section 5.03 – Approval of Alterations and Improvements**

Lessee must submit to Authority 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. 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 in a standard engineering format (22" x 34" 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.

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 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, specifications or other matters relating to the Leased Premises.**

#### **Section 5.04 – No Liens**

Unless otherwise agreed, prior to the date upon which Lessee purchases the Refrigerated Warehouse hereunder, 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. 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 – Building Code**

All improvements placed on the Leased Premises by Lessee must comply with all applicable building codes unless they are modified by the Port of Corpus Christi Authority Design and Construction Guidelines.

#### **Section 5.07 – 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 copies of its permits, licenses, and consents as the same are obtained.

#### **Section 5.08 – Ownership or Removal of Alterations, Modifications, or Improvements by Lessee**

At the expiration or earlier termination of this Lease Agreement, all new alterations, modifications or improvements to the Refrigerated Warehouse made by Lessee, 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 Lessee a notice in writing (i) not less than fifteen (15) days prior to the expiration of this Lease, or (ii) not more than fifteen (15) days following any termination of this Lease 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 end of the Term of the Lease. 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. Trade fixtures, racking, furnishings and equipment, except for those referred to above, which are installed by Lessee, at its expense, may be removed by Lessee 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. Any trade fixtures not removed by Lessee when this Lease Agreement terminates are considered abandoned by Lessee and will automatically become Authority's property. If any trade fixture installed by Lessee is abandoned when the Lease Agreement terminates, Lessee must pay Authority any reasonable 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 5.09 – Signs**

Prior to the Purchase Date, 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. If Lessee does not consummate the purchase of the Refrigerated Warehouse, Lessee must remove all its signs when this Lease Agreement terminates and repair any damage resulting from erecting or removing the signs.

After the Purchase Date, Lessee may not place any signs at or on the Leased Premises nor paint any signs on any buildings on the Leased Premises that are political in nature, or contain sexual content, or that are unrelated to Lessee's business at the Leased Premises.

### **Section 5.10 – Floodplain**

Lessee acknowledges that Lessee has been advised by Authority that the Leased Premises are in the FEMA floodplain and that construction of improvements must conform to the laws and regulations applicable to construction of improvements in a floodplain. Authority also warrants that the original construction and any subsequent improvements to the Leased Premises occurring prior to the execution of this Lease conform to the applicable FEMA and/or local floodplain laws and regulations in effect at the time such construction or improvements were made.

## **ARTICLE 6 RIGHTS AND OBLIGATIONS OF AUTHORITY**

### **Section 6.01 – Authority Use of Leased Premises**

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 for the laying of pipelines for oil, petroleum, petroleum products, fiber optics, and any other products over, under and upon the Leased Premises; provided, however, that the same shall not interfere with 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, and Authority has the right to grant easements or rights-of-way reserved to Authority in this Article to other parties. **If the Authority exercises any of the rights reserved by the Authority under this Article 6, the Authority shall, to the extent permitted by law, Indemnify and Defend (as those terms are defined in Section 11.01(a)) the Lessee from and against all Claims (as that term is defined in Section 11.01(a)) resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, the exercise of such rights.** All costs associated with said activities under this Article 6 will be borne by the Authority.

#### **Section 6.02 – Services to be Provided by Authority to Lessee**

(a) Authority shall allow Lessee use of the existing Logimax WMS system presently operated at the Leased Premises and Authority shall maintain the system software and hardware (including off-site servers) relating thereto for one hundred eighty (180) days following the Commencement Date. Lessee shall pay to Authority a fee in the amount of \$4,000.00 per calendar quarter within 15 days following the end of each quarter for the rights and services described in this Section 6.02(a).

(b) Lessee shall have the right for one hundred eighty (180) days following the Commencement Date, as requested by Lessee, to utilize designated IT personnel of Authority to generate reports and obtain other information from the Logimax WMS system. Lessee shall pay for the use of such personnel on an hourly basis at a rate of \$100.00 per hour. Authority will send Lessee an invoice for the services described in this Section 6.03(b) at the end of each calendar quarter and payment will be due within 15 days following receipt of such invoice by Lessee.

### **ARTICLE 7 SUBLETTING OR TRANSFER**

#### **Section 7.01 – Sublease or Transfer**

Prior to the Purchase Date, Lessee shall not, without the prior written consent of Authority which consent will not be unreasonably withheld, (i) assign this Lease Agreement in whole or in part nor any interest therein, (ii) permit the transfer of this Lease by operation of law or otherwise, (iii) sublet the entire Leased Premises such that Lessee no longer retains control over the Leased premises, provided that Lessee may sublease all or any portion of the storage space in the Refrigerated Warehouse and may grant any licenses, concessions or other rights of occupancy of any portion of the Leased Premises to its customers or tenants in the ordinary course of Lessee's business, or (iv) cause or permit an interest, direct or indirect, in Lessee to be sold, assigned, transferred, exchanged, or otherwise disposed of (each a "Disposition") such that, after the Disposition, the Lessee shall cease to be controlled by substantially the same individuals and/or entities who control it as of the Commencement Date; provided, however, that the Authority's consent to any of the actions in clauses (i) – (iv) above shall not be required if the Transferee (who is defined in Section 7.02) or its management team has at least five years of experience operating facilities similar to the Refrigerated Warehouse and such Transferee had an annual revenue of at least \$10,000,000 for its then preceding fiscal year. Consent of Authority to one or more such 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 Lessee, then Authority may, after default by the Lessee, collect rent from the assignee, subtenant, or occupant and apply the net amount collected, less any costs of collection, attorneys' fees or other costs incurred by Authority, to the Rent provided for in this Lease Agreement. No assignment, subletting, occupancy or collection waives the obligations of Lessee under this Lease Agreement. 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.

After the Purchase Date, Lessee may assign, sublease, or otherwise transfer this Lease Agreement in whole or in part without the Authority's consent so long as Lessee remains liable for Lessee's obligations hereunder.

### **Section 7.02 – Conditions**

Prior to the Purchase Date, the following conditions automatically apply to each assignment, sublease or transfer by Lessee or any sublessee, to the extent such assignment, sublease or transfer required Authority consent, 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 or the Leasehold Estate created hereby, to execute, have acknowledged and deliver to Authority an instrument in form and substance 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) 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;

(3) The Transferee agrees to use and occupy the transferred space solely for the purposes permitted under Section 4.01 and otherwise in strict accordance with this Lease Agreement; and

(4) 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).

## **ARTICLE 8 DEFAULT**

### **Section 8.01 – Event of Default**

Each of the following shall be an "Event of Default" by Lessee hereunder and a material breach of this Lease:

(a) Lessee fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions in this Lease that are to be kept, performed, or observed by Lessee, and Lessee fails to remedy the same within thirty (30) days after Lessee has been given a written notice specifying such default; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such ten-day time period, and if Lessee has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such ten-day cure period shall be extended for the period of time necessary for Lessee to cure such default;

(b) An involuntary petition is filed against Lessee under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, or a receiver of Lessee, or of all or substantially all of the property of Lessee, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event;

(c) Lessee makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors; or

(d) Lessee abandons or vacates the Leased Premises for thirty (30) consecutive days and such abandonment or vacation is not caused by casualty to the Leased Premises or *Force Majeure*.

### **Section 8.02 – Remedies of Authority**

Subject to Article 10 hereof, if an Event of Default occurs, then Authority may, following any applicable notice and cure period, at any time thereafter prior to the curing thereof and without waiving any other remedies hereunder or available to Authority at law or in equity (Authority's remedies being cumulative), terminate this Lease by giving Lessee written notice thereof, in which event this Lease and the Leasehold Estate and all parties claiming by, through, or under Lessee shall automatically terminate upon the effective date of such notice; and Authority, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Leased Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. In the event of such termination, Lessee shall be liable to Authority for all Rent accrued to the date of

termination and damages in an amount equal to (a) the discounted present value of the amount by which the Rent reserved hereunder for the remainder of the stated Term exceeds the then fair market rental value of the Leased Premises for such period of time plus (b) all expenses incurred by Authority in enforcing its rights hereunder.

### **Section 8.03 – No Waiver**

Any waiver, expressed or implied, by Authority or Lessee to any breach of any agreement, covenant or obligation herein contained shall operate as such only in the specific instance and shall not be construed as 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 – Consequential Damages**

Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless Authority shall have failed to perform such obligations for thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by 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 thirty (30) days after Authority has been given a written notice specifying such default (or such additional time as is reasonably required to correct any such default), then in such event Lessee may enforce the performance of the Lease by any method provided by law or equity except as otherwise provided herein.

Notwithstanding anything in this Lease Agreement to the contrary, Authority shall in no event be charged with or liable for any consequential damages suffered by Lessee as a result of Authority's breach of this Lease Agreement or failure to perform any of its obligations under this Lease Agreement.

## **ARTICLE 9 WAIVER OF LANDLORD'S LIEN**

Authority waives any and all liens it may assert on Lessee's personal property, including any statutory, constitutional or contractual liens.

## **ARTICLE 10 LESSEE'S FINANCING**

### **Section 10.01 – Lessee's Right to Encumber**

It is contemplated that Lessee may be required to borrow funds for the purchase of the Refrigerated Warehouse, and it may be desirable or convenient for Lessee to borrow additional funds for additional improvements, alterations, repairs, or other purposes. Accordingly, it is agreed that Lessee shall at all times during the Term of this Lease Agreement, without the consent of Authority (but provided written notice and a copy of the security instruments are delivered to Authority), have the right to encumber the Leasehold Estate with a deed of trust,

mortgage or other lien instrument to secure borrowings of Lessee to purchase the Refrigerated Warehouse or for additional improvements, alterations, repairs of the Leased Premises, or other purposes. Any such mortgage, deed of trust or other lien instrument and the indebtedness secured thereby are herein collectively referred to as a "Permitted Mortgage" and the holder or other beneficiary of a Permitted Mortgage is referred to herein as a "Permitted Mortgagee." A Permitted Mortgage shall not encumber the Authority's Interest and will at all times be subject to and shall recognize the superior right, title, and interest of Authority to the Authority's Interest.

#### **Section 10.02 – Mortgage Protective Provisions**

(a) Notice to Permitted Mortgagee. During any period in which a Permitted Mortgage is in place, Authority shall give any such Permitted Mortgagee of which Authority has received notice from Lessee a duplicate copy of all notices of default or other notices that Authority may give to or serve in writing upon Lessee pursuant to the terms of this Lease. No notice by Authority to Lessee under this Lease shall be effective unless and until a copy of such notice has been provided to each Permitted Mortgagee of which Authority has received notice from Lessee. The address of the Permitted Mortgagee originally designated in the Permitted Mortgage, or other documentation related thereto or in Section 10.02(g) hereof may be changed upon written notice delivered to Authority in the manner specified in Section 16.04 hereof.

(b) Right of Permitted Mortgagee to Cure. To the extent that Lessee grants the right to any such Permitted Mortgagee, such Permitted Mortgagee, at its option at any time within thirty (30) days following expiration of the right of Lessee to cure any default under this Lease, may pay any amount or do any act or thing required of Lessee by the terms of this Lease. All payments made and all acts performed by such Permitted Mortgagee within such thirty (30) day period shall be effective to prevent a termination of the rights of Lessee hereunder to the same extent as if they had been performed by Lessee. At Lessee's option, any Permitted Mortgage given by Lessee may provide that, as between the Permitted Mortgagee and Lessee, such Permitted Mortgagee, upon curing the default, shall be subrogated thereby to any and all of the rights of the person or persons to whom any payment is made by such Permitted Mortgagee.

(c) Right to New Lease. Notwithstanding anything to the contrary contained herein, no termination of this Lease shall become effective until each Permitted Mortgagee registered in accordance with Section 10.02(g) hereof shall have had the option, exercisable by giving Authority written notice not more than thirty (30) days after Authority has given such Permitted Mortgagee notice of the occurrence of any Event of Default by Lessee hereunder, to elect to receive from Authority a new lease to such Permitted Mortgagee (or to its nominee) covering the Leased Premises for the then unexpired balance of the Term, and otherwise on the same terms and conditions as set forth in this Lease. Upon termination of this Lease, Authority agrees to execute such new lease with such Permitted Mortgagee (or with its nominee), if such Permitted Mortgagee: (i) shall cure immediately any monetary Event of Default by Lessee hereunder; (ii) shall undertake immediately to remedy any non-monetary Event of Default by Lessee hereunder, excluding those which by their very nature are incapable of cure by any Person other than Lessee, and thereafter proceed with reasonable diligence to cure such Event of Default within a reasonable period of time; and (iii) shall agree to perform thereafter all covenants and conditions contained in this Lease to be observed and performed by Lessee.

(d) Limitation on Liability of Permitted Mortgagee. No Permitted Mortgagee shall be or become liable to Authority as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Authority and Permitted Mortgagee such liability (in which event the Permitted Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Permitted Mortgage or other instrument or from a conveyance from Lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Lessee under the terms of this Lease.

(e) Estoppel Certificates. Authority and Lessee agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from any Permitted Mortgagee or a permitted assignee thereof, Authority or Lessee will execute, acknowledge and deliver to the other party or to such Permitted Mortgagee a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Authority or Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Authority, Lessee or any Permitted Mortgagee, as the case may be, in this Lease or by any prospective Permitted Mortgagee or assignee of any Permitted Mortgage.

(f) Mortgage of Authority's Estate. Authority agrees not to encumber or convey any interest in Authority's Interest, subsequent to the Commencement Date, with any mortgage, deed of trust or other instrument in the nature thereof as security for any debt which is not expressly subordinate to Lessee's Estate under this Lease and to any Permitted Mortgage, without the written consent of Lessee.

(g) Registration of Permitted Mortgages. Lessee shall provide written notice to Authority of the name and address of each Permitted Mortgagee under this Lease.

## ARTICLE 11 INDEMNITY/WAIVER

### Section 11.01 – Indemnity and Waiver

(a) As used in this Section 11.01, each of the following terms shall have the meanings set forth in this Section 11.01:

(1) "Beneficiary" means the intended recipient of the benefits of another party's Indemnity, Waiver, or obligation to Defend.

(2) "Claims" means all claims, damages (including actual, consequential, and punitive), losses, fines, penalties, liens, causes of action, suits, judgments, settlements, and expenses [including court costs, attorney's fees (including attorney's fees in defending and/or settling a Claim and attorney's fees to collect on this Indemnity), costs of investigation, and expert witnesses] of any nature, kind or description by, through, or of any person or entity.

(3) "Defend" means to oppose on behalf of another party a Claim in litigation, arbitration, mediation, or other alternative dispute resolution proceeding and to pay all costs associated with the preparation or prosecution of such Defense.

(4) "Indemnify" means to protect and hold harmless a party from and against a potential Claim and/or to compensate a party for a Claim actually incurred.

(5) "Indemnified Persons" or "Indemnified Person" means the Authority, its Port Commissioners, directors, managers, employees, and agents.

(6) "Lessee Parties" means the Lessee, its agents, contractors, employees, owners, invitees, or licensees.

(7) "Waive" means to knowingly and voluntarily relinquish a right and/or to release another party from liability.

(b) Subject to the terms of this Section 11.01, Lessee shall Defend and Indemnify the Indemnified Persons from and against all third party Claims resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the following matters (these Claims being referred to herein as the "Indemnified Claims"):

(1) the conduct of Lessee's business on the Leased Premises;

(2) Lessee's breach of this Lease Agreement;

(3) any third party property loss or damage occurring in, on, or about the Leased Premises or relating to the condition, use or occupancy of the Leased Premises during the Term of this Lease;

(4) any bodily or personal injury, sickness, disease, and/or death (including the bodily or personal injury and/or death of any employee of an Indemnified Person or a Lessee Party) occurring in, on, or about the Leased Premises or relating to the condition, use of occupancy of the Leased Premises during the Term of this Lease; or

(5) any act, omission, willful misconduct, strict liability, breach of warranty, express or implied, or violation of any laws, ordinances, rules, regulations, or codes, now or hereafter existing, of or by any Lessee Party, including the sole, joint, concurrent, or comparative negligence of any Lessee Party in connection with or pertaining to this Lease Agreement.

(c) The Indemnities, Waivers, and obligation to Defend in this Section 11.01 shall be enforced to the fullest extent permitted by applicable law for the benefit of the applicable Indemnified Persons thereof, regardless of any extraordinary shifting of risks, and even if the applicable Claim is caused by the joint, concurrent, or comparative negligence of such Indemnified Persons, and regardless whether liability without fault or

strict liability is imposed upon or alleged against such Indemnified Persons; provided, however, that an Indemnity will not be enforced to the extent that a court of competent jurisdiction holds in a final judgment that the applicable Claim against any Indemnified Persons was caused by the breach of contract, willful misconduct or primary negligence of the Authority or such Indemnified Persons.

(d) Notwithstanding anything to the contrary contained in this Section 11.01, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence, causation, responsibility, or fault of the Indemnified Persons and the Lessee Parties, then Lessee's obligation to the Indemnified Persons shall only extend to the percentage of the total responsibility of the Lessee Parties in contributing to such Indemnified Claim.

(e) In Claims against any Indemnified Person 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. If an action for damages is brought by an injured employee of Lessee, a legal beneficiary, or an insurance carrier against an Indemnified Person liable 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 Indemnified Person or a settlement by the Indemnified Person, Lessee expressly agrees to reimburse and hold harmless the Indemnified Person for the damages based on such judgment or settlement as provided in this Section 11.01.

(f) Except as otherwise expressly limited in this Section 11.01, it is the intent of the parties to this Lease Agreement that all indemnity obligations and liabilities contracted for in this Lease Agreement be without monetary limit and without regard to the cause or causes thereof (including pre-existing conditions on the Leased Premises or as the result of an indemnification agreement with a third party), and will not be limited by damages paid under the Workers' Compensation Act. The indemnity contained in this Section 11.01 applies, without limitation, to any violation of any law, rule, or regulation referred to in Section 4.02 in effect during the term of this Lease Agreement, and any and all matters arising out of any act, omission, event, or circumstance existing or occurring during the Term of this Lease Agreement, regardless of whether the act, omission, event, or circumstance constituted a violation of any law, rule, or regulation referred to in Section 4.02 at the time of its existence or occurrence.

(g) If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this Section 11.01, the Indemnified Person will be represented by its general counsel or another attorney selected by the Indemnified Person and approved by Lessee, which approval will not be unreasonably withheld.

(h) If Lessee should fail or refuse, after written notice to Lessee that an Indemnified Person intends to make a settlement of an Indemnified Claim, to participate in the settlement of such Indemnified Claim, then the Indemnified Person may settle with the claimant without prejudice to the Indemnified Person's indemnity rights set forth herein, and a settlement after such notice to Lessee will constitute a settlement of the proportionate

**fault, including but not limited to negligence, of both Lessee and the Indemnified Person, which settlement may later be apportioned between the Indemnified Person and Lessee.**

**(i) Lessee agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance required in Section 12.01 hereof.**

## **ARTICLE 12 INSURANCE**

### **Section 12.01 – Insurance**

(a) Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees at all times during the Term of this Lease to carry and maintain at its direct expense, except for the policy described in subsection A of this Section 12.01 during the Pre-Purchase Period, policies of insurance (the "Policies") of the types and in the minimum amounts as follows:

A. Prior to the Purchase Date insurance coverage for "All Risks" of Direct Physical Loss including Flood on buildings, improvements and betterments on the Leased Premises owned by Authority will be maintained by Authority in an amount sufficient to cover 100% of the insurable value of the said improvements. Lessee shall be responsible for insurance for its personal property situated on the Leased Premises. "Insurable value" means replacement cost value. Lessee will reimburse Authority on or before January 1 each year during the Pre-Purchase Period for Authority's annual cost of the insurance described in this subparagraph A. Lessee may make equal quarterly payments of such annual cost to Authority beginning on the Commencement Date and continuing thereafter on or before the first day of January, April, July, and October. During construction of substantial improvements on the Leased Premises on the part of Lessee, Lessee will require its contractor or contractors and their subcontractors to carry Builder's Risk insurance, completed coverage value form (including malicious mischief and vandalism). Lessee is responsible for insurance for its personal property on the Leased Premises.

B. For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and employer's liability insurance with limits of at least \$500,000 each employee accident and disease, or such similar insurance that is in accordance with state and federal laws applicable to said employees.

C. Commercial General Liability (CGL) coverage with policy limits of at least \$1,000,000 per occurrence and \$3,000,000 general aggregate at the Leased Premises, including sudden and accidental pollution liability and contractual liability.

D. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit).

E. Umbrella liability coverage limits of not less than \$5,000,000 over and above the underlying primary coverage limits stated in subparagraphs C and D of this Section.

F. Warehouse Legal Liability coverage for property damage by reason of liability as a result of the negligence of the warehouse operator or bailee, its agents, servants or employees in commercially reasonable limits of coverage.

G. Effective on the Purchase Date, and thereafter during the Term of this Lease, Lessee will have in effect at its direct cost "All Risks" of Direct Physical Loss, including Flood, on buildings, improvements, and betterments situated on the Leased Premises in an amount sufficient to cover 100% of the Insurable Value of the said buildings, improvements, and betterments, and have coverage in Builder's Risk insurance, completed value form during substantial construction of improvements (including malicious mischief and vandalism) in amounts sufficient to provide coverage for 100% of the Insurable Value of such improvements. "Insurable value" means replacement cost value.

The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon request by Authority to an amount that is commercially reasonable at the time and available in the marketplace at commercially reasonable rates.

(b) Authority shall have been furnished, to the attention of Authority's Director of Engineering Services, prior to taking possession of the Leased Premises, as proof of the insurance required of Lessee, a certificate or certificates of insurance (with the endorsements required in this Section attached) certifying that the insurance coverages described in this Section are in effect. All certificates of insurance must be acceptable in form and content to Authority. Each of the Policies, except for the workers' compensation and employer's liability insurance policy described in subparagraph B, above, and the Warehouse Legal Liability coverage described in subparagraph F, above, shall be endorsed to include the Authority as an "additional insured." Each of the Policies will be endorsed to (i) provide that it will not be suspended, voided, canceled, or reduced in coverage or limits without thirty days' prior written notice to Authority, Attention: Director of Engineering Services; and (ii) provide that notwithstanding any language in any policy of insurance held by Authority ("Authority Insurance") to the effect that the Authority Insurance is primary, the policy or policies held by Lessee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies.

(c) In addition, the Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm, or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm, or organization shall automatically be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract." Lessee shall deliver to Authority certificates of renewal at least thirty days prior to the expiration date of each of the Policies and copies of new policies at least thirty 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 if either exceeds \$50,000; and, in such event, Authority may decline to approve this Lease Agreement without any liability to Lessee. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Lessee neglects or refuses to provide any insurance required herein, or if any

such 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% per annum from the date Lessee receives Authority's notice of payment until reimbursement.

**Section 12.02 – Waiver of Subrogation**

Lessee waives every claim which arises or may arise in its favor against Authority during the Term of this Lease Agreement for any 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 covered by insurance. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease Agreement with respect to any loss of or damage to property of the parties hereto. Lessee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this Lease Agreement 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; and Lessee will provide to Authority a copy of said endorsement or endorsements or evidence that such endorsement is not necessary to prevent the invalidation of the insurance coverage by reason of such waiver.

**ARTICLE 13  
CASUALTY LOSSES BEFORE  
SALE OF REFRIGERATED WAREHOUSE**

**Section 13.01 – Period Covered by this Article 13**

This Article 13 will be operative during the Term of the Lease before Lessee purchases the Refrigerated Warehouse and Authority Owned Equipment pursuant to Section 3.07. If the Lessee purchases the Refrigerated Warehouse, this Article 13 will cease to be operative after the closing of the sale, and thereafter casualty losses to the Refrigerated Warehouse shall be governed by Article 13A.

**Section 13.02 – Obligation to Restore**

If all or any part of the Refrigerated Warehouse is destroyed or damaged by a fire or other casualty during the Term of this Lease Agreement, Lessee will promptly commence and thereafter prosecute diligently to completion the restoration of the Refrigerated Warehouse to substantially the same condition in which the destroyed or damaged portion existed prior to casualty. Lessee will perform such restoration with at least as good workmanship and quality as the part of the Refrigerated Warehouse being restored and in compliance with the provisions of Article 5 hereof. Notwithstanding the foregoing provisions of this paragraph to the contrary, if the Refrigerated Warehouse is wholly destroyed by fire or other casualty or is so damaged or destroyed that, in Authority's good faith judgment reasonably exercised, it would be uneconomical to cause the same to be restored and if Authority gives written notice of such determination to Lessee within ninety days after the date the casualty occurred, then Lessee shall not be obligated to restore the Refrigerated Warehouse 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.

If a property loss affecting the Leased Premises occurs and the value of such property loss exceeds \$100,000, all insurance proceeds arising from policies maintained by Lessee for the damages arising from such casualty shall be distributed and paid directly to Authority, and Authority shall distribute such insurance proceeds to Lessee to the extent necessary to reimburse Lessee for costs incurred by Lessee in restoring the damaged Leased Premises in satisfaction of this Section 13.02, and any balance of such proceeds remaining after such restoration is complete shall be paid to Lessee within sixty days after the restoration is complete and in accordance with the terms hereof.

**Section 13.03 – Damage Near End of Term**

If more than fifty percent (50%) of the Refrigerated Warehouse is damaged or destroyed during the last twenty-four (24) months of the Term of the Lease, Lessee shall have the right to terminate this Lease Agreement and not rebuild the Refrigerated Warehouse, in which event Authority shall be entitled to receive and retain the insurance proceeds from the loss to the extent such proceeds are attributable to the Refrigerated Warehouse rather than Lessee's personal property. If Lessee does not elect to terminate the Lease pursuant to this Section 13.03, Lessee shall rebuild the Refrigerated Warehouse as provided herein.

If Lessee elects to terminate this Lease Agreement pursuant to this Section 13.03, it shall give notice to the Authority of such election within ninety days after the occurrence of the damage to or destruction of the Refrigerated Warehouse. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and Rent shall be adjusted as of the date of such notice of termination.

**Section 13.04 – Notice of Damage**

Lessee shall immediately notify Authority of any destruction of or damage to the Leased Premises.

**ARTICLE 13A  
CASUALTY LOSSES AFTER  
SALE OF REFRIGERATED WAREHOUSE**

**Section 13.01A – Period Covered by this Article 13A**

This Article 13A will be operative during the Term of the Lease after Lessee purchases the Refrigerated Warehouse and Authority Owned Equipment pursuant to Section 3.07. If the Lessee purchases the Refrigerated Warehouse, Article 13 will cease to be operative after the closing of the sale, and thereafter casualty losses to the Refrigerated Warehouse shall be governed by this Article 13A.

### **Section 13.02A – Obligation to Restore**

If all or any part of the Refrigerated Warehouse is destroyed or damaged by a fire or other casualty during the Term of this Lease Agreement, Lessee will promptly commence and thereafter prosecute diligently to completion the restoration or demolition of the same to a safe condition in compliance with all Applicable Laws. Notwithstanding the foregoing provisions of this paragraph to the contrary, if the Refrigerated Warehouse is wholly destroyed by a fire or other casualty or is so damaged or destroyed that, in Lessee's good faith judgment reasonably exercised, it would be uneconomical to cause the same to be restored and if Lessee gives written notice of such determination to Authority within ninety days after the date the casualty occurred, then Lessee shall not be obligated to restore the Refrigerated Warehouse and this Lease Agreement shall terminate as of the date of the casualty, and Lessee shall be entitled to retain the insurance proceeds for the loss; provided Lessee cleans up and removes all of the damaged improvements owned by Lessee from the Leased Premises to the reasonable satisfaction of Authority, all within ninety (90) days after the date of termination of this Lease Agreement.

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, and Lessee shall use such insurance proceeds to the extent necessary to restore the damaged Leased Premises in satisfaction of this Section 13.02A, and any balance of such proceeds remaining after such restoration is complete shall be retained by Lessee.

### **Section 13.03A - 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**

Should the entire Leased Premises be taken (which term, as used in this Article 14, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, then (a) this Lease shall terminate as of the date of taking possession by the condemning authority, (b) Rent shall be apportioned and paid to such date of termination, and (c) the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (ii) second, the balance of the award shall be equitably apportioned between Authority and Lessee based on the then respective fair market values of Authority's Interest (appraised by reference to all relevant factors including the income stream derivable by Authority under or as a result of this Lease and the then present value of Authority's reversionary interest in the entire Leased Premises after expiration of the Term, assuming the Lessee exercises its rights to extend the Term), and Lessee's Leasehold Estate (appraised by reference to all relevant factors, including the income stream derivable by Lessee from the Leased Premises for the remainder of the Term) with any award to Lessee payable to Lessee and any Permitted Mortgagees as their interests may appear.

If Authority and Lessee are unable to agree on the respective fair market values of Authority's Interest and Lessee's Leasehold Interest, then the fair market value of these interests shall be determined in accordance with the provisions of Section 14.08. After the determination and distribution of the condemnation award as herein provided, this Lease shall terminate.

#### **Section 14.02 – Partial Taking**

If a portion of the Leased Premises is taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right (such as impairment of the surface rights by the owner of mineral rights under the Land), this Lease shall continue in effect as to the remainder thereof unless, in Lessee's reasonable judgment, so much of the Leased Premises is so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Premises had thus been taken, and the award therefor shall be distributed as provided in Section 14.01. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis giving due regard to the relative value and square footage of the portion of the Leased Premises thus taken as compared to the remainder thereof and taking into consideration the extent, if any, to which Lessee's use of the remainder of the Leased Premises shall have been impaired or interfered with by reason of such partial taking. If Authority and Lessee are unable to agree as to a just reduction in Base Rent, these reductions shall be determined in accordance with the provisions of Section 14.08. In the event of a partial taking where this Lease is not terminated, Lessee shall proceed promptly to restore the remaining portion of the Refrigerated Warehouse to an economically viable unit with at least as good workmanship and quality as existed prior to such taking.

#### **Section 14.03 – Notice of Taking, Cooperation**

Lessee shall immediately notify Authority and each Permitted Mortgagee of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Leased Premises. Authority and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

#### **Section 14.04 – Temporary Taking**

If the whole or any portion of the Leased Premises shall be taken for temporary use or occupancy, the Term shall not be reduced or affected and Lessee shall continue to pay the Rent in full. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. In the event of any temporary taking, Lessee shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy extends beyond the expiration of the Term, in which case such award, after payment to Authority therefrom for the estimated cost of restoration of the Leased Premises to the extent that any such award is intended to compensate for damage to the Leased Premises, shall be apportioned between Authority and Lessee as of the day of expiration

of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

**Section 14.05 – Mortgagee's Rights**

Any Permitted Mortgagee shall, if it so desires, be made a party to any condemnation proceeding.

**Section 14.06 – Voluntary Dedication**

Lessee shall have no right to voluntarily devote or dedicate any portion of the Leased Premises to public use without Authority's prior written consent.

**Section 14.07 – No Condemnation by Authority**

Authority agrees that it will not condemn any portion of the Leased Premises during the Term of this Lease. Notwithstanding any provision to the contrary contained in this Article 14, if Authority is the condemning authority, then Lessee (and the Permitted Mortgagees to the extent applicable) will receive the entire condemnation award.

**Section 14.08 – Independent Determination of Values**

(a) If Authority and Lessee are unable to agree on the respective fair market values of Authority's Interest and Lessee's Leasehold Interest pursuant to Section 14.01, then Authority and Lessee shall each appoint an Appraiser. The two Appraisers shall then, within ten days after their designation, select a third Appraiser. If the two Appraisers are unable to agree on a third Appraiser within such ten-day period, either Authority or Lessee, by giving five days' prior written notice thereof to the other, may apply to the then presiding judge of any of the Nueces County District Courts for selection of a third Appraiser. Within twenty business days after the selection of the third Appraiser, a majority of the Appraisers shall determine the respective fair market values of Authority's Interest and Lessee's Leasehold Interest. If a majority of the Appraisers is unable to agree upon the fair market values of Authority's Interest and Lessee's Leasehold Interest within such time, (i) the two closest appraisals of the Authority's Interest shall be averaged and the average will be the fair market value of the Authority's Interest, and (ii) the two closest appraisals of the Lessee's Leasehold Interest shall be averaged and the average will be the fair market value of the Lessee's Leasehold Interest. Authority and Lessee shall each bear the cost of the Appraiser selected by it and shall share equally the cost of the third Appraiser.

(b) If Authority and Lessee are unable to agree on a just reduction in Base Rent pursuant to Section 14.02, then Authority and Lessee shall each appoint an Appraiser. The two Appraisers shall then, within ten days after their designation, select a third Appraiser. If the two Appraisers are unable to agree on a third Appraiser within such ten-day period, either Authority or Lessee, by giving five days' prior written notice thereof to the other, may apply to the then presiding judge of any of the Nueces County District Courts for selection of a third Appraiser. Within twenty business days after the selection of the third Appraiser, a majority of the Appraisers shall determine a just reduction in Base Rent for purposes of Section 14.02. If a majority of the Appraisers is unable to agree upon a just reduction in Base Rent within such time, the two closest reductions of Base Rent shall be averaged and the average will be the reduction

in Base Rent. Authority and Lessee shall each bear the cost of the Appraiser selected by it and shall share equally the cost of the third Appraiser.

## **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 (i) the provisions of this Lease Agreement, (ii) the lawful use of the Leased Premises by any mineral owner of part or all of the Leased Premises or a lessee in an oil, gas, or mineral lease granted by any mineral owner of all or part of the Leased Premises, (iii) all matters of record in Nueces County, Texas, and (iv) any unrecorded easements or licenses executed by Authority to the extent the foregoing are validly existing, applicable to the Leased Premises and have been provided to Lessee at least 15 days prior to the Commencement Date. 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 GENERAL PROVISIONS**

### **Section 16.01 – Compliance**

Lessee must comply with all federal, state, and local laws, rules, or regulations applicable to Lessee's tenancy or operations on the Leased Premises.

### **Section 16.02 – 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; for purposes of maintaining, repairing, or altering the premises to the extent contemplated under this Lease; or for the purposes of showing the Leased Premises to prospective lessees, purchasers, mortgagees, or beneficiaries under deeds of trust.

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. 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 16.03 – No Partnership**

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.

**Section 16.04 – Payments and Notices**

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. All payments, notices, demands, or requests from Authority to Lessee shall be given to Lessee at \_\_\_\_\_ **[insert address for Lessee]**, or at such other address as Lessee shall request in writing. 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 or other commercially reasonable means and will be effective when actually received.

**Section 16.05 – 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 defaults, and provides any other information reasonably requested.

**Section 16.06 – Abatement**

Except as otherwise provided herein, Lessee is not entitled to abatement of Rent or Revenue Gain Share for any reason.

**Section 16.07 – 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 17  
MISCELLANEOUS**

**Section 17.01 – Parties Bound**

This Lease 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 17.02 – Applicable Law**

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

**Section 17.03 – Severability**

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

**Section 17.04 – 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 17.05 – 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 their exercise arises.

**Section 17.06 – 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 17.07 – 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 17.08 – 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.

**Section 17.09 – 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 17.10 – Authority to Enter into Lease**

The Port Commission of the Authority has found and determined that entering into this Lease Agreement is in the best interests of the Authority and is expected to have a positive impact on the Authority's net revenues over the Term of the Lease, that revenues generated under this Lease will help keep the Authority self-supporting and financially solvent for many years to come, that the permitted uses of the Leased Premises hereunder are incident to and in aid of the development of the Authority's ports and waterways, that the Refrigerated Warehouse will be useful in the operation or development of the Authority's ports and will aid navigation-related commerce in the Authority's ports, and that the permitted uses of the Leased Premises are similar to other authorized activities connected with the development and operation of ports generally. The person executing this Lease Agreement on behalf of the Lessee personally warrants and represents unto Authority that (i) if applicable, Lessee is a duly organized and existing legal entity, in good standing in the State of Texas, (ii) Lessee has the full right and authority to execute, deliver, and perform this Lease Agreement, (iii) the person executing this Lease Agreement on behalf of Lessee is authorized to do so, and (iv) upon request of Authority, such person will deliver to Authority satisfactory evidence of his or her authority to execute this Lease Agreement on behalf of Lessee. The person executing this Lease Agreement on behalf of the Authority warrants and represents unto Lessee that (i) the Authority is a navigation district and political subdivision of the State of Texas operating under the provisions of Article XVI, Section 59, Texas Constitution, (ii) Authority has the full right and authority to execute, deliver, and perform this Lease Agreement, (iii) the person executing this Lease Agreement on behalf of Authority is authorized to do so, and (iv) upon request of Lessee, such person will deliver to Lessee satisfactory evidence of his or her authority to execute this Lease Agreement on behalf of the Authority.

#### **Section 17.11 – Third Party Beneficiaries**

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 17.12 – 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 17.13 – Force Majeure**

In the event either party hereto is delayed or hindered in, or prevented from, the performance required hereunder by reason of *force majeure*, which includes strikes, lockouts, labor troubles, inability to procure materials or permits, failure of power, riots, insurrection, war, acts of God, governmental restrictions, terrorism, civil commotion, fire, unavoidable casualty,

unusually severe weather conditions, or other causes beyond the control 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 to deliver written notice of such *force majeure* to the other party.

**Section 17.14 – Contractual Relationship**

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

**Section 17.15 – 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 that are not fully expressed in this Lease Agreement. No change, waiver, or discharge is valid unless it is in a writing that is signed by the party against whom it is sought to be enforced.

**Section 17.16 – Memorandum of Lease**

Upon the request of either party to this Lease, the Authority and Lessee shall execute a Memorandum of Lease in recordable form. Neither party to this Lease may record this Lease without the consent of the other party.

*[The signature page follows this page]*

IN WITNESS WHEREOF, this Lease Agreement is executed in duplicate originals, either of which shall be deemed to be an original, at Corpus Christi, Texas, effective as of the Commencement Date.

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

By: \_\_\_\_\_

John P. LaRue  
Executive Director

\_\_\_\_\_

By: \_\_\_\_\_

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

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2010, by John P. LaRue, Executive Director of the Port of Corpus Christi Authority of Nueces  
County, Texas, on behalf of said Authority.

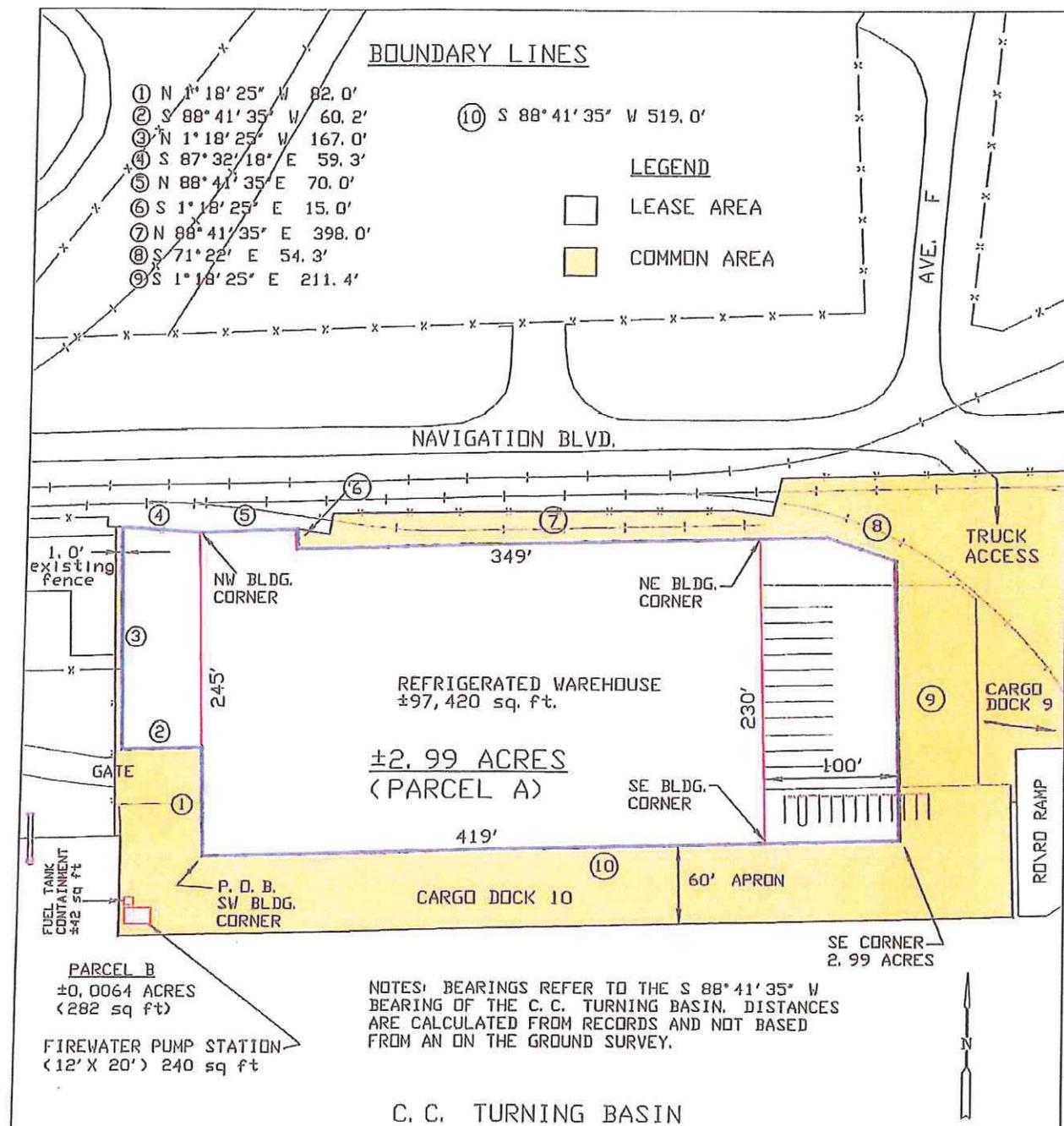
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of said  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT A**  
**REFRIGERATED WAREHOUSE AND**  
**±2.9964-ACRE LEASE**



CD10 LEASE-R-oct-2010

NO.	DATE	REVISION



PORT OF CORPUS CHRISTI AUTHORITY	
REFRIGERATED WAREHOUSE AND ±2.9964 ACRE LEASE PARCEL A & B	
SCALE: 1"=100'	DATE: OCT. 2010
DWN. BY: RALPH	EXHIBIT A

**EXHIBIT A-1**

**CROSS SECTION OF CARGO DOCK 10  
AND REFRIGERATED WAREHOUSE FACILITY**

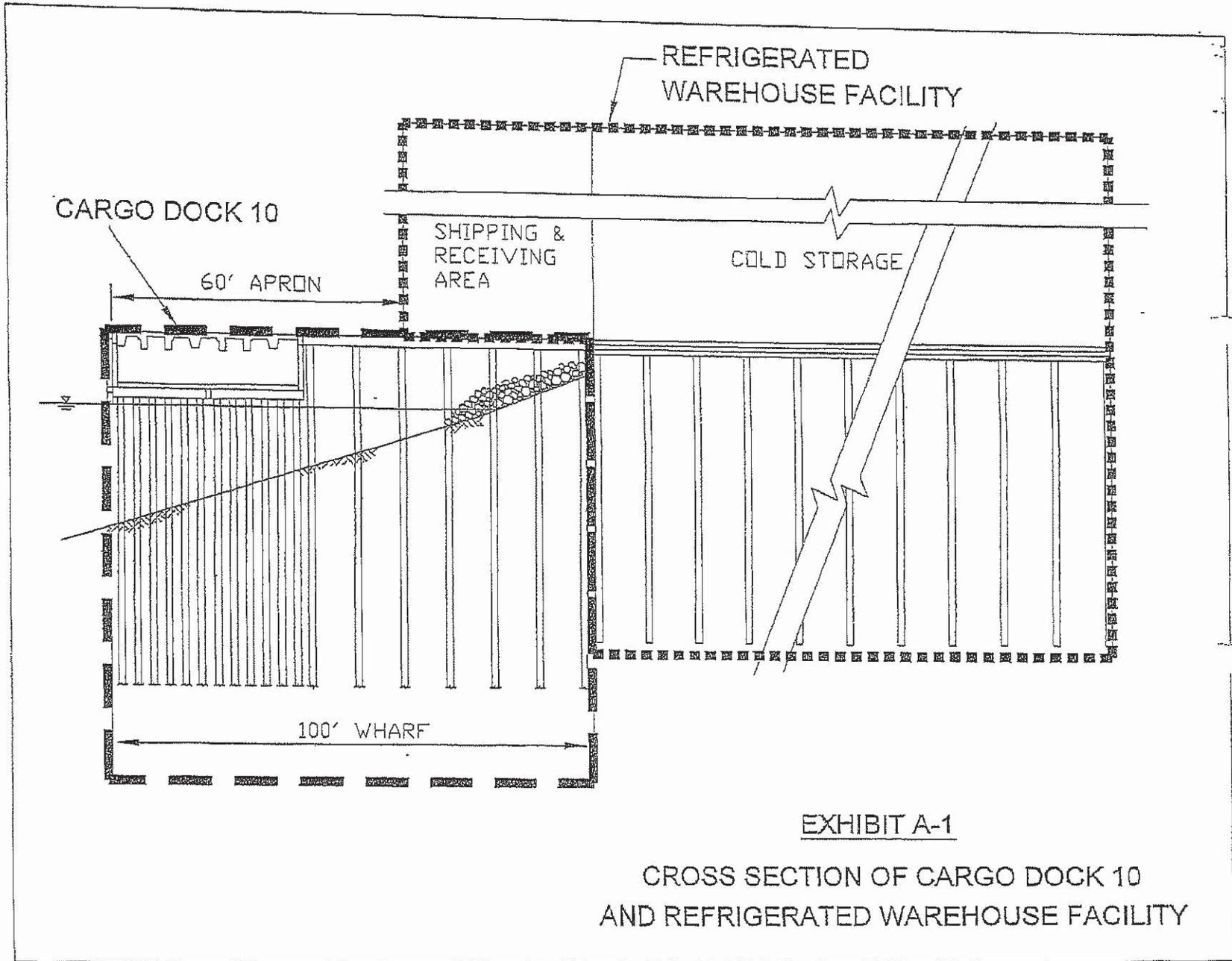


EXHIBIT A-1

CROSS SECTION OF CARGO DOCK 10  
AND REFRIGERATED WAREHOUSE FACILITY

**EXHIBIT B**  
**REFRIGERATED WAREHOUSE**  
**±2.99-ACRE LEASE**  
**METES & BOUNDS**

## Exhibit B

### Refrigerated Warehouse $\pm$ 2.9964-Acre Lease Metes and Bounds

Being  $\pm$  2.9964 total acres composing of Parcels A & B in Nueces County, Texas, of the Port of Corpus Christi Authority (PCCA), located approximately 1.4 miles north of county courthouse, and bounded on the north by Navigation Blvd., the south by the Corpus Christi Turning Basin in the Corpus Christi Ship Channel, the east by PCCA Cargo Dock 9 and the west by the PCCA Maintenance Garages and more particularly described by metes/bounds as follows:

#### Parcel A

Beginning at the southwest building corner of refrigerated warehouse. (P.O.B.),

- (1) Thence, N 1° 18' 25" W along the west wall of warehouse, a distance of 82.0' to a point of said west wall,
- (2) Thence, departing from west wall, S 88° 41' 35" W, a distance of 60.2' to a point on a fence,
- (3) Thence, along said fence, N 1° 18' 25" W, a distance of 167.0' to a point on a fence,
- (4) Thence, S 87° 32', 18" E, a distance of 59.5' to the northwest building corner of warehouse.
- (5) Thence, N 88° 41' 35" E, a distance of 70.0' to a building corner,
- (6) Thence, S 1° 18' 25" E, a distance of 15.0' to a building corner,
- (7) Thence, along the north side of building, N 88° 41' 35" E, 349' to the northeast building corner, in all, 398.0' to a point,
- (8) Thence, S 71° 22' E, a distance of 54.3' to a point,
- (9) Thence, S 1° 18' 25" E along a line 100' east of and parallel to the east wall of refrigerated warehouse for a distance of 211.4' to the southeast corner of this tract,
- (10) Thence, S 88° 41' 35" W, 100' to the southeast building corner; in all, 519.0' to the P.O. B. containing 2.99 acres, more or less.

#### Parcel B

Being  $\pm$  0.0064 acres (282 sq. ft.) composing of a 240 sq. ft. firewater pump station and a fuel tank containment area of  $\pm$  42 sq. ft.

Total lease area:  $\pm$  2.9964 Acres

Notes: Bearings in this description refer to the S 88° 41' 35" W bearing of the Corpus Christi Turning Basin. Distances are calculated from records and are not based from an on the ground survey.

**EXHIBIT C**  
**PERSONAL PROPERTY & EQUIPMENT**

Exhibit C  
Personal Property and Equipment

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	<b>Warehouse Equipment:</b>					
	Flodyne/Hydradyne Pallet Inverter	10380		W01	1	
	La Tech Shrink Wrap Machine	S-300XT		W02	1	
	MTC Combo Dumper	N-LE	2180	W03	1	
	PAC Box Strapper #1	TP-6000ACE		W04	1	<i>Not Working</i>
	S.S. Packing Table			W06	1	
	Powered Conveyor w/34" x 11 1/4' Plastic Belt			W07	1	
	Ashland Conveyor w/24" x Several Pieces = 30'			W08	3-PC Set	
	Tornado Karcher Scrubber	BR700		W09	1	<i>Broken</i>
	Nobles Floor Buffer/Scrubber	608324		W10	1	
	Biro Band Saw			W11	1	
	Cardinal Floor Scale	748P	F26600-0083	W12	1	
	Cardinal Table Scale	205	E19002-0027	W13	2	
	Cardinal Table Scale	210	E05205-0140	W15	3	
	Bailer TTE Dura-Bilt	V6030HD	11042512	W18	1	
	Air Master Shop Fan			W19	2	
	Heat Buster Shop Fan			W22	1	
	Tornado Battery Charger	99515	ME8438	W23	1	<i>Not Working</i>
	Ingersoll Rand Air Compressor	2340L5	30T946469	W24	1	
	Stainless Steel Table			W25	2	
	Slip Sheet			W27	1	
	Ice Machine			W28	1	
	Ramp			W29	1	
	Platform Cage			W31	1	
	Platform Cage			W32	1	
	Samuel Strapping Machine	EXS118	0801015A	W33	1	<i>Not Working</i>
	Pressure Washer	JP15020ME1	1431171	W35	1	
	Thaw Tank	KB30030M0		W36	1	
	Pallet Jack A	PE3540-60	6A201817	W64	1	
	Dock Loading Lights			W37	12	
	Warehouse Desk			W28	5	
	Foaming Dispenser			W40	1	
	Spacers				≈ 8,000	

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Exhibit C  
Personal Property and Equipment

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	Prest Rack Inc. Select & Drive-In Pallet Rack System				1	
	<b>Fire Detection and Protection System:</b>					
	Fire Detection System				1	
	Fire Protection System including Firewater				1	
	Pump, Pump House, Intake Structures, Fuel				1	
	Tank, Sprinklers, Compressors & Piping System				1	
	<b>Tools &amp; Equipment:</b>					
	Large Tool Cabinet w/Assortment of Wrenches, Sockets, Various Hand & Specialty Tools			TE1	1	
	Large Tool Cabinet			TE2	1	
	Forklift Jack			TE3	1	
	Various Power Tools			TE4	1	
	Saw Zaw A66B606091911	6520-21	B02A607042110	TE6	2	
	Band Saws	6236	769F40715083	TE7	2	
	Bosch Hammer Drill	11222EV5	683000410	TE8	1	
	Portable Tig Welder	LF06011DM	LF060118M	TE10	1	
	Torch Cart Set w/Leased Bottles			TE12	1	
	Small Portable Torch Set			TE11	1	
	Table Grinder	42672E		TE13	1	
	Tap & Die Set	1PZ43		TE14	1	
	Infrared Thermometer			TE16	1	
	Chain Hoists			TE17	1	
	MSA Ultra 2 SCBAs			TE18	2	
	MSA NH3 Full-Face Masks w/Canisters			TE19	2	
	RAE Pump & Gas Detection Tubes			TE21	1	
	Emergency Oxygen Bottle & Mask			TE22	1	
	Bosh Uni Shear		Z92000078	TE-24	1	
	Milwaukee Sander/Grinder		907A400160275	TE-25	1	
	Black & Decker Angle Sander			TE-26	1	
	Milwaukee Heat Gun		199A-11061	TE-27	1	
	Hammer Drill		556B301320003	TE-28	1	
	Ryobi Drill 14.4V			TE-29	1	

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Exhibit C  
Personal Property and Equipment

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	Ryobi 3/8" VSR Drill		G052938697	TE-30	1	
	Skill Saw		HF262611	TE-31	1	
	Welding Tank			TE-32	1	
	Gas Mask GMD-N95			TE-33	1	
	Soldering Gun		D-550	TE-34	1	
	Small Tool Chest			TE-35	1	
	Airmaster Fan			TE-37	1	
	Chop Saw			TE-38	1	
	Dewalt Cordless Drill		DW980-SER 133680	TE-40	1	
	Dewalt Angle Polisher		DW845-SER 1331	TE-41	1	
	Milwaukee Heavy Duty Bandsaw		SER BZZB40040187	TE-42	1	
	Dewalt 1/2" Impact Wrench		DW290 SER 18007	TE-43	1	
	Milwaukee 1/2" Drill		SER A15A506102412	TE-44	1	
	Ladder			TE-48	1	
	Ladders			TE-49	2	
	Battery Charger		12330	TE-51	1	
	55 Gallon Tank and Pump			TE-52	1	
	<b>Forklifts:</b>					
	Pallet Jack UNIT #8D	PE3520-60	6A141490	PJ-48	1	(Charger/2 Batteries)
	Pallet Jack UNIT #13B	PE3520-60	6A201816	PJ-49	1	(Charger/2 Batteries)
	Pallet Jack UNIT #9A	PE3520-60	6A201817	PJ-50	1	(Charger/2 Batteries)
	Pallet Jack UNIT #19C	PE3520-60	6A201818	PJ-51	1	(Charger/2 Batteries)
	Pallet Jack UNIT #1F	PE3540-80	6A201819	PJ-52	1	(Charger/2 Batteries)
	Pallet Jack UNIT #11G	PE3540-80	6A201820	PJ-53	1	(Charger/2 Batteries)
	Pallet Jack UNIT #E	PE3520-60	6A173773	PJ-54	1	(Charger/2 Batteries)
	Reach Truck Forklift UNIT #1E	RR5220-45	1A258350	RTF-55	1	(Charger/2 Batteries)
	Reach Truck Forklift UNIT #4J	RR5220-45	1A258351	RTF-56	1	(Charger/2 Batteries)
	Reach Truck Forklift UNIT #5A	RR5220-45	1A258352	RTF-57	1	(Charger/2 Batteries)
	Reach Truck Forklift UNIT #3	RR5220-45	1A258353	RTF-58	1	(Charger/2 Batteries)
	Reach Truck Forklift UNIT #7	RR5220-45	1A258854	RTF-59	1	(Charger/2 Batteries)
	Forklift UNIT #7	SC-4040-40-TT172	9A127311	FL-60	1	(Charger/2 Batteries)
	Forklift UNIT #8	SC-4040-40-TT172	9A127312	FL-61	1	(Charger/2 Batteries)

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Exhibit C  
Personal Property and Equipment

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	Forklift UNIT #6	SC-4040-40-TT172	9A127313	FL-62	1	(Charger/2 Batteries)
	<b>Office Equipment:</b>					
	Lucent Partner Phone System	01S957-016784	01DR09380744		1	Break Room (On Wall)
	Two Extension Cards	206EC & 308ED			1	Break Room
	Sylvania TV/DVD		O87		1	Break Room
	IR Ingersoll Rand Recognition System Hand Punch				1	Break Room (On Wall)
	Patch Panel				1	Supply Room
	SIECOR Fiber Wall Mount Conctr.				1	Supply Room
	Avaya Phone Set	108236712	01SP63524848		1	Warehouse Super's Office
	Lucent Phone Set	107854788	01SP24 443009		1	Upstairs Office
	Dell 15" CRT Monitor	MY-OY1352-47603-447-FY44		88	1	Upstairs Office
	Dell PC	Optiplex 280	F78HH71		1	Upstairs Office
	Lexmark Printer	T632	991YYFt		1	Upstairs Office
	HP Printer	Photosmart C4450	CN851D31DW		1	Upstairs Office
	Lucent Phone Set	107854788	O1SP24 443003		1	Upstairs Office
	Samsung 19" LCD	SynMaster 943	MY19H9NS611580Y		1	Upstairs Office
	Dell PC	Optiplex 280	G57HH71		1	Upstairs Office
	Nortel Phone Set	NTDU92	NNTMDF01F85D		1	Upstairs Office
	Avaya Phone Set	108236720	00KE00646457		1	Upstairs Office
	Acer LCD	V223W	91601550342		1	Upstairs Office
	Dell PC	Optiplex 745	G7PID1	988	1	Upstairs Office
	HandHeld Terminals	7035	506582		1	Computer Room
	HandHeld Terminals	7035	506581		1	Computer Room
	HandHeld Terminals	7035	506580		1	Computer Room
	HandHeld Terminals	7035	674154		1	Computer Room
	HandHeld Terminals	7035	446908		1	Computer Room
	HandHeld Terminals	7035	674148		1	Computer Room
	HandHeld Terminals	7035	674159		1	Computer Room
	HandHeld Terminals	7035	674153		1	Computer Room
	HandHeld Terminals	7035	446907		1	Computer Room
	HandHeld Terminals	7035	674147		1	Computer Room
	Battery Charger	7942	C0079244		1	Computer Room

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**Exhibit C  
Personal Property and Equipment**

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	Battery Charger	7942	C0079289		1	Computer Room
	Battery Charger 6 Gang	7967	C0090302		1	Computer Room
	Fiber Patch Panel				1	Computer Room
	Network Patch Panel				1	Computer Room
	CISCO Switch	2590	FAB05280EK		1	Computer Room
	Pulizzi Power Controller	TPC-12FACB2499	9835-000-78443		1	Computer Room
	Relisys CRT Monitor	TE770B	M204730491		1	Computer Room
	Acer LCD	V223W	90800747440		1	Computer Room
	Best Power UPS	Ferrups FE Series	FE5.3K03688	425	1	Computer Room
	Avaya Phone Set	108236712	01SP47291714		1	Computer Room
	Brother Typewriter	BEM-630	M48308325		1	Computer Room
	Micron PC		2893564-0001	730	1	Computer Room
	Canon Copier	NP 6221	NTU12074		1	Computer Room
	Compaq PC	d530	USU4014pb	856	1	Manager's Office
	Samsung LCD	Sync Master 943	MY19H9NSA09787E		1	Manager's Office
	Avaya Phone Set	108236712	01SP63524845		1	Manager's Office
	Notel Phone Set	NTDU92	NNTMDF01K2FN		1	Manager's Office
	Avaya Phone Set	107854788	01SP24 443066		1	Morgan Building
	Dell PC	Optiplex GX 280	967HH71	917	1	Morgan Building
	Dell LCD	E178FPb	CN-0G284H-74261-928-1GDL	1134	1	Morgan Building
	Samsung LCD	Sync Master 943	MY19H9NSA09782A		1	Morgan Building
	Dell PC	Optiplex GX 270	GKZ6R41	875	1	Morgan Building
	Datamax Label Maker		43977175		1	Morgan Building
	Zebra S600 Bar Code Printer		8M0799748		1	Morgan Building
	Lexmark	T632	991PZLH		1	Downstairs Office
	Canon Copier	Image Runner 5000	C1403542		1	Downstairs Office
	Nortel Phone Set	NTDU92	NNTMDF00011G		1	Downstairs Office
	Lucent Phone System	107854846	97SP39 109481		1	Downstairs Office
	Canon	Laser Class 510	C14049579		1	Downstairs Office
	Dell PC	Optiplex GX 270	FKZ6R41	871	1	Downstairs Office
	Acer LCD	V22EW	91601486642		1	Downstairs Office
	Avaya Phone Set	7000419971	81702044831		1	Downstairs Office

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Exhibit C  
Personal Property and Equipment

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	Compaq PC	D530c	USU40104QT			
	Samsung	Sync Master 943N	MY19H9LQ704073W	851	1	Downstairs Office
	Avaya Phone Set	108236712	01SP4729T722		1	Downstairs Office
	Wireless Gateway	9150			1	Downstairs Office
	Avaya Phone Set	108236712	01SP63524847		6	Warehouse
	Dell LCD		CN-ORNMH6-74445-97D-306L		1	Warehouse
	Dell PC	Vostro 220s	70GMFK1	1158	1	Engineer's Office
	Dell PC	Vostro 220s	63SYML1	1157	1	Engineer's Office
	APC UPS	Backups X-S 1000			1	Engineer's Office
	HP Printer	PhotoSmart C4450	CN922H2079		1	Engineer's Office
	Dell 15" CRT Monitor		GB-04D025-47604-1C4-DOFG	772	1	Engineer's Office
	HP Printer	Deskjet 6980	MY71L9R3GX		1	Engineer's Office
	Dell PC	Optiplex 280	C57HH71	934	1	Engineer's Office
	Avaya Phone Set	108236712	01SP47291689		1	Engineer's Office
	Sensa Phone System	2000			1	Machine Room
	<b>Office Furniture:</b>					
	Task Chairs			O4-O6	3	(Metal Bldg.)
	4-Drawer File Cabinet			O7	1	(Metal Bldg.)
	30"x60" Desks			O9, O10	2	(Upstairs Spare Office)
	Task Chairs			O11-O13	3	(Upstairs Spare Office)
	Wood Chairs			O15, O16	2	(Manager's Office)
	Coat Rack			O17	1	(Manager's Office)
	3'x6' Executive Desk			O20	1	(Manager's Office)
	Executive Chair			O21	1	(Manager's Office)
	6' Credenza			O22	1	(Manager's Office)
	36"x6' Bookcases			O23, O24	2	(Manager's Office)
	3'x2' File Cabinet			O25	1	(Manager's Office)
	Framed, Wall-Mounted Maps			O27, O28	2	(Manager's Office)
	L-Shaped Desks			O31-O33	2	(Upstairs Spare Office)
	Task Chairs			O34-O36	3	(Upstairs Spare Office)
	3' 2-Drawer Black File Cabinet			O41	1	(Upstairs Spare Office)
	3' 4-Drawer Beige File Cabinet			O42-O44	3	(Upstairs Spare Office)

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Exhibit C  
Personal Property and Equipment

✓	Description	Model No.	Serial No.	Tag No.	Quantity	Comments
	U-Shaped Executive Desk					
	Roller Chair			048	1	(Asst Mgr.'s Office)
	4' Ø Table			049	1	(Asst Mgr.'s Office)
	Chairs			050	1	(Asst Mgr.'s Office)
	Framed World Map			051-054	2	(Asst Mgr.'s Office)
	3'x5' Metal Desks			056	1	(Hall)
	L-Shaped; Left-Hand Desk			057-059	2	(Downstairs Office)
	Task Chair			060	1	(USDA Office)
	Metal File Cabinets w/Locks			061	1	(USDA Office)
	2'x4' Desk w/Chair			062-064	3	(USDA Office)
	16"x2"x30" Bookcase			065	1	(USDA Office)
	4' Ø Tables			066	1	(USDA Office)
	Metal Chairs			067-069	3	(Lunch Room)
	Microwaves			070-082	13	(Lunch Room)
	Sylvania TV/DVD			085-086	2	(Lunch Room)
	Roper Refrigerator			087	1	(Lunch Room)
	L-Shaped Right-Hand Desk			088	1	(Outside Office)
	Task Chair			089	1	(Engineer's Office)
	Standard Chairs			090	1	(Engineer's Office)
	Grey 4-Drawer File Cabinet			091-092	2	(Engineer's Office)
	Electric Heater			094	1	(Engineer's Office)
	5' File Cabinet			095	1	(Engineer's Office)
	Miscellaneous:			096	1	(Engineer's Office)
	Box Tops					
	Box Bottoms				1800	
	Phone/Fax Lines:				4500	
	Direct Phone Line (361-885-7893)					
	Extension Phone Line (361-885-6622)					
	Extension Phone Line (361-885-6602)					
	Extension Phone Line (361-885-6601)					
	Fax Line (361-885-7869)					
	Fax Line (361-885-7896)					

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## EXHIBIT D BASE RENT

The following schedule outlines the annual Base Rent for the Initial Term as referenced in Section 3.03(b) of this Agreement:

Initial Term	Annual Rent (\$ USD)
Year 1	\$ _____
Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____

The Base Rent for the First and Second Renewal Periods will be determined by calculating the CPI Adjustment Factor as defined in Section 1.01 and applying that factor to the preceding Base Rent amount. This CPI Adjustment Factor calculation cannot result in a year-over-year increase of more than 3% in any given year, nor can the calculation result in the Base Rent falling below the preceding year's amount.

**First Renewal Period:**

Year 6	Year 5 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 7	Year 6 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 8	Year 7 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 9	Year 8 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 10	Year 9 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.

**Second Renewal Period:**

Year 11	Year 10 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 12	Year 11 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 13	Year 12 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 14	Year 13 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.
Year 15	Year 14 Base Rent multiplied by CPI Adjustment Factor, not to exceed 3%.

## EXHIBIT E REVENUE GAIN SHARING

The following schedule outlines the Revenue Gain Share schedule and conditions for the Pre-Purchase Period as referenced in Section 3.04 of this Agreement:

If the Lessee is EBITDA positive AND is generating an EBITDA margin percentage of 20% or greater as defined under Section 3.04 of this Lease, then Lessee shall pay the Authority the corresponding "Revenue Gain Share" amounts as calculated by applying the following percentages to "Gross Revenue":

EBITDA%	Gross Revenue Share %
20%	1.000%
25%	2.000%
30%	3.000%
35%	4.000%
40%	5.000%
45%	7.000%
50%+	10.000%

Lessee shall pay the Authority as per Exhibit E of this Agreement and such calculated gain share payment amounts shall be based on a fiscal year quarterly basis.

Fiscal Year Quarters ("FY Qtr.") under this Agreement shall be defined as follows:

FY Qtr. 1	January 1 – March 31, XXXX
FY Qtr. 2	April 1 – June 30, XXXX
FY Qtr. 3	July 1 – September 30, XXXX
FY Qtr. 4	October 1 – December 30, XXXX

**EXHIBIT F**  
**AUTHORITY REPAIRS TO LEASED PREMISES**

**AUTHORITY REPAIRS TO LEASED PREMISES**

Priority A = Major repairs needed before Lease Commencement  
 Priority B = Required repairs that can be completed after Lease commencement.\*

**PRIORITY A ITEMS**

	LOCATION
All items included in Section 3.0, "Action List," in R.A. Corbett Engineering's Mechanical Integrity Inspection Report dated 12/15/10	Warehouse
Armonia computer monitoring system (e.g., floor/pressure/room temp, etc.) needs to be fully operational (if not already included in MI Report)	Warehouse
Repair pump #2 & bonnet, leaking at low side recirculator (if not already included in MI Report)	Engine Room
Replace main boards on battery chargers that do not work (3)	Battery Room
Replace truck dock bumpers for Doors #1, #5 and #7 on truck dock	Warehouse
Repair and replace the motor on evaporator #3 and #4 in dock area (if not already included in MI Report)	Warehouse
Repair south rail dock wall leak	Warehouse
Repair all truck door leaks	Warehouse
Repair room #4 roof/wall leak	Warehouse
Repair floor holes/cracking at door thresholds (all rooms — #1, #3 and #4 especially)	Warehouse
Repair truck dock penthouse electrical problem/short	Warehouse
Repair ALL freezer/refreezer doors in warehouse to operational condition (open/close) including curtains	Dock Area
Repair inoperable emergency stop switch (if not already included in MI Report)	Warehouse
Replace missing electrical box cover	Packing Room
Repair Glycol on/off switches to make fully operational (if not already included in MI Report)	Packing Room
Repair wire-T connector (if not already included in MI Report)	Rail Dock
Repair/replace motor mount and fan (if not already included in MI Report)	Elast Cell Room 1
Isolated roof leak repair	Elast Cell Room 2
	Warehouse

**PRIORITY B ITEMS**

	LOCATION
Complete repair on shrink wrap machine in dock area to make operational	Dock Area
Repair breakroom leak	Warehouse
Repair inspection room leak	Inspection Room
Repair outside foundational caulking around building foundation (separation/settling)	Exterior
Repair main doors (poor fitting)	Packing Room
Repair pipe (detached from wall/ceiling)	Packing Room
Repair hydraulic dumper	Inspection Room
Replace missing vent (outside inspection room)	Inspection Room
Repair bent sink pedals	Showers Room
Repair plumbing in shower (water not working)	Break Room
Replace ceiling panels	Showers Room
Repair hole in wall	Break Room
Repair wall leak	Break Room
Repair wall holes	Break Room
Repair floor molding	Break Room

Note: Port repair cost limited to maximum of \$250,000



**FRANCHISE**

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS  
TO  
FLINT HILLS RESOURCES CORPUS CHRISTI, LLC**

**RECITALS:**

Whereas, by a special warranty deed dated March 7, 2011 (“Deed”), Port of Corpus Christi Authority of Nueces County, Texas (“Authority”), conveyed to Flint Hills Resources Corpus Christi, LLC, a Delaware limited liability company whose mailing address is 4111 E. 37<sup>th</sup> Street North, Wichita, Kansas 67220 (“Grantee”), a tract of approximately 1.72 acres of land located in San Patricio County, Texas, which tract is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Land”); and

Whereas, by a lease agreement dated March 7, 2011 (“Lease”), the Authority leased to Grantee two contiguous tracts of submerged land located in Nueces County, Texas, adjacent to the Land, one of which is approximately 8.86 acres and the other of which is approximately 2.06 acres and both of which are more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the “Submerged Lands”); and

Whereas, the Deed contains a restrictive covenant running with the Land that Grantee, its successors and assigns, shall not access the waters in Nueces County, Texas, including the Corpus Christi Ship Channel and the La Quinta Ship Channel (all of such waters and waterways being collectively referred to herein as the “Waters of Nueces County”), from any wharf, pier, bulkhead, dock, building, or other improvement now or hereafter constructed on the Land or the Submerged Lands for any business purpose without first obtaining a franchise from Authority to do so in substantially the form attached to the Deed; and

Whereas, Grantee has asked the Authority to grant it a franchise that would give Grantee the right of access to the Waters of Nueces County from Grantee’s wharves, piers, bulkheads, docks, buildings and other improvements now or hereafter constructed on the Land or the Submerged Lands (collectively, “Grantee’s Water Related Improvements” whether one or more) for the purpose of shipping property or commodities to, from, or across Grantee’s Water Related Improvements and for other proper purposes;

Now, therefore, by action of the Port Commission of the Authority:

**SECTION 1**  
**GRANT**

Subject to the terms and conditions of this franchise, the Authority hereby grants to Grantee, its successors and permitted assigns, for the term specified in this Section 1, the right of access to the Waters of Nueces County from Grantee's Water Related Improvements, for all

purposes reasonably related to shipping property or commodities to, from, or across Grantee's Water Related Improvements, and constructing, operating, maintaining, repairing, replacing, upgrading, and/or removing Grantee's Water Related Improvements, and dredging of the Submerged Lands as is necessary or appropriate to facilitate the construction, operation, repair, and maintenance of Grantee's Water Related Improvements. The term of this franchise shall begin on the Effective Date described in Section 10 of this franchise and shall end on April 30, 2041.

## **SECTION 2** **DREDGING**

Grantee may conduct and perform all dredging operations in, on and under the Submerged Lands as may be necessary, proper or expedient in connection with the use of the Submerged Lands as a means of navigating from Grantee's Water Related Improvements to the Corpus Christi Ship Channel, or as otherwise required hereunder.

## **SECTION 3** **RENTALS**

For the rights granted to it hereunder, Grantee shall pay to the Authority a rental, based upon the type and quantity of all property or commodities shipped by water to, from, or across the Grantee's Water Related Improvements, equal to the product of (i) the quantity of the property or commodities so shipped, multiplied by (ii) fifty percent (50%) of Authority's then current tariff wharfage rate on the same type of property or commodities. By accepting this franchise, Grantee agrees that this rental is fair and reasonable.

Grantee, its successors and permitted assigns, shall keep and maintain a complete and accurate set of books and records showing all commodities shipped over, and to or from, Grantee's Water Related Improvements (such books/records, as relating to any specific shipment hereunder, shall be retained by Grantee for a period of 4 years following the time of such specific shipment) in order that the Authority may ascertain therefrom what rentals are due to the Authority from Grantee hereunder, and such books and records shall (during the records-retention period noted above) be subject to the inspection of the Authority, its agents and attorneys, at any and all reasonable times.

The rental payable hereunder shall be paid to the Authority at its offices in Corpus Christi, Nueces County, Texas, and shall be payable at such reasonable time or times as the Authority may direct by written notice to Grantee and by general rule or regulation which shall be applicable to all persons or parties holding permits or franchises similar to this franchise. Until otherwise directed, the rental payable hereunder shall be paid monthly.

## **SECTION 4** **CONDITIONS**

This franchise is granted with reasonable conditions for the protection of the Authority and its property and the property of its tenants, to-wit:

- A. **Hazards.** Grantee will at all times conduct its operations on Grantee's Water Related Improvements so as not to create any unusual fire or health hazard.
  
- B. **Plans.** Before constructing any structure or commencing any work on the Land or the Submerged Lands for which a U. S. Department of the Army permit is required and before filing application for any such permit, Grantee will submit plans of such structure or work to be undertaken to the Authority for its approval, and Grantee shall not begin such construction or work until it has obtained the Authority's written approval of such plans, which approval shall not be unreasonably withheld. Authority will review and approve or disapprove any such plans within sixty (60) days after its receipt of the plans. Grantee shall file with the Authority a copy of any permit or license it obtains from any governmental agency in connection with any construction or work described in this Section 4, and any documents placing conditions on or amending them in any way.

To facilitate the Authority's review of the plans, Grantee shall submit two (2) sets of formal plans that clearly define the project. The drawings must be prepared in 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 any area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, existing channel depth elevations, etc., must be included with the formal plans submitted. The site plan must clearly show the bottom of cut line and top of slope line of any planned dredging. If any dredging is planned by Grantee that will, in Authority's judgment, based upon customary dredging operations, result in removal of a substantial quantity of earth or material from, or damage to, adjacent real property, Grantee must obtain the written permission of the adjacent property owner to carry out such dredging for the project and submit it to the Authority with the formal plans.

- C. **Compliance.** Grantee shall perform all construction or work described in this Section 4 in conformity with applicable building codes and all applicable federal, state and other governmental laws and regulations; and Grantee must comply with any applicable provisions of the code of the National Fire Protection Association.
  
- D. **Slips.** Grantee's slips along Grantee's Water Related Improvements shall be maintained by Grantee at a depth sufficient to prevent vessels berthed at the docks there from striking bottom due to lowering of the water level from passing vessels or seasonal low tides.
  
- E. **Pollution.** Grantee shall take all reasonable precautions to prevent the pollution of the Waters of Nueces County. Grantee shall also comply with all federal, state and local laws and regulations relating to maintaining water quality in the Waters

of Nueces County, and will file with the Authority copies of all permits received by Grantee relating to water quality to the extent relating to its activities hereunder.

- F. **Rules and Regulations.** This franchise shall be subject to such reasonable rules and regulations as the Authority presently has in effect or that the Authority may invoke in the future which apply to all individuals and entities holding similar franchises granted by the Authority.

## **SECTION 5** **INDEMNITY**

Grantee shall defend, indemnify and hold harmless Authority and its commissioners, officers, directors, managers, employees, and agents (for the purposes of this Section 5, 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) (all of which are hereinafter collectively called "Claims"), which may now or in the future be brought or instituted or asserted on account of or growing out of or arising from or relating to the sole, joint, concurrent, or comparative negligence of Grantee, its owners, officers, directors, managers, employees, or agents (for the purposes of this Section 5, the "Grantee Parties") in connection with the exercise by Grantee of the rights and privileges granted herein (each an "Indemnified Claim") **EVEN IF THE INDEMNIFIED CLAIM IS CAUSED BY THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PARTIES;** provided, however, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence of the Grantee Parties and the Indemnified Parties, then Grantee's obligation to the Indemnified Parties shall only extend to the percentage of the total responsibility of the Grantee Parties in contributing to such Indemnified Claim. Without relieving Grantee of its obligations under this Section 5, the Indemnified Parties, at their election and expense, may defend or participate in the defense of any Claims with attorneys and representatives of their own choosing. Grantee shall be relieved of its obligation of indemnity to the extent, and only to the extent, of the amount actually recovered from one or more insurance carriers and either paid to Authority or paid for Authority's benefit in reduction of any Claims. In Claims against any Indemnified Party by or for an employee of a Grantee Party, the Grantee's indemnification obligation under this Section 5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Grantee Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. To the fullest extent provided by this Section 5, Grantee hereby waives all Claims it may have against the Indemnified Parties resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any Claims covered by Grantee's indemnity obligations hereunder.

**SECTION 6**  
**DEFAULT**

In the event of default of Grantee in the performance of any of the terms and conditions herein stipulated to be done by it, or required of it under any valid law, rule or regulation of the government of the United States of America or the State of Texas, and in event such default is not cured or is not in the process of being cured in a reasonably diligent manner within sixty (60) days after the Authority has sent a written notice by registered or certified mail to Grantee at its business address, advising it of the nature and extent of such default, this franchise shall be subject to forfeiture at the instance of the Authority by suit in a State District Court located in Nueces County, Texas.

**SECTION 7**  
**NO EFFECT ON DEED OR LEASE**

The rights and privilege of Grantee and the Authority arising out of the Deed or Lease are hereby expressly recognized and confirmed and in no wise abridged, lessened or diminished by the granting of this franchise and its acceptance by Grantee or by any surrender, cancellation or forfeiture of the same.

**SECTION 8**  
**ASSIGNMENT**

Grantee may, with the prior written consent of the Authority, assign Grantee's rights and obligations under this franchise to any individual or business entity that leases the Grantee's Water Related Improvements or otherwise has the right to use Grantee's Water Related Improvements, but Grantee shall not be released thereby from any obligations and duties hereunder assumed by such lessee or user.

Grantee may, with the prior written consent of the Authority, assign this franchise to any individual or business entity that purchases or otherwise acquires title to all of the Grantee's Water Related Improvements. Any such assignee of this franchise, shall file written evidence of such assignment and of assignee's acceptance of the same in the office of the Authority. If Grantee assigns this franchise in accordance with the terms and conditions of this paragraph, Grantee shall be released from any further obligations and duties hereunder only insofar as such obligations and duties arise from and after the effective date of such assignment, it being specifically understood that any such assignment shall not have the effect of releasing Grantee from any obligations or duties hereunder which may have accrued at any time prior to the effective date of such assignment.

If Grantee sells, assigns, or transfers title to only a portion of the Grantee's Water Related Improvements, this franchise shall automatically terminate with respect to the transferred portion of Grantee's Water Related Improvements, and the new owner thereof shall not have the right to access the Waters of Nueces County from the transferred portion of Grantee's Water Related

Improvements until such time as the new owner has received a new permit or franchise from the Authority for such purpose in accordance with the terms of the Deed.

Grantee shall have the right to convey this franchise by mortgage, deed of trust or any other security instrument. If Grantee shall be in default of any of the covenants or conditions of this franchise, the holder of the mortgage, deed of trust or other security instrument may, before forfeiture is invoked by the Authority, make any and all payments and do and perform any and all acts or things which may be necessary to prevent a forfeiture of this franchise and the party making such payments or performing such acts or things shall thereby be subrogated to all rights of the Grantee under this franchise. The Authority agrees that if the holder of any mortgage, deed of trust or other security instrument delivers a copy of such instrument to the Authority, together with the address to which it desires notices to be sent, the Authority will send to the holder at the address specified copies of all written notices to be served on Grantee under and pursuant to the terms of this franchise. It is understood that the mortgagee, trustee and beneficiary of any security instrument shall in no way be liable to the Authority for any payments or for the performance of any other covenants and conditions of this franchise until such time as it shall acquire by assignment or conveyance from Grantee or by foreclosure or other proceedings provided by law or by the terms of the security instrument all the right, title and interest of Grantee under this franchise; provided, however, that any party who shall acquire said right, title and interest of Grantee, as above provided, shall thereby become liable for all payments and the performance of all other covenants and conditions theretofore and thereafter required to be made by Grantee under the franchise, as fully and to the same extent as if Grantee itself would have been if it still had retained its right, title and interest hereunder.

#### **SECTION 9** **GENERAL**

All covenants, conditions and agreements of this franchise shall apply to and be binding upon the Authority and Grantee and their respective legal representatives, successors and permitted assigns (when assignment is made in accordance with the provisions hereof). This franchise is made under the applicable laws of the State of Texas and if any term, clause, provision, part or portion of this franchise shall be adjudged invalid or illegal for any reason, the validity of any other part or portion hereof shall not be affected thereby, and the invalid or illegal portion thereof shall be deleted and ignored as if the same had not been written herein. If any of the rights and authorities granted hereunder are in excess of the authority of the Authority, then the rights and authorities shall be limited to such as the Authority is authorized to grant, under the applicable laws. The failure of Grantee or of the Authority to insist upon the strict performance of any of the covenants and conditions of this franchise, or the consent, either express or implied, of either party hereto to any act or omission by the other party in breach or default hereof, shall not be deemed or construed to be a waiver of any such covenants or condition except for that particular instance only and shall not constitute or be construed as a waiver of such covenant or condition or of any further or future breach or default thereof. The expense of publishing this franchise as required by law shall be borne by the Grantee.

**SECTION 10**  
**PASSAGE, PUBLICATION AND ACCEPTANCE**

A majority of the Authority's Port Commissioners voted to grant this franchise at meetings of the Port Commission held on February 17, 2011, March 8, 2011, and April 12, 2011, and the final form of this franchise was approved at the last of these meetings. This franchise shall not become effective until it has been published in full in its final form at the expense of Grantee once a week for three consecutive weeks in the *Corpus Christi Caller Times*, a daily newspaper of general circulation published inside the boundaries of the Authority (the "Publication Requirement"). Grantee must file its written acceptance of this franchise with the Authority within thirty (30) days after the date on which this franchise was finally approved by the Authority's Port Commissioners, and such written acceptance shall be duly acknowledged by the person or persons executing the same (the "Acceptance Requirement"). The effective date of this franchise ("Effective Date") shall be the first day of the first calendar month after the date on which both the Publication Requirement and the Acceptance Requirement have been satisfied.

IN WITNESS WHEREOF, the Authority has caused this franchise to be signed by the Chairman of the Port Commission and attested by the Secretary of the Port Commission this 12<sup>th</sup> day of April, 2011.

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

By: \_\_\_\_\_  
Mike Carrell  
Port Commission Chairman

ATTEST:

\_\_\_\_\_  
Judy Hawley  
Port Commission Secretary

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

This instrument was acknowledged before me on the 12<sup>th</sup> day of April, 2011, by Mike Carrell, Chairman of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, and Judy Hawley, Secretary of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Port Authority.

---

NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT A**  
**Metes and Bounds Description of 1.72 Acres of Upland**



**THENCE;** N-81°-27'-49"-W, a distance of **20.23'** to a PK nail set for an exterior corner of this tract;

**THENCE,** N-21°-08'-50"-E, along a 0.5' offset from the existing fence, a distance of **43.55'** to a 5/8" steel rod set for the most northerly northwest corner of this tract;

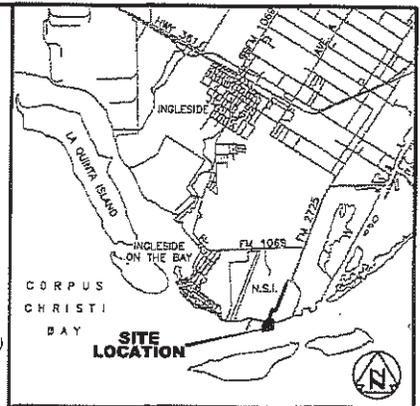
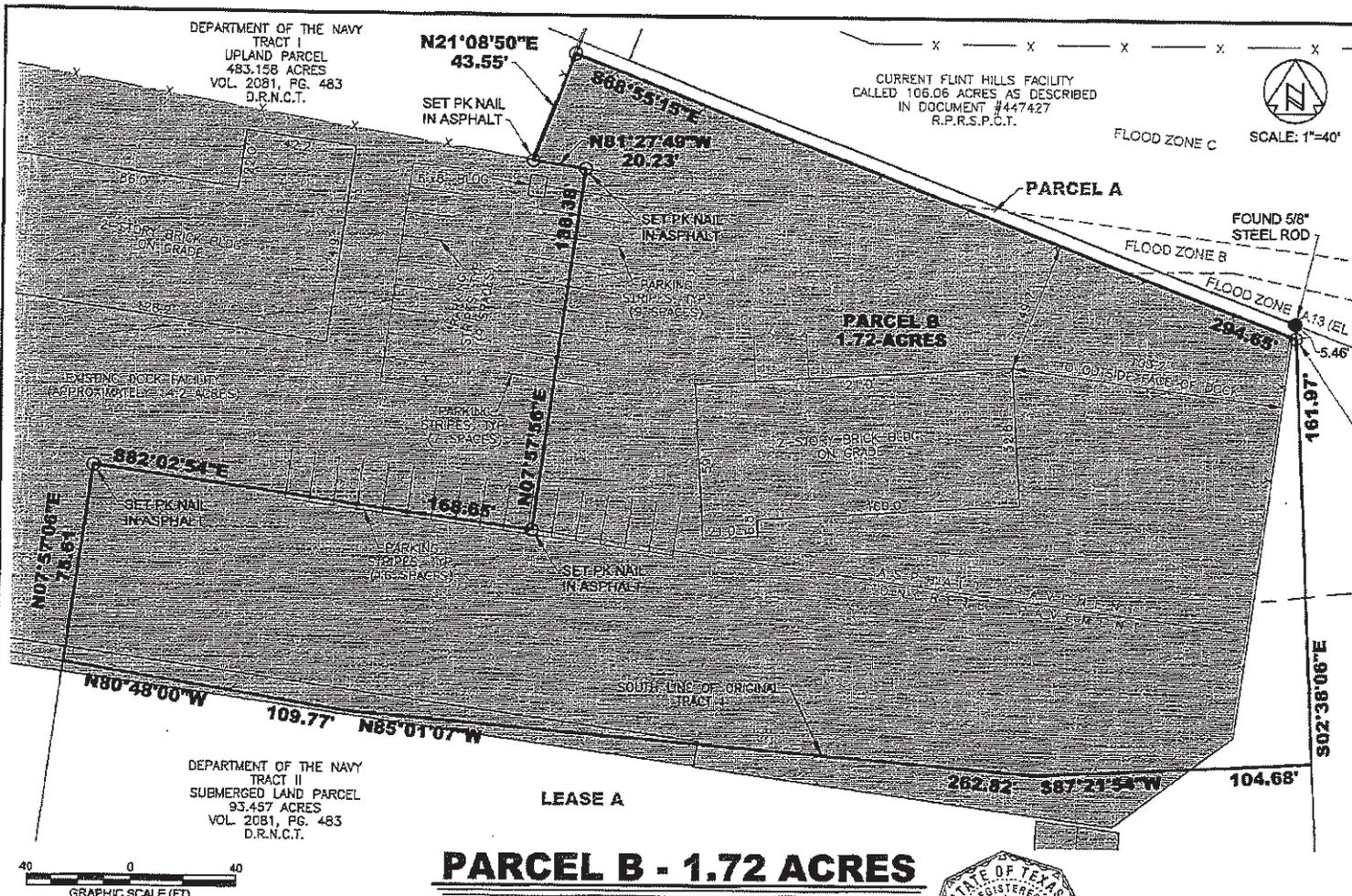
**THENCE,** S-68°-55'-15"-E, along a 0.5' offset from the existing fence, a distance of **294.65'** to the **POINT OF BEGINNING** and containing 1.72- acres of land.

These field notes represent a survey made upon the ground under my direction and are true and correct to the best of my knowledge. Accompanying plat prepared.

*February 11, 2011*  
Date

*David L. Nesbitt*  
David L. Nesbitt, R.P.L.S. No. 5302





**VICINITY MAP N.T.S.**

SET 5/8" STEEL ROD (POB, PARCEL B)  
 N. 17189497.17  
 E. 1403847.51  
 TEXAS STATE PLANE COORDS., SOUTH ZONE 4205, NAD 83

- NOTES:**
1. ACCOMPANYING FIELD NOTES HAVE BEEN PREPARED.
  2. BASIS OF BEARING OF THIS SURVEY IS GRID NORTH AS OBSERVED BY GPS, TEXAS SOUTH ZONE 4205, N.A.D. 83 WITH A COMBINED SCALE FACTOR OF 1.00000079.
  3. ALL EASEMENT RESEARCH HAS BEEN PREVIOUSLY PERFORMED BY SAN JACINTO TITLE SERVICES.
  4. BY GRAPHIC PLOTTING ONLY, THIS PROPERTY LIES WITHIN FLOOD ZONE C, AREAS OF MINIMAL FLOODING, FLOOD ZONE B, AREAS OF BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD, AND FLOOD ZONE A13 (EL. 9), AREAS OF 100-YEAR FLOOD WITH BASE FLOOD ELEVATIONS AND FLOOD HAZARD FACTORS DETERMINED, ACCORDING TO THE FLOOD INSURANCE RATE MAP OF SAN PATRICIO COUNTY, PANEL NO. 485505 0529 C, EFFECTIVE DATE: MARCH 18, 1965.
  5. ● DENOTES FOUND 5/8" STEEL ROD.  
○ DENOTES SET 5/8" STEEL ROD (OR AS NOTED).
  6. POINTS ON THE SOUTH LINE OF THIS TRACT ARE NOT SET DUE TO OBSTRUCTIONS.



# SURVEY PLAT

SHOWING THE BOUNDARY OF A 1.72-ACRE TRACT HEREIN DESIGNATED "PARCEL B", SAID 1.72-ACRES BEING OUT OF 483.158-ACRES OF LAND, MORE OR LESS, KNOWN AS TRACT I DESCRIBED IN A DEED TO THE DEPARTMENT OF THE NAVY AS RECORDED IN VOLUME 2081, PAGE 483, DEED RECORDS, NUECES COUNTY, TEXAS, AND ALSO BEING OUT OF THE L. VON ZACHARIAS SURVEY 1, ABSTRACT 271, IN SAN PATRICIO COUNTY, TEXAS.

THE SURVEY SHOWN HEREON WAS MADE UNDER MY SUPERVISION. VISIBLE ENCROACHMENTS, DISCREPANCIES, PROTRUSIONS, IF ANY, ARE SHOWN HEREON.

February 11, 2011  
 DATE: *David L. Nesbitt*  
 DAVID L. NESBITT  
 REGISTERED PROFESSIONAL LAND SURVEYOR, NO.: 5302  
 LICENSED STATE LAND SURVEYOR

**CRG** Coyn, Rehmet & Gutierrez Engineering, L.P.  
 Firm Reg. No. P-398  
 5650 South Staples, Suite 230  
 Corpus Christi, Texas 78411  
 Phone (381) 991-8550 Fax 993-7569  
 E-Mail crg@crget.com

SURVEY DATE: JANUARY 3, 2011  
 PLAT PREPARED: FEBRUARY 10, 2011  
 CRG JOB: 20474C  
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 SHEET 1 OF 1

**EXHIBIT B**  
**Metes and Bounds Description of 8.86 Acres**  
**and 2.06 Acres of Submerged Land**



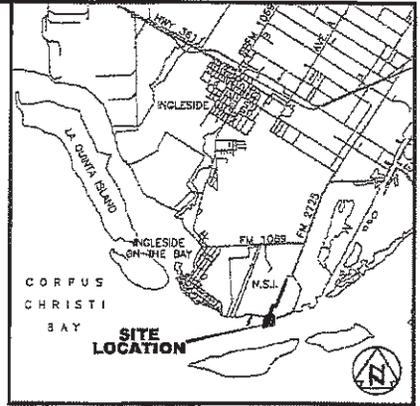
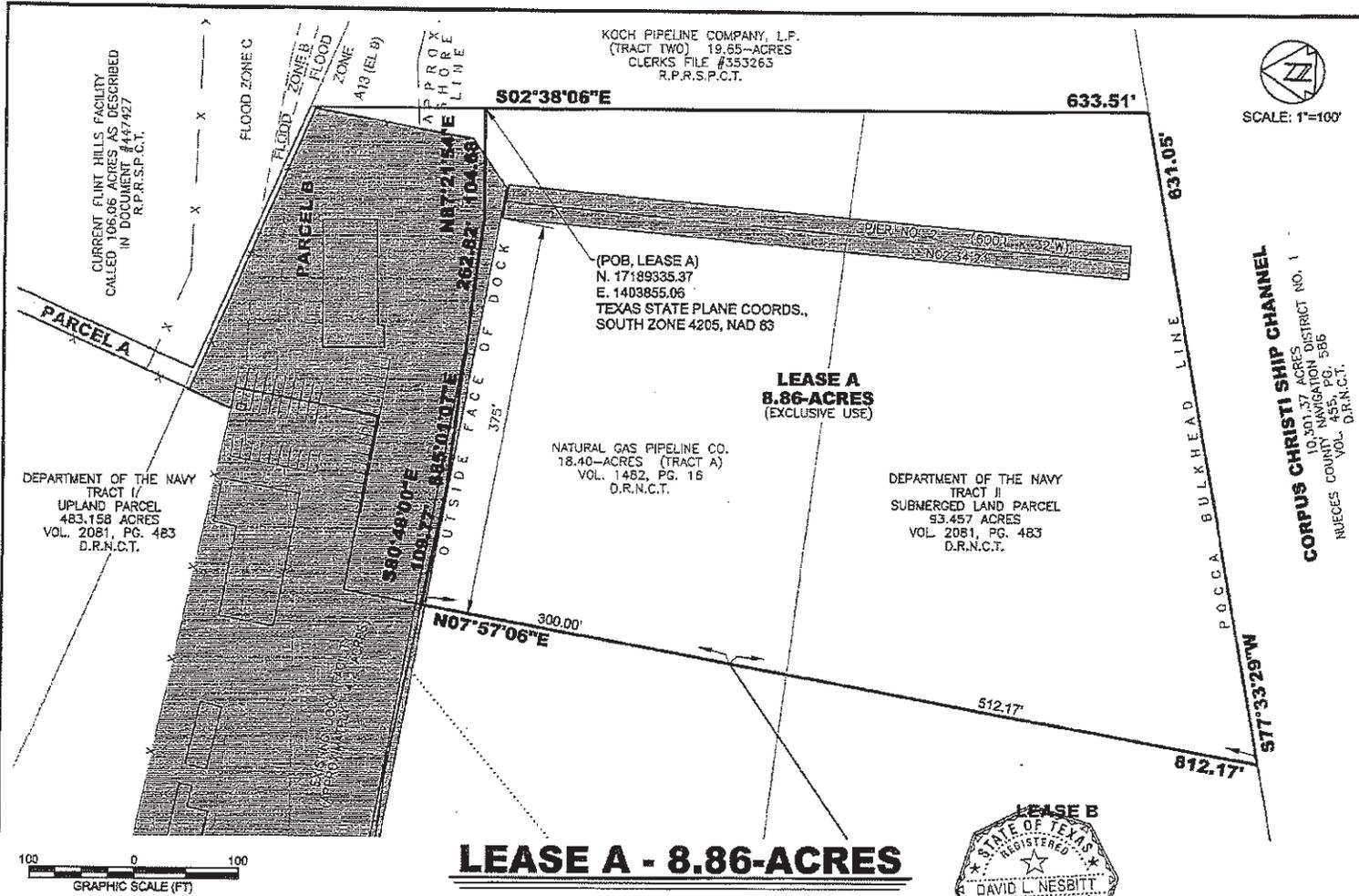
**THENCE**, N-87°-21'-54"-E, continuing along said common line, a distance of **104.68'** to the **POINT OF BEGINNING** and containing 8.86-acres by calculation.

These field notes represent a survey made upon the ground under my direction and are true and correct to the best of my knowledge. Accompanying plat prepared.

February 11, 2011  
Date



David L. Nesbitt  
David L. Nesbitt, R.P.L.S. No. 5302



VICINITY MAP N.T.S.

- NOTES:**
1. ACCOMPANYING FIELD NOTES HAVE BEEN PREPARED.
  2. BASIS OF BEARING OF THIS SURVEY IS GRID NORTH AS OBSERVED BY GPS, TEXAS SOUTH ZONE 4205, N.A.D. 83 WITH A COMBINED SCALE FACTOR OF 1.0000079.
  3. ALL EASEMENT RESEARCH HAS BEEN PREVIOUSLY PERFORMED BY SAN JACINTO TITLE SERVICES.
  4. SINCE THIS LEASE IS AN UNSURVEYABLE PARCEL OF SUBMERGED LAND, IT HAS NOT BEEN SURVEYED ON THE GROUND.

# LEASE A - 8.86-ACRES



# SURVEY PLAT

SHOWING THE BOUNDARY OF AN 8.86-ACRE TRACT HEREIN DESIGNATED "LEASE A", SAID 8.86-ACRES BEING OUT OF 93.457-ACRES, MORE OR LESS, OF SUBMERGED LAND KNOWN AS TRACT II DESCRIBED IN A DEED TO THE DEPARTMENT OF THE NAVY AS RECORDED IN VOLUME 2081, PAGE 483, DEED RECORDS, NUECES COUNTY, TEXAS, AND BEING OUT OF THE CALLED 10,301.37-ACRE TRACT OF SUBMERGED LAND CONVEYED BY THE STATE OF TEXAS TO NUECES COUNTY NAVIGATION DISTRICT NO. 1 BY PATENT 217 DATED JANUARY 24, 1950 AS RECORDED IN VOLUME 455, PAGE 586, DEED RECORDS, NUECES COUNTY, TEXAS.

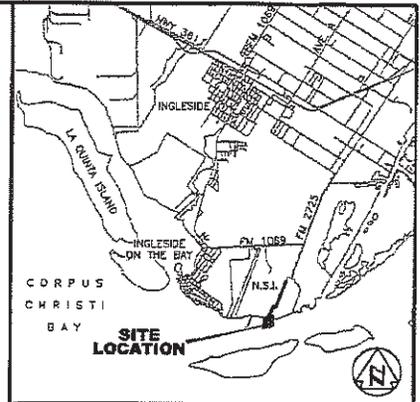
THE SURVEY SHOWN HEREON WAS MADE UNDER MY SUPERVISION. VISIBLE ENCROACHMENTS, DISCREPANCIES, PROTRUSIONS, IF ANY, ARE SHOWN HEREON.

DATE: February 11, 2011  
 David L. Nesbitt  
 REGISTERED PROFESSIONAL LAND SURVEYOR, NO.: 5302  
 LICENSED STATE LAND SURVEYOR

**CR & G**  
**Coy, Rehmet & Gutierrez**  
**Engineering, L.P.**  
 Firm Reg. No. F-386  
 5550 South Staples, Suite 230  
 Corpus Christi, Texas 78411  
 Phone (361) 991-3550 Fax 993-7589  
 E-Mail [org@orgel.com](mailto:org@orgel.com)

SURVEY DATE: JANUARY 3, 2011  
 PLAT PREPARED: FEBRUARY 10, 2011  
 CRG JOB: 20474C  
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 SHEET 1 OF 1





VICINITY MAP N.T.S.

- NOTES:
1. ACCOMPANYING FIELD NOTES HAVE BEEN PREPARED.
  2. BASIS OF BEARING OF THIS SURVEY IS GRID NORTH AS OBSERVED BY GPS, TEXAS SOUTH ZONE 4205, N.A.D. 83 WITH A COMBINED SCALE FACTOR OF 1.0000079.
  3. ALL EASEMENT RESEARCH HAS BEEN PREVIOUSLY PERFORMED BY SAN JACINTO TITLE SERVICES.
  4. SINCE THIS LEASE IS AN UNSURVEYABLE PARCEL OF SUBMERGED LAND, IT HAS NOT BEEN SURVEYED ON THE GROUND.

### LEASE B - 2.06-ACRES



## SURVEY PLAT

SHOWING THE BOUNDARY OF AN 2.06-ACRE TRACT HEREIN DESIGNATED "LEASE B", SAID 2.06-ACRES BEING OUT OF 93.457-ACRES, MORE OR LESS, OF SUBMERGED LAND KNOWN AS TRACT II DESCRIBED IN A DEED TO THE DEPARTMENT OF THE NAVY AS RECORDED IN VOLUME 2081, PAGE 483, DEED RECORDS, NUECES COUNTY, TEXAS, AND BEING OUT OF THE CALLED 10,301.37-ACRE TRACT OF SUBMERGED LAND CONVEYED BY THE STATE OF TEXAS TO NUECES COUNTY NAVIGATION DISTRICT NO. 1 BY PATENT 217 DATED JANUARY 24, 1950 AS RECORDED IN VOLUME 455, PAGE 586, DEED RECORDS, NUECES COUNTY, TEXAS.

THE SURVEY SHOWN HEREON WAS MADE UNDER MY SUPERVISION. VISIBLE ENCROACHMENTS, DISCREPANCIES, PROTRUSIONS, IF ANY, ARE SHOWN HEREON.

*February 11, 2011*  
 DATE: \_\_\_\_\_  
*David L. Nessitt*  
 DAVID L. NESSITT  
 REGISTERED PROFESSIONAL LAND SURVEYOR, NO.: 5302  
 LICENSED STATE LAND SURVEYOR


**Coyne, Rehmet & Gutierrez Engineering, L.P.**  
 Firm Reg. No. F-288  
 5656 South Staples, Suite 230  
 Corpus Christi, Texas 78411  
 Phone (361) 981-8550 Fax 993-7569  
 E-Mail [crge@crge.com](mailto:crge@crge.com)

SURVEY DATE: JANUARY 3, 2011  
 PLAT PREPARED: FEBRUARY 10, 2011  
 CRG JOB#: 20474C  
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 SHEET 1 OF 1





# **INVESTMENT REPORT**

**For the Quarter Ended December 31, 2010**

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

**Port of Corpus Christi Authority  
Investment Report  
Table of Contents  
For the Quarter Ended December 31, 2010**

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# Port of Corpus Christi Authority Compliance Statement For the Quarter Ended December 31, 2010

## Quarterly Investment Report

We believe the investment information presented for the quarter ending December 31, 2010, is accurate in all material respects, and is presented in a manner that fairly sets forth the investment standing of the Port of Corpus Christi Authority (Authority).

This report was prepared in compliance with the Authority's Investment Policy, Investment Strategy, and the Public Funds Investment Act of the State of Texas (Texas Government Code 2256.023).



Dennis J. DeVries  
Director of Finance



Audre Debler  
Chief Accountant

# **Port of Corpus Christi Authority**

## **Executive Summary**

### **For the Quarter Ended December 31, 2010**

The accompanying quarterly investment report lists in summary form and in detail the investment positions of the Port of Corpus Christi Authority's (Authority) operating funds as of December 31, 2010. As of that date, the Authority had a total of approximately \$25.6 million invested in a local government investment pool and certificates of deposit.

The goal of the Authority is to ensure the safety of all funds entrusted to 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. The safety of principal and liquidity shall always be the primary concern. The Authority's intention is to hold investments to maturity while receiving the highest reasonable market yield in accordance with its objectives at the date of investment. It is not the intent to devote substantial efforts to earn profit on investment market fluctuations. Investments will be purchased because of their interest yield expectations over their remaining life rather than for speculative purposes.

All investments in the portfolio are fully secured and will return 100% of par value if held to maturity. The Authority's investments are usually held to maturity, and any gains (losses) in market value will be reflected in market prices created by changes in interest rates during the quarter.

# Port of Corpus Christi Authority

## Executive Summary

### For the Quarter Ended December 31, 2010

Below are summaries of the Authority's investment performance and activity for the quarter ended December 31, 2010.

Performance Summary	12/31/10	09/30/10	Change
<b>Book Value</b>	\$ 25,603,680	\$ 25,102,279	\$ 501,401
<b>Market Value</b>	\$ 25,603,680	\$ 25,102,279	\$ 501,401
<b>Market to Book Ratio</b>	100.00%	100.00%	100.00%
<b>Weighted Average Maturity (Days)</b>	72	1	71
<b>Weighted Average Yield</b>	0.343%	0.227%	0.116%

Investment Activity Summary	Book Value	Market Value	Market to Book Ratio
<b>Beginning Balance - 09/30/10</b>	\$ 25,102,279	\$ 25,102,279	100%
<b>Changes:</b>			
<b>Purchases</b>	\$ 7,501,401	\$ 7,501,401	
<b>Maturities</b>	\$ (7,000,000)	\$ (7,000,000)	
<b>Net Change</b>	\$ 501,401	\$ 501,401	
<b>Ending Balance - 12/31/10</b>	\$ 25,603,680	\$ 25,603,680	100%

# Port of Corpus Christi Authority

## Investment Portfolio Report

### For the Quarter Ended December 31, 2010

Purchase Date	Type	Call Date	Maturity Date	Days to Maturity at Purchase	Remaining Days to Maturity	Book Yield (%)	Par Value	Original Principal	Book Value	Market Value	Unrealized Gain(Loss)	Quarterly Accrued Interest
12/31/10	TEXPOOL		01/01/11	1	1	0.195%	\$ 20,113,066	\$ 20,113,066	\$ 20,113,066	\$ 20,113,066	\$ -	\$ 10,786
10/18/10	Certificate of Deposit		10/18/11	365	291	1.500%	\$ 245,000	\$ 245,000	\$ 245,614	\$ 245,614	\$ -	\$ 746
11/05/10	Certificate of Deposit		11/05/11	365	309	0.950%	\$ 245,000	\$ 245,000	\$ 245,000	\$ 245,000	\$ -	\$ 354
11/30/10	Certificate of Deposit		11/30/11	365	334	0.850%	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ -	\$ 3,546
<b>Total</b>							\$ 25,603,066	\$ 25,603,066	\$ 25,603,680	\$ 25,603,680	\$ -	\$ 15,432

<b>Valuation Date:</b>	12/31/10
<b>Average Maturity:</b>	72 Days 2.36 Mths 0.20 Yrs
<b>Average Rate of Return:</b>	0.343%

# Port of Corpus Christi Authority

## Investment Transactions

### For the Quarter Ended December 31, 2010

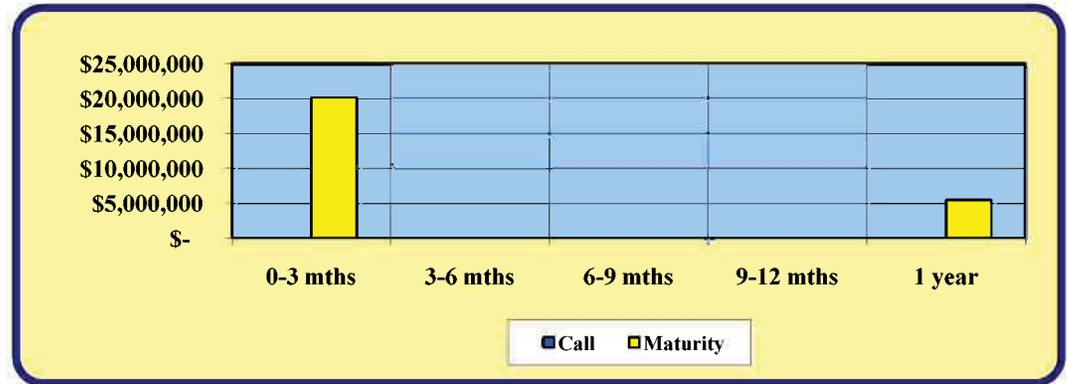
Transaction Date	Purchase Date	Description	Coupon	Yield	Maturity Date	Par Value	Transaction Price	Total Cost	Interest Purchased (Sold)	Total Transaction
<b>Purchases:</b>										
10/18/10	10/18/10	CD-1st Community	1.500%	1.500%	10/18/11	\$ 245,000	100.00	\$ 245,000	\$ -	\$ 245,000
10/29/10	10/29/10	TEXPOOL	Daily	Daily	Daily	\$ 4,311	100.00	\$ 4,311	\$ -	\$ 4,311
11/05/10	11/05/10	CD-Prosperity	0.950%	0.950%	11/05/11	\$ 245,000	100.00	\$ 245,000	\$ -	\$ 245,000
11/18/10	11/18/10	Interest-1st Community	1.500%	1.500%	11/18/10	\$ 312	100.00	\$ 312	\$ -	\$ 312
11/30/10	11/30/10	TEXPOOL	Daily	Daily	Daily	\$ 3,813	100.00	\$ 3,813	\$ -	\$ 3,813
11/30/10	11/30/10	CD-IBC Bank	0.850%	0.850%	11/30/11	\$ 5,000,000	100.00	\$ 5,000,000	\$ -	\$ 5,000,000
12/18/10	12/18/10	Interest-1st Community	1.500%	1.500%	12/18/10	\$ 302	100.00	\$ 302	\$ -	\$ 302
12/22/10	12/22/10	TEXPOOL	Daily	Daily	Daily	\$ 2,000,000	100.00	\$ 2,000,000	\$ -	\$ 2,000,000
12/31/10	12/31/10	TEXPOOL	Daily	Daily	Daily	\$ 2,663	100.00	\$ 2,663	\$ -	\$ 2,663
<b>Total Purchases</b>						<b>\$ 7,501,401</b>		<b>\$ 7,501,401</b>	<b>\$ -</b>	<b>\$ 7,501,401</b>
<b>Maturities:</b>										
10/21/10	10/21/10	TEXPOOL	Daily	Daily	Daily	\$ 500,000	100.00	\$ 500,000	\$ -	\$ 500,000
11/23/10	11/23/10	TEXPOOL	Daily	Daily	Daily	\$ 1,500,000	100.00	\$ 1,500,000	\$ -	\$ 1,500,000
12/01/10	12/01/10	TEXPOOL	Daily	Daily	Daily	\$ 5,000,000	100.00	\$ 5,000,000	\$ -	\$ 5,000,000
<b>Total Maturities</b>						<b>\$ 7,000,000</b>		<b>\$ 7,000,000</b>	<b>\$ -</b>	<b>\$ 7,000,000</b>
<b>Total Net Transactions</b>						<b>\$ 501,401</b>		<b>\$ 501,401</b>	<b>\$ -</b>	<b>\$ 501,401</b>

120

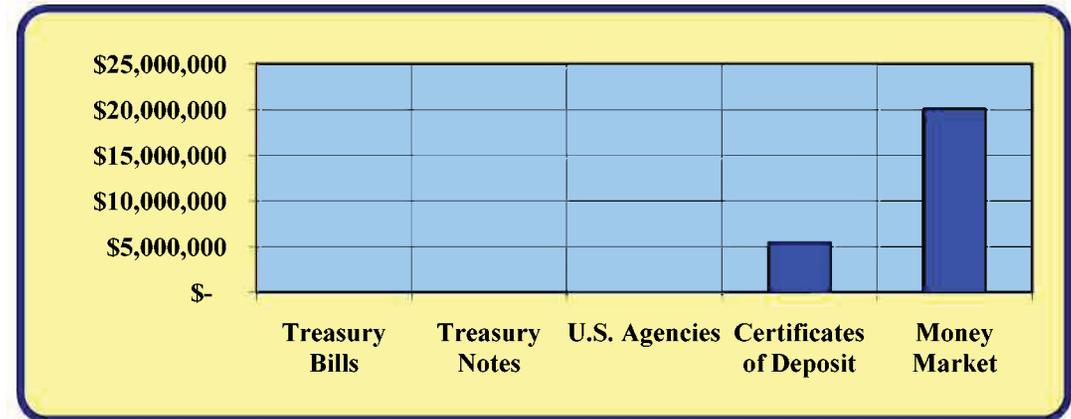
# Port of Corpus Christi Authority Diversification Report For the Quarter Ended December 31, 2010

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MATURITY PERIOD				
Period	Call	Maturity		
0-3 mths	\$ -	\$ 20,113,066	78.56%	
3-6 mths	-	-	0.00%	
6-9 mths	-	-	0.00%	
9-12 mths	-	-	0.00%	
1 year	-	5,490,614	21.44%	
	\$ -	\$ 25,603,680	100.00%	



SECURITY TYPE		
Type	Book Value	
Treasury Bills	\$ -	0.00%
Treasury Notes	-	0.00%
U.S. Agencies	-	0.00%
Certificates of Deposit	5,490,614	21.44%
Money Market	20,113,066	78.56%
	\$ 25,603,680	100.00%



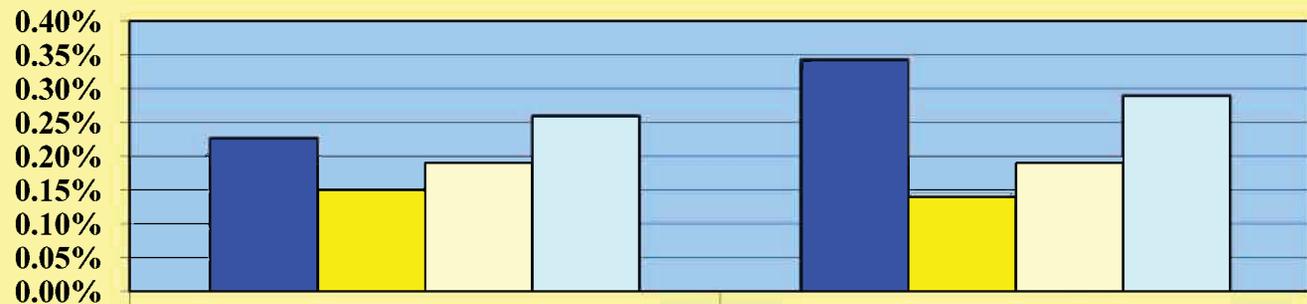
# Port of Corpus Christi Authority Treasury Yield Curve Comparison (Average Yields By Month) For the Quarter Ended December 31, 2010



\* Treasury does not currently issue a 1-year T-Bill, the market recognizes the 1-year CMT T-Bill of "comparable maturity treasury" as representative of this market sector

# Port of Corpus Christi Authority Portfolio Return to Benchmark Comparison For the Quarter Ended December 31, 2010

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	September 2010	September 2010
■ <b>Portfolio Yield</b>	<b>0.23%</b>	<b>0.34%</b>
□ <b>Three Month Treasury</b>	<b>0.15%</b>	<b>0.14%</b>
□ <b>Six Month Treasury</b>	<b>0.19%</b>	<b>0.19%</b>
□ <b>One Year CMT Treasury</b>	<b>0.26%</b>	<b>0.29%</b>

■ Portfolio Yield
□ Three Month Treasury
□ Six Month Treasury
□ One Year CMT Treasury

# **Comprehensive Annual Financial Report**

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

**For the Year Ended December 31, 2010**

**Prepared by the Finance Department**

**Dennis J. DeVries**  
*Director of Finance*

## **ABOUT THE 2010 REPORT PHOTO DESIGN**

The report photo design highlights the SAIL SOUTH TEXAS, a Tall Ship event created by the Authority to commemorate a number of concurrent local, national and international celebrations:

- The official transfer of the United States Naval Station Ingleside to the Authority,
- The Bicentennial celebration of independence of many Latin American countries
- The 234<sup>th</sup> anniversary of United States Independence.

Sail South Texas had the honor of hosting the Naval Academy Tall Ships from four countries: The “B.E. Cuauhtémoc” from Mexico, the “Esmeralda” from Chile, the “Capitan Miranda” from Uruguay and the “USCGC Eagle” from the United States.

Together these four tall ships were the highlight of one of the most exciting 4<sup>th</sup> of July weekends ever held in the region celebrating history, independence and sharing culture among visiting countries.

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**PORT COMMISSIONERS**

**L. Michael Carrell, Chairman**

Mr. Carrell was appointed to the Port Commission by the City of Corpus Christi in 2002. He is President of Frost Bank.

**Richard M. Borchard, Vice-Chairman**

Mr. Borchard was appointed to the Port Commission by Nueces County in 2009. He is Director of Client Relations at the law firm of Linebarger, Goggan, Blair & Sampson.

**Judy Hawley, Secretary**

Mrs. Hawley was appointed to the Port Commission by San Patricio County in 2004. She is the Texas Business Development Director for Advanced Acoustics Concepts.

**Robert J. Gonzalez Sr., Commissioner**

Mr. Gonzalez was appointed to the Port Commission by Nueces County in 2000. He is an attorney and partner in the law firm of Gonzalez and Gonzalez L.L.P.

**Kenneth L. Berry, Commissioner**

Mr. Berry was first appointed to the Port Commission by the City of Corpus Christi in 1999. He was later appointed to the Port Commission by Nueces County in 2005. He is President and Chief Executive Officer of The Berry Co.

**Francis I. Gandy, Jr., Commissioner**

Mr. Gandy was appointed to the Port Commission by the City of Corpus Christi in 2009. He is manager and part owner of F.I. Gandy Farms, President of Gandy-Robertson, Inc., a family real estate investment business; and managing partner of Saratoga Oaks Shopping Center.

**Robert Kostelnik, Commissioner**

Mr. Kostelnik was appointed to the Port Commission by the City of Corpus Christi in 2010. He is President and CEO of Cinatra Clean Technologies, Inc.

**EXECUTIVE STAFF**

John P. LaRue, Executive Director

Frank C. Brogan, Deputy Port Director of Engineering and Finance and Administration

Maynard J "Sandy" Sanders, Deputy Port Director of Operations and Business Development

Anthony Alejandro, Director of Operations/Harbormaster

Greg Brubeck, Director of Engineering Services

Dennis J. DeVries, Director of Finance

Sandra Terrell-Davis, Director of Human Resources

Patricia Cardenas, Director of Communications

**PORT COMMISSION, PORT OF CORPUS CHRISTI AUTHORITY**

Executive Director	John P. LaRue
Deputy Port Director of Engineering and, Finance and Administration	Frank C. Brogan
Director of Engineering Services	Greg Brubeck
Chief Engineer	David L. Michaelson
Environmental Compliance Manager	Sarah Garza
Director of Finance	Dennis J. DeVries
Chief Accountant	Audre Debler
Accounting Manager	Lynn Angerstein
Manager of Management Information Systems	Gustavo Espinosa
Deputy Port Director of Operations and Business Development	Maynard J. "Sandy" Sanders
Director of Operations / Harbormaster	Anthony Alejandro
Manager of Foreign Trade Zone	Sonya Lopez-Sosa
Chief of Port Security	Arch Archambo
Manager of Bulk Terminal	Paul "Skip" Kaup
Manager of Dock Operations	Raymond Kadlecek
Maintenance Manager	David Throop
Director of Communications	Patricia Cardenas
Deputy Director of Business Development	Ruben C. Medina
Manager of Industrial Development	Richard E. Stroot
General Cargo & Tariff Manager	Maggie Iglesias-Turner
Director of Human Resources	Sandra Terrell-Davis
Human Resource Manager	Monica Euresti
Manager of Legislative Affairs	Nelda Olivo
Project Manager - Naval Station Ingleside Redevelopment	Tom Moore

April 5, 2011

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

State law requires that every navigation district or port authority publish at the close of each fiscal year a complete set of audited financial statements. This report is published to fulfill that requirement for the year ended December 31, 2010.

Management assumes full responsibility for the completeness and reliability of the information contained in this report, based upon a comprehensive framework of internal control that it has established for this purpose. Because the cost of internal control should not exceed anticipated benefits, the objective is to provide reasonable, rather than absolute, assurance that the financial statements are free of any material misstatements.

Lovvorn & Kieschnick, LLP, Certified Public Accountants, have issued an unqualified (“clean”) opinion on the Port of Corpus Christi Authority of Nueces County, Texas (Authority)’s financial statements for the year ended December 31, 2010. The independent auditor’s report is located at the front of the financial section of this report.

Management’s discussion and analysis (MD&A) immediately follow the independent auditor’s report and provides a narrative introduction, overview, and analysis of the basic financial statements. MD&A compliments this letter of transmittal and should be read in conjunction with it.

#### **PROFILE OF THE GOVERNMENT**

The Authority is located along the southeastern coast of Texas on the Gulf of Mexico approximately 150 miles north of the Mexican border. The Authority maintains one of the deepest ports along the Gulf of Mexico coast with a channel depth of 45 feet. The Authority’s port facilities are part of the Port of Corpus Christi complex. The Port of Corpus Christi has been a deep draft port since 1926. The channel is approximately 30 miles long and links the City of Corpus Christi with the Gulf of Mexico.

The Authority (formerly the Nueces County Navigation District No.1) is a navigation district and political subdivision of the State of Texas, having boundaries co-extensive with those of Nueces and San Patricio Counties, Texas. The Authority operates under the provisions of Article XVI, Section 59, of the Texas Constitution and related laws of the State of Texas, particularly Sections 60 and 62 of the Texas Water Code, and all amendments thereto. The Authority being a navigation district and political subdivision of the State of Texas is a separate and distinct entity of Nueces and San Patricio Counties and operates independently with its own Port Commission as its governing body. The only relationship the Authority and Nueces County have is that in the event the Port Commission deems it necessary to issue tax-supported bonds, it must request the Commissioners Court to call an election. The Commissioners Court shall call the election, canvas the vote, and if the bond issue is approved, thereafter set the necessary tax rate to service the bonds.

A Port Commission composed of seven commissioners, who serve without pay, governs the Authority. Each commissioner serves a staggered term of three years with appointments made to the Commission each year. Three commissioners are appointed by the Corpus Christi City Council, the governing body of the City of Corpus Christi, three commissioners are appointed by the Nueces County Commissioners Court, the governing body of Nueces County, and one commissioner is appointed by the San Patricio County Commissioners Court, the governing body of San Patricio County. The executive staff, under the leadership of the executive director, manages the operations of the Authority and assists the Commission in planning for the future. Port Commission efforts are directed toward encouraging industrial expansion, attracting new

cargo, building and maintaining public terminals, setting operational policy and cooperating with the Federal Government as a local sponsor in maintaining and further improving vital navigation channels.

The Authority owns and operates public wharves, transit sheds, open storage facilities, freight handling facilities and equipment, warehouses, a bulk material handling terminal, a refrigerated warehouse facility and a multi-purpose cruise terminal/conference center. The Authority also owns a grain elevator that is leased to Archer Daniels Midland (ADM), and cotton warehouses that are leased to Gulf Compress. In addition, the Authority leases land, buildings and improvements, and maintains areas for the placement of dredged materials.

The Port of Corpus Christi consists not only of the Authority's docks, but also includes privately owned docks. The Authority owns eight general cargo docks, eleven liquid bulk cargo docks, two bulk material docks, a container terminal, two bagging facilities, a shipside grain elevator, a refrigerated warehouse, cotton warehouses and a multi-purpose cruise terminal/conference center. All of these facilities are operated for hire on a first-come, first-serve basis, with the exception to the shipside grain elevator and cotton warehouses that are leased. Most of the privately owned docks at the Port of Corpus Christi are owned by, and operated exclusively for, the various refineries, chemical plants and other industries that line the Channel. Approximately thirty-two privately owned docks are located at the Port of Corpus Christi, and compete directly with the Authority's docks.

The Port Commission adopts an annual budget each year, on a basis consistent with accounting principles generally accepted in the United States of America for proprietary funds, as a prudent management tool. Monthly budget reports are prepared for management to maintain proper budgetary control, and are reviewed by the Port Commission on a quarterly basis.

### **LOCAL ECONOMY**

The Authority continues to remain financially strong and a primary driver of the local economy. The Authority's sound fiscal management has allowed the Authority to remain financially stable. The Authority is currently ranked as the 5th largest port in the United States in terms of tonnage. The Authority has served the local economy for over eighty years, and is continually upgrading and expanding its' facilities to better serve South Texas industry and shippers. Local Port industries as well have made investments to upgrade and expand their facilities, to improve air and water quality, and improve process efficiencies, or supply utilities such as electricity and steam. Local refineries have made investments that permit them to provide clean burning gasoline during the ozone alert months, a volunteer program that has contributed to the local area's ability to maintain its "attainment" classification with environmental agencies.

The Authority has adopted a mission statement, which has become an integral part in the development of a strategic plan to guide the Authority. The mission statement is as follows: "It is the mission of the Port of Corpus Christi to serve as a regional economic development catalyst while protecting and enhancing its existing industrial base and simultaneously working to diversify its international maritime cargo business. In pursuit of this mission, the Port, which is a political subdivision of the State of Texas governed by appointees of Nueces County, the City of Corpus Christi and San Patricio County, shall be guided by the following basic principles: (1) The Port shall conduct its affairs in a positive, open and cooperative manner; (2) The Port shall operate in a fiscally responsible manner; (3) The Port shall be a positive and proactive force in the protection of the region's marine and water related resources; and (4) The Port shall be committed to serving its customers - present and future."

Economic development means attracting industrial and commercial activity, private capital and waterborne cargo shipments that will create employment opportunities, sustaining and upgrading existing jobs, introducing new basic dollars to the area and broadening the tax base that supports all public services. The 2008 Port Economic Impact findings reinforce the Port's mission statement: to be an economic catalyst for the region. Martin Associates of Lancaster, PA studied the economic impact of the Authority operations including the Ortiz Center. The last economic impact study for the Authority was in 2003. Five years later, the 2008 report shows similar increases. In 2003, the Authority created 39,905 jobs, generated \$195.4 million in state and local taxes, and provided \$1.3 billion in business revenue. Today, the Authority creates

approximately 40,560 jobs with 10,487 direct jobs. The Authority generates 13,669 induced jobs that are the result of purchases by the direct employees. The remainder of total jobs is comprised of 16,404 indirect jobs supported by the local purchases by businesses supplying services or dependent upon the Authority. The 40,560 jobs provide \$3.0 billion in income (direct, induced, and indirect wages and salaries) for families throughout the Coastal Bend. Authority operations generate \$1.6 billion of revenue for businesses providing services to the Authority and port industries, and Ortiz Center. More than \$282 million was paid in state and local taxes due to activity created by the Authority. Over the five-year period, Authority tonnage grew by over 1 million tons. While a decrease of 4 million tons was seen over the last five years in petroleum and petrochemicals, they continue to be the Authority's top commodity. This decline was however offset by increases of 3.8 million tons in bulk grain exports, 873 thousand tons in ore, 306 thousand tons in break bulk cargo, and 270 thousand tons in other dry bulk cargo. This indicates that the Authority's diversification efforts are working. The Authority remains an economic force via its ability to provide the commercial shippers with first class channels, docks and facilities for handling their cargo, and by providing public facilities designed to attract more tourist dollars to the area while maintaining financial stability. Ultimately, our goal is to raise the standard of living and enhance the quality of life of everyone in the local surrounding region.

### **LONG-TERM FINANCIAL PLANNING**

The Authority has three major projects that will require significant funding in the future. These projects will be funded from federal and state assistance, revenue bonds and the Authority's unrestricted net assets of \$29.8 million.

#### ***The Joe Fulton Trade Corridor – Phase II***

The Authority continues construction on the final phase of the *Joe Fulton Trade Corridor*, a road and rail route that has already streamlined truck and rail traffic in and out of the Authority by providing an alternative route to access I-37 west of the ship channel. This corridor consists of almost 12 miles of new and existing roadway, coupled with 7 miles of new rail that has significantly improved access to more than 2,000 acres of land along the North side of the channel for existing and future development. The corridor has made approximately 1,100 acres of land (which had no access available) for use as marine terminals or industrial sites. The corridor connects two major highway components- US Highway 181 and Interstate Highway 37; thus, establishing more efficient intermodal links between highway, marine, and rail transportation systems. The corridor addressed environmental and safety concerns, and facilitates international trade.

Construction began in 2004 and Phase I was completed in 2008. Total project costs for phase I was \$50.4 million. Funding for the first phase of the project was provided through federal and state assistance, and cash reserves of the Authority. Funding to complete phase II of this project is being provided from \$11.25 million of federal stimulus funding and \$3.75 million of the Authority's unrestricted net assets over 2009, 2010, and 2011. Phase II will rebuild a 2.25 mile section of substandard roadway and overlay 6.5 miles of Phase I work with asphalt and is schedule to be complete in the Fall of 2011.

#### ***Channel Improvement Project***

In 2003, the Authority completed the feasibility phase of the Channel Improvement Project and in November 2007, the project was authorized by Congress in the Water Resources Development Act (WRDA) of 2007. The authorized project includes the following navigation and ecosystem restoration features: (1) deepening the ship channel from 45 to 52 feet, (2) adding 200 foot barge shelves across Corpus Christi Bay, (3) widening the ship channel to 530 feet from Port Aransas to the Harbor Bridge, (4) extending the La Quinta Channel approximately 1.4 miles and (5) constructing ecosystem restoration features to protect endangered species, wetlands and seagrass. In December 2009, the US Army Corps of Engineers awarded the first construction contract associated with the extension of the La Quinta Channel. This contract for \$1.1 million will construct a 126-acre dredge material placement area for containment of sands and clay excavated to create the La Quinta Channel extension. This contract award is for the first of several construction projects required to complete the \$75 million plan to construct the La Quinta Channel Extension. Total improvements will cost approximately \$500 million. This project will be funded with both federal and Port dollars.

### ***La Quinta Multi-Purpose Facility***

In December 2009, in addition to moving forward with the planned dredging of La Quinta Extension, the Authority approved a professional services agreement to design the initial phase of a multi-purpose dock and terminal project to be constructed on the Authority's 1,000 acre La Quinta property site for which the La Quinta channel extension will serve. The multi-purpose dock and terminal facility will be designed to handle a wide variety of general cargo including containers, military, wind turbines, steel pipe, and more. The preliminary engineering for full build out has been completed. The final design for the initial 800 foot to 1,000 foot dock will provide the necessary information to define costs and determine completion schedules is ready to begin with the goal of being ready to solicit bids for the first phase of construction by late 2011.

## **MAJOR INITIATIVES - 2010**

### ***Environmental Management System***

Through the Authority's Environmental Management System (EMS), the Authority is a community leader for its proactive efforts and voluntary emissions reductions. Along with the Texas A&M University Pollution Prevention Partnership, the Authority continues to host and promote numerous Auto Check events to detect pollution emitting vehicles, inform vehicle operators if their vehicle is polluting and provide repair assistance for polluting vehicles. The Authority is also a leader in voluntary energy consuming reduction initiatives, propane powered yard equipment and idling reductions, all overseen by the Authority's EMS program. The Authority's program is in its 4<sup>th</sup> year of ISO 14001 certification and its 6<sup>th</sup> year of implementation. Each year, the program must undergo a detailed external audit to get ISO 14001 certified. The EMS program is overseen by a team of Authority employees from different departments and manages the environmental issues associated with our operations. In the 6 years of implementation, the program has identified numerous significant aspects impacted the environment. Of those, most have been managed to the point that the impact has been reduced significantly. Employees are continuing to come up with better ideas to manage and reduce our environmental footprint.

### ***U.S. Naval Station Ingleside Facility***

In 2005, Congress passed Base Realignment and Closure (BRAC) legislation that would close down Navy operations at Naval Station Ingleside (NSI) and revert the entire base to the Authority. The official reversion took place on April 30, 2010. To celebrate the reversion and to open the doors of NSI to the community, the Authority hosted Sail South Texas 2010, an International Tall Ship event, during the 4<sup>th</sup> of July weekend. The event was free to the public and recorded about 40,000 visitors during the four day weekend.

The main base consists of 483 acres of upland property, which provided facilities and support for approximately 2000 military personnel. The maritime portion of the base includes an 1100-foot concrete pier and over 2400 feet of wharf space. This premier property is located next to the Authority's 45 foot deep main ship channel and less than 10 miles from the Gulf of Mexico. The Authority continues its master planning to help assess and market what would be the best use for a total of 1012 acres comprised of Naval Station Ingleside property and adjacent Authority green field property. The Authority continues its work on extensive outreach with the citizens of the Coastal Bend and to dialogue about what the base could become in the near future.

### ***Military Cargo and Layberth***

The Authority continues to serve as a Military Strategic Seaport for the Department of Defense. The Authority is used by the military on an intermittent basis under the direction of the Army's 842<sup>nd</sup> Transportation Battalion from Beaumont, Texas, which continues to maintain administrative office space on the port. Increased commercial cargo shipments through the port have required large portions of the terminal yards used for military deployments. A new 24.5 acre yard on the north side of the inner harbor was constructed to support future military deployments and commercial cargos. The Authority served as the home port for the USNS Benavidez throughout 2010. Due to the importance of military presence in the Gulf of Mexico, the port continues to pursue a full-time military presence to be stationed at the Authority.

### ***Wind Turbines***

Texas continues to be the leader in the nation for the development of wind power projects. Through the port of Corpus Christi we have handled the components for the most important European developers. We've increased our participation through the handling of Asian wind manufacturers. The three Class I railroads allow wind companies to transport their wind components to and from our port to any State in the Union. Simultaneously, our non congested access to our docks as well as to the interstate freeway systems allows for cost reduction to the wind developers. In addition, with over 100 acres of staging area, we can accommodate any number of turbine components. E-On concluded their Papalote phase II project and soon will start developing two additional ones not far from these port premises. Port of Corpus Christi continues to excel in providing the best transportation systems to the wind manufacturers and it is an active member of the American Wind Energy Association (AWEA).

### ***Las Brisas Energy Center***

In 2008, Las Brisas Energy Center, LLC, selected the Northside of the Authority's Inner Harbor as the site for the development of a state-of-the-art electric generating facility. With an initial investment of \$3 billion dollars, Las Brisas Energy Center, LLC, received its Air Permit from the State of Texas Commission of Environmental Quality (TCEQ). The circulating fluidized bed (CFB) facility was designed to minimize the environmental impact and to be clean and efficient. It is expected to create about 1,300 direct jobs and 2,600 indirect jobs during the construction phase. Project completion is expected by early 2014, creating from 80 to 100 direct and 150 to 175 indirect jobs once operating.

### ***On-going Construction Projects and Marketing Efforts***

Projects that carry over into 2011 include several Security Grant projects that will add additional thermal imaging cameras at the oil docks and general cargo areas, the installation of radar and sonar equipment in the inner harbor that will be integrated with existing equipment at the Security Center utilizing new command and control programs. New main entrance gates are also planned at the North side cargo and oil dock area, Viola Turning Basin Oil Docks and at the Bulk Terminal.

In addition, at the Bulk Terminal several upgrades to the material handling equipment will take place in 2011 to include the extension of the boom on the gantry crane by 10 feet and the ability to increase its digging depth by 10 feet, the upgrade of the programmable logic controller on the Bulk Dock 2 shiploader, and various conveyor system and rail upgrades to help handle new coal cargos that will be exported through the Port of Corpus Christi. .

Another significant rail project that is being designed is a new rail interchange yard at the west end of the inner harbor on the north side of the channel adjacent to the Viola Channel. The Viola Channel Interchange Yard will be capable of more efficiently handling the increasing number of unit trains and cars loading and unloading cargos at the Port. This will be on 36 acres of property currently owned by the Authority. Additional projects that will carry over and be completed in early 2011 are the installation of an emergency generator at the Annex Building, and fire pressurization improvements at the Avery Point Oil Docks, the reconstruction of Navigation Blvd., additional paving of open storage yards and rail sidings, the replacement of the Bulkhead at the Viola Turning Basin, hoist and gangway support improvements at the Avery Point oil docks, and the repowering of the Bulk Terminal locomotive switch engine.

The growth of the Authority's cargo tonnage is focus on its cargo diversification efforts. With the reorganization of the Business Development Department in 2009, the Authority continues a more aggressive marketing effort identifying new business opportunities in new markets. The Business Development Department has a clear mandate, to diversify and obtain additional cargoes/clients to the Port. In 2010, the new team continued the efforts to meet with innumerable freight forwarders, shipping agents and shipping lines. This trend will continue throughout the next years within a 400 mile radius from the port. Thus, bulk cargoes, general cargoes have been incremented by thousands of tons. In addition, the department has eagerly pursued the prospect/establishment of a regular shipping line/service to link our port with ports in Mexico, Central and South America intended to initiate the latter part of 2011.

## **AWARDS AND ACKNOWLEDGMENTS**

### **Awards**

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the Port of Corpus Christi Authority of Nueces County, Texas, for its Comprehensive Annual Financial Report (CAFR) for the fiscal year ended December 31, 2009. This was the twenty-seventh consecutive year that the Authority has received this prestigious award. In order to be awarded a Certificate of Achievement, a governmental unit must publish an easily readable and efficiently organized comprehensive annual financial report. This report satisfied both generally accepted accounting principles and applicable legal requirements. A Certificate of Achievement for Excellence in Financial Reporting is valid for a period of one year only. We believe our current comprehensive annual financial report continues to meet the Certificate of Achievement Program's requirements and we are submitting it to the GFOA to determine its eligibility for another certificate.

### **Acknowledgments**

The preparation of this comprehensive annual financial report would not have been possible without the efficient and dedicated services of the entire staff of the Authority's Accounting Department. We would like to express our appreciation to all members of the department who assisted and contributed to the preparation of this report. Credit also must be given to the Port Commission for their unfailing support for maintaining the highest standards of professionalism in the management of the Authority.

Respectfully Submitted,

John P. LaRue  
Executive Director

Dennis J. DeVries  
Director of Finance

# Certificate of Achievement for Excellence in Financial Reporting

Presented to

Port of Corpus Christi  
Authority of Nueces County  
Texas

For its Comprehensive Annual  
Financial Report  
for the Fiscal Year Ended  
December 31, 2009

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.

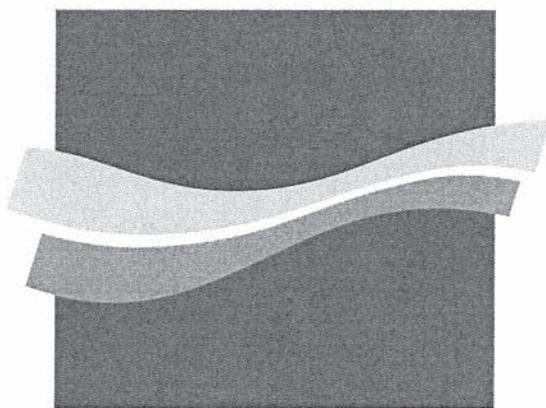


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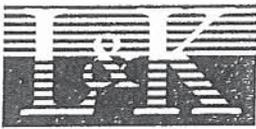
President

A handwritten signature in black ink, appearing to read "Jeffrey R. Emer".

Executive Director



PORT**CORPUSCHRISTI**



# Lovvorn & Kieschnick

CERTIFIED PUBLIC ACCOUNTANTS

418 Peoples Street, Suite 308 tele 361-884-8897  
Corpus Christi, TX 78401 fax 361-884-3457

## INDEPENDENT AUDITOR'S REPORT

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

We have audited the accompanying statements of net assets of the Port of Corpus Christi Authority of Nueces County, Texas (the Authority), as of December 31, 2010 and 2009 and the related statements of revenues, expenses and changes in net assets, and cash flows for the years then ended, which collectively comprise the Authority's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the Authority's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Port of Corpus Christi Authority, as of December 31, 2010 and 2009, and the respective changes in net assets and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated April 5, 2011 on our consideration of the Port of Corpus Christi Authority's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations and contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral

part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and the other required supplementary information on pages 3 through 10 and 32 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Authority's basic financial statements. The introductory section, supplemental schedules, and statistical section listed in the table of contents are presented for purposes of additional analysis and are not a required part of the financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* and is also not a required part of the financial statements of the Authority. The supplemental schedules and the schedule of expenditures of federal awards are the responsibility of management and were derived from and related directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole. The introductory and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we do not express an opinion or provide any assurance on them.

*Lovvorn & Kieschnick, LLP*

Lovvorn & Kieschnick, LLP  
April 5, 2011

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**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS  
Management's Discussion and Analysis (Unaudited)  
December 31, 2010**

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As management of the Port of Corpus Christi of Nueces County, Texas (Authority), we offer readers as an introduction to the Authority's financial statements, this narrative overview and analysis of the Authority's activities and financial performance for the years ended December 31, 2010 and 2009. This discussion and analysis is designed to assist the reader in focusing on the significant financial issues and activities and to identify any significant changes in financial position. We encourage readers to consider the information presented here in conjunction with Authority's financial statements taken as a whole. All amounts, unless otherwise indicated, are expressed in whole dollars.

**FINANCIAL HIGHLIGHTS**

- The net assets of the Authority at December 31, 2010 were \$353,199,270. Of this amount, \$29,800,913 is considered unrestricted net assets, and may be used to meet the Authority's current ongoing obligations to employees and creditors.
- The Authority's total net assets increased \$116,609,050 or 149.3% over the prior year. Income before contributions produced an increase in net assets of \$4,938,350, while capital contributions provided an increase of \$111,670,700.
- The Authority's total debt decreased by \$1,220,363 in 2010, the result of scheduled debt service payments.

**OVERVIEW OF THE FINANCIAL STATEMENTS**

The Authority's basic financial statements are comprised of the financial statements and the notes to the financial statements. The basic financial statements can be found on pages 11 through 31 of this report. Since the Authority is comprised of a single enterprise fund, no fund level financial statements are shown. This report also contains other supplementary information in addition to the basic financial statements themselves.

**Basic Financial Statements**

The basic financial statements are designed to provide readers with a broad overview of the Authority's finances, in a manner similar to a private-sector business. These statements offer short and long-term financial information about its activities.

The Statement of Net Assets includes all of the Authority's assets and liabilities, and provides information about the nature and amounts of investments in resources (assets) and the obligations to Authority creditors (liabilities). The assets and liabilities are presented in a format, which distinguishes between current and long-term assets and liabilities. Net assets increase when revenues exceed expenses. An increase in assets without a corresponding increase to liabilities, results in increased net assets, which indicates an improved financial position.

The Statements of Revenues, Expenses, and Changes in Fund Net Assets accounts for all of the Authority's current year's revenues and expenses. All changes in net assets are reported as soon as the underlying event occurs, regardless of timing of related cash flows. Thus revenues and expenses are reported in this statement for some items that will only result in cash flows in future periods (e.g., earned but unused vacation leave).

The Statement of Cash Flows primary purpose is to provide information about the Authority's cash receipts and cash payments during the reporting period. The statement reports cash receipts, cash payments, and net changes in cash resulting from operations, investing and financing activities and provides answers to such questions as where did cash come from, what was cash used for, and what was the change in cash balance during the reporting period.

The notes provide additional information that is essential to a full understanding of the data provided in the financial statements.

**Other Information**

In addition to the financial statements and accompanying notes, this report also presents certain *required supplementary information* and other *supplemental information*. Statistical information presented on a multi-year basis and other information including disclosures for compliance with the Securities and Exchange Commission Rule 15c2-12 are presented for the purpose of additional

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analysis and are not a required part of the basic financial statements. Statistical and other information can be found on pages 39 through 69 of this report.

**FINANCIAL ANALYSIS**

The fundamental question that is most asked of business is, as a whole "Are you better off or worse off as a result of the year's activities?" The Statement of Net Assets, and the Statements of Revenues, Expenses, and Changes in Net Assets report information about the Authority's activities in a way that will help answer this question. These two statements report the net assets of the Authority and changes in them. You can think of the Authority's net assets – the difference between assets and liabilities – as one way to measure financial health or financial position. Over time, increases or decreases in the Authority's net assets are one indicator of whether its financial health is improving or deteriorating.

**Statement of Net Assets**

The Statement of Net Assets serves over time as a useful indicator of the Authority's financial health or position. It distinguishes assets and liabilities as to their expected use for operations, restricted purposes and capital investment.

The following condensed Statement of Net Assets provides an overview of the Authority's net assets as of December 31, 2010, 2009 and 2008:

	2010	2009	2008	2010-09 Change	2009-08 Change
<b>Assets</b>					
Current assets	\$ 38,695,155	\$ 27,595,569	\$ 31,944,820	\$ 11,099,586	\$ (4,349,251)
Restricted assets	1,927,662	1,747,632	1,756,683	180,030	(9,051)
Capital assets	341,020,588	233,222,853	225,460,257	107,797,735	7,762,596
Other non-current assets	960,804	2,759,234	4,110,059	(1,798,430)	(1,350,825)
<b>Total Assets</b>	<b>382,604,209</b>	<b>265,325,288</b>	<b>263,271,819</b>	<b>117,278,921</b>	<b>2,053,469</b>
<b>Liabilities</b>					
Current liabilities	9,361,529	6,915,890	5,681,364	2,445,639	1,234,526
Long-term debt, net of current portion	7,331,640	8,607,003	9,822,038	(1,275,363)	(1,215,035)
Deferred income, net of current portion	10,489,407	10,946,447	11,403,487	(457,040)	(457,040)
Other liabilities	2,222,363	2,265,728	2,269,920	(43,365)	(4,192)
<b>Total Liabilities</b>	<b>29,404,939</b>	<b>28,735,068</b>	<b>29,176,809</b>	<b>669,871</b>	<b>(441,741)</b>
<b>Net Assets</b>					
Invested in capital assets, net of related debt	321,470,695	211,984,713	202,587,244	109,485,982	9,397,469
Restricted	1,927,662	1,747,632	1,756,683	180,030	(9,051)
Unrestricted	29,800,913	22,857,875	29,751,083	6,943,038	(6,893,208)
<b>Total Net Assets</b>	<b>\$ 353,199,270</b>	<b>\$ 236,590,220</b>	<b>\$ 234,095,010</b>	<b>\$ 116,609,050</b>	<b>\$ 2,495,210</b>

**2010 – 2009**

The Authority's assets exceeded its liabilities at the close of 2010 by \$353,199,270. This is an increase over 2009 of \$116,609,050. By far, the largest portion of the Authority's net assets (91.0%) reflects its investment in capital assets, less related debt used to acquire those assets that is still outstanding. The Authority uses these capital assets to provide services to its customers and consequently, these assets are not available for future spending. Although the Authority's investment in capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities. An additional portion of the Authority's net assets (0.6%) represents resources that are subject to external legal restrictions on how they may be used. The remaining balance of unrestricted net assets (8.4%) may be used to meet the Authority's ongoing obligations to employees and creditors.

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**2009 – 2008**

The Authority's assets exceeded its liabilities at the close of 2009 by \$236,590,220. This is an increase over 2008 of \$2,495,210. By far, the largest portion of the Authority's net assets (89.6%) reflects its investment in capital assets, less related debt used to acquire those assets that is still outstanding. The Authority uses these capital assets to provide services to its customers and consequently, these assets are not available for future spending. Although the Authority's investment in capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities. An additional portion of the Authority's net assets (0.7%) represents resources that are subject to external legal restrictions on how they may be used. The remaining balance of unrestricted net assets (9.7%) may be used to meet the Authority's ongoing obligations to employees and creditors.

**Statements of Revenues, Expenses, Change in Net Assets**

The Statements of Revenues, Expenses, and Change in Net Assets serve as a measure to determine how successful the Authority was during the past year in recovering its costs through its user fees and other charges, as well as to its profitability and credit worthiness. The following Statements of Revenues, Expenses, and Change in Net Assets summarize the operations of the Authority for the years ended December 31, 2010, 2009 and 2008:

	2010	2009	2008	2010-09 Variance	2009-08 Variance
<b>Revenues</b>					
Operating revenues:					
Wharfage	\$ 26,567,587	\$ 24,826,670	\$ 26,359,823	\$ 1,740,917	\$ (1,533,153)
Dockage	8,138,326	7,319,259	7,078,197	819,067	241,062
Security fees	6,170,288	3,412,485	3,474,748	2,757,803	(62,263)
Freight handling	2,316,667	2,428,621	2,178,423	(111,954)	250,198
Building and land rentals	4,417,518	3,924,060	4,318,458	493,458	(394,398)
Conference center services	1,679,885	2,007,407	1,451,630	(327,522)	555,777
Warehouse handling charges	426,093	596,168	1,367,306	(170,075)	(771,138)
FTZ user fees	337,000	326,000	284,500	11,000	41,500
Other	2,226,488	1,585,220	4,538,108	641,268	(2,952,888)
<b>Total operating revenues</b>	<b>52,279,852</b>	<b>46,425,890</b>	<b>51,051,193</b>	<b>5,853,962</b>	<b>(4,625,303)</b>
Interest revenue	478,291	584,849	932,447	(106,558)	(347,598)
Federal and other grant assistance	60,806	17,570	-	43,236	17,570
Federal funds received as fiscal agent	-	-	284,048	-	(284,048)
Donation of NSI personal property	225,825	-	-	225,825	-
Gain(Loss) on disposal of capital assets	(8,643)	7,266	(308,883)	(15,909)	316,149
<b>Total Revenues</b>	<b>53,036,131</b>	<b>47,035,575</b>	<b>51,958,805</b>	<b>6,000,556</b>	<b>(4,923,230)</b>
<b>Expenses</b>					
Operating expenses:					
Maintenance and operations	20,391,570	20,854,315	21,842,912	(462,745)	(988,597)
General and administrative	15,079,752	15,191,213	13,007,565	(111,461)	2,183,648
Depreciation	12,165,114	10,060,645	9,648,639	2,104,469	412,006
<b>Total operating expenses</b>	<b>47,636,436</b>	<b>46,106,173</b>	<b>44,499,116</b>	<b>1,530,263</b>	<b>1,607,057</b>
Interest expense and fiscal charges	450,602	504,030	562,442	(53,428)	(58,412)
Fiscal payments to subrecipients	-	-	284,048	-	(284,048)
Amortization of bond issuance costs	10,743	20,735	28,615	(9,992)	(7,880)
<b>Total Expenses</b>	<b>48,097,781</b>	<b>46,630,938</b>	<b>45,374,221</b>	<b>1,466,843</b>	<b>1,256,717</b>
<b>Income (Loss) Before Contributions</b>	<b>4,938,350</b>	<b>404,637</b>	<b>6,584,584</b>	<b>4,533,713</b>	<b>(6,179,947)</b>
Capital Contributions	111,670,700	2,090,573	2,510,746	109,580,127	(420,173)
<b>Changes in Net Assets</b>	<b>116,609,050</b>	<b>2,495,210</b>	<b>9,095,330</b>	<b>114,113,840</b>	<b>(6,600,120)</b>
Total Net Assets, Beginning of Year	236,590,220	234,095,010	224,999,680	2,495,210	9,095,330
<b>Total Net Assets, End of Year</b>	<b>\$ 353,199,270</b>	<b>\$ 236,590,220</b>	<b>\$ 234,095,010</b>	<b>\$ 116,609,050</b>	<b>\$ 2,495,210</b>

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**Revenues**

**2010 – 2009**

Operating revenues in 2010 increased by \$5,853,962 or 12.6% from 2009. The most significant increase was in security fees of \$2.8 million over 2009. In April, a harbor safety fee was imposed to assist in offsetting the costs of the Authority's marine patrol unit, and this fee has generated \$2.5 million in 2010. In addition, wharfage revenues increased \$1.7 million in 2010, and of this increase, \$1.5 million was at the public and private oil docks. This increase is largely attributed to an increase in the movement of petroleum products of 7.5% over 2009. An increase in vessel traffic of 12% has also led to an increase in dockage fees of \$819 thousand. Other revenues increased \$641 thousand. Fireboat fees in 2010 increased by \$185 thousand compared to 2009. In 2009, the Authority's fire fighting response vessel sustained damage and was out of service for three months. In addition, the Authority received insurance reimbursement of \$350 thousand in 2010 to offset these damage repairs made in 2009.

**2009 – 2008**

Operating revenues in 2009 decreased by \$4,625,303 or 9.1% from 2008. The most significant decrease was in other revenues of \$3.0 million from 2008. The Authority periodically receives disposal fees for the placement of dredge material in the Authority's dredge disposal placement areas by customers who perform maintenance dredging along their docks. In 2009, the Authority saw a significant decline in this maintenance dredging activity by our customers from 2008 that resulted in a drop in disposal fee revenue of \$2.5 million. In addition, wharfage revenues declined \$1.5 million in 2009. The movement of petroleum products in 2009 dropped 8%, and as a result, wharfage revenues at both the public and private oil docks were down \$1.2 million. Another factor in the decrease in revenues was the drop in warehouse handling charges of \$771 thousand from 2008. The Authority ceased operations of the refrigerated warehouse and leased the facility in July, 2009.

**Expenses**

**2010 – 2009**

Operating expenses in 2010 increased \$1,530,263 or 3.3% over 2009. In April 2010, Naval Station Ingleside (NSI) reverted to the Authority and the costs of the facility have been the most significant factor for the increase in expenses. The major cost increases at NSI are as follows:

● Maintenance	\$ 844,785
● Utilities	612,248
● Insurance	366,443
● Security services	268,939
● Depreciation	1,911,663

The Authority has made an effort to reduce or maintain expenditure levels in 2010 to offset the impact of NSI. The Authority implemented an early retirement program and a reduction in force, eliminating 10 full time positions, and made reductions in administrative overhead costs. Major maintenance project expenses decreased \$1.9 million, partly due to budget reductions, but also to the Authority's cost share in 2009 of \$1.1 million for the maintenance dredging of Jewell Fulton and La Quinta channels by the U.S. Army Corp of Engineers.

**2009 – 2008**

Operating expenses in 2009 increased \$1,607,057 or 3.6% over 2008. A major factor in this increase was professional services which increased \$1.4 million over 2008. In 2009, the Authority incurred additional costs associated with the site restoration and remediation of the crude oil tank farms located on Harbor Island; the Authority also engaged Texas A&M University to act as the Authority's master developer of the Naval Station Ingleside land that will revert to the Authority on May 1, 2010. In addition, the Authority is in

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pursuit of the designation as a cotton delivery point and has incurred associated legal and consulting costs. Employee services costs increased \$418 thousand as a result of a COLA given to employees in 2009, coupled with costs associated with two newly created deputy port director positions. These increases were partially offset by a reduction in the Authority's self-funded medical and dental costs in 2009. A reduction in employee services costs associated with the leasing of our refrigerated warehouse facility were also offset by the hiring of additional police officers to support the Authority's new marine patrol unit. The Authority also recorded increases in business and community development expenses for service contracts with area economic development corporations, public relations expenses for a new public relations media campaign, utilities costs and depreciation, collectively totaling \$1.2 million. These increases were however offset by a decrease in maintenance expenses of \$1.2 million. Contracted labor services also fell by \$432 thousand as a result of leasing the Authority's refrigerated warehouse facility midway through 2009.

**Capital Grants and Contributions**

**2010 – 2009**

Capital grants and contributions increased by \$109,580,127 from 2009. The Authority is the recipient of a number of federal and state grants from a variety of programs. These grant funds are recorded on the basis of project expenditures made. As projects are advanced and expenditures incurred, grant funds are requested on a reimbursement basis and then recognized. In addition to the receipt of capital grants, the Authority was the recipient of the Naval Station Ingleside properties when the base was closed by the Base Realignment and Closure Commission in April. Major capital grants and contributions at December 31, 2010 include the following:

● Donation of Naval Station Ingleside	\$ 101,671,427
● Security Enhancements	5,024,930
● Joe Fulton International Trade Corridor	4,974,343

**2009 – 2008**

Capital grants and contributions decreased by \$420,173 from 2008. The Authority is the recipient of a number of federal and state grants from a variety of programs. These grant funds are recorded on the basis of project expenditures made. As projects are advanced and expenditures incurred, grant funds are requested on a reimbursement basis and then recognized. Major capital grants and contributions at December 31, 2009 include the following:

● Security Enhancements	\$ 1,090,573
● Coastal Impact-Pelican Shoreline Erosion	1,000,000

**CAPITAL ASSETS AND DEBT ADMINISTRATION**

**Capital Assets**

**2010 – 2009**

The Authority's investment in capital assets as of December 31, 2010, amounts to \$341,020,588 (net of accumulated depreciation). This investment in capital assets includes port facilities, elevator and bulk terminal facilities, machinery and equipment, property and buildings, furniture and equipment, intangibles and construction in progress. This amount represents a net increase (additions net of retirements and depreciation) of \$107,797,735 or 46.2%. Additional information regarding the Authority's capital assets can be found in Note 4 to the financial statements on page 21.

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Major capital asset additions during 2010 include the following:

● Naval Station Ingleside	\$ 101,671,427
● Shoreline Erosion Protection-Pelican Island	1,245,114
● Renovations of Oil Dock Houses	705,771
● Purchase of security boats	669,350
● Improvements to the Bulk Loader	611,821

**Capital Assets**

**2009 – 2008**

The Authority's investment in capital assets as of December 31, 2009, amounts to \$233,222,853 (net of accumulated depreciation). This investment in capital assets includes port facilities, elevator and bulk terminal facilities, machinery and equipment, property and buildings, furniture and equipment, and construction in progress. This amount represents a net increase (additions net of retirements and depreciation) of \$7,762,596 or 3.4%. Additional information regarding the Authority's capital assets can be found in Note 4 to the financial statements on page 21.

Major capital asset additions during 2009 include the following:

● North Bank Open Storage Area	\$ 5,484,905
● Conference Center Roof Replacement	459,357
● Oil Dock 12 Upgrades	411,776
● Install Secondary Oil Containment Pans at Oil Docks	395,146

The following table summarizes the Authority's capital assets (net of accumulated depreciation) as of December 31, 2010, 2009 and 2008:

	2010	2009	2008	2010-09 Change	2009-08 Change
<b>Capital assets, not being depreciated:</b>					
Land	\$ 60,346,608	\$ 40,215,339	\$ 40,215,339	\$ 20,131,269	\$ -
Channel & waterfront improvements	18,868,431	18,868,431	18,868,431	-	-
Intangibles	50,000	50,000	50,000	-	-
Construction in progress	30,866,201	16,898,775	6,873,834	13,967,426	10,024,941
	110,131,240	76,032,545	66,007,604	34,098,695	10,024,941
<b>Capital assets, being depreciated:</b>					
Port facilities	135,604,906	91,029,637	94,173,467	44,575,269	(3,143,830)
Buildings & improvements	82,744,445	51,991,005	49,221,531	30,753,440	2,769,474
Machinery and equipment	12,374,198	13,803,430	15,431,342	(1,429,232)	(1,627,912)
Intangibles	165,799	366,236	626,313	(200,437)	(260,077)
	230,889,348	157,190,308	159,452,653	73,699,040	(2,262,345)
<b>Net Capital Assets</b>	<b>\$ 341,020,588</b>	<b>\$ 233,222,853</b>	<b>\$ 225,460,257</b>	<b>\$ 107,797,735</b>	<b>\$ 7,762,596</b>

**Long-term Debt**

As of December 31, 2010, the Authority had long-term debt outstanding of \$8,596,640. This amount is comprised of general revenue bonds. The Authority's debt decreased through its annually scheduled debt service payments during 2010 and 2009. Additional information regarding the Authority's long-term debt can be found in Note 6 to the financial statements on page 23. The following table summarizes the Authority's long-term debt outstanding as of December 31, 2010, 2009 and 2008:

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS  
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	2010	2009	2008	2010-09 Change	2009-08 Change
General revenue bonds	\$ 8,596,640	\$ 9,817,003	\$ 10,982,038	\$ (1,220,363)	\$ (1,165,035)
<b>Total Long-term Debt</b>	<b>\$ 8,596,640</b>	<b>\$ 9,817,003</b>	<b>\$ 10,982,038</b>	<b>\$ (1,220,363)</b>	<b>\$ (1,165,035)</b>

The Authority maintains an A3 rating from Standard and Poor's Corporation and an A rating from Moody's Investor Service on its' general revenue bonds. In accordance with the Authority's general revenue bond covenants, the Authority is required to maintain a revenue bond coverage of at least 1.25 times the average debt service requirements of its' general revenue bonds. As of December 31, 2010 the Authority's revenue bond coverage was 10.51 times, compared to 6.58 times as of December 31, 2009.

**ECONOMIC OUTLOOK**

The results of 2010 saw an improvement over 2009. The Authority saw an increase in both tonnage throughput and ship/barge activity over 2009. This equated into an increase in both wharfage and dockage revenues over 2009. Coupled with this increase, we felt the positive effects of the implementation of the new Harbor Safety Fee that provided for funding assistance to cover security related costs associated with the Authority's Marine Patrol Unit. The Authority was also able to control expenses through the implementation of an early retirement program and a reduction in force, the re-evaluation of staffing needs for the marine patrol security division, and a reduction in administrative overhead expenses.

The Authority reviews its tariff structure on a continuous basis, as well as it looks to ways to reduce its overall operating costs while fulfilling its mission as the primary economic catalyst of the region. During 2010, the Authority continued to work on a number of diversification initiatives that will be carried forward over the next few years. These initiatives include the following:

- The Authority continues moving forward with the development of its state-of-the-art container and multipurpose facility, La Quinta Trade Gateway Terminal. Goldston Engineering, a CH2M HILL Company, and Lockwood, Andrews & Newman, Inc. finalized the engineering design of the initial phase of the facility providing necessary information to define costs to be ready to solicit bids in 2011.
- To maximize productivity of its facilities, the Authority continued its efforts to find an operator to lease its Cold Storage Facility.
- The Authority continues to serve as a Military Strategic Deployment Port. In 2010, the Authority continued the identification and improvements of additional acres of all-weather cargo staging area for future military deployments and redeployments. A new 24.5 acre yard on the north side of the inner harbor was constructed to support future military deployments and commercial cargos. The Authority served as the home port for the USNS Benavidez throughout 2010.
- The Authority continues to support the growing wind turbine business by making improvements to expand its handling capacity of turbine parts along the North and South sides of the channel and continues a strong marketing promotion of the Authority in that sector.
- The Authority received the U. S. Naval Station Ingleside property as part of the Base Realignment and Closure (BRAC) legislation of 2005 to the Authority. The facility reverted to the Authority on April 30, 2010, including a 1,100-foot concrete pier and over 2,400 feet of wharf space. The Authority continues its master planning to help assess and market what would be the best use for a total of 1,012 acres comprised of Naval Station Ingleside property and adjacent Authority green field property.
- The Authority continues working with Las Brisas Energy Center, LLC, for the development of a state-of-the-art electric generating facility in the north side of the Inner Harbor. Las Brisas Energy Center, LLC, received its Preliminary Air Permit

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**PORT OF CORPUS CHRISTI AUTHORITY  
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from the State of Texas Commission of Environmental Quality (TCEQ) in fall of 2009. The circulating fluidized bed (CFB) facility was designed to minimize the environmental impact and to be clean and efficient. With an investment of \$3 Billion approx., it is expected to create about 1,300 direct jobs and 2,600 indirect jobs during the construction phase. Project completion is expected by early 2014, creating from 80 to 100 direct and 150 to 175 indirect jobs once operating. The Authority entered into a ground lease with Las Brisas Energy Center, LLC on December 8, 2009 for 82.48 acres of land located on the northside of the ship channel immediately west of the Authority's Bulk Terminal for the construction of the new electric generating facility.

- The future looks bright for the Authority's Bulk Terminal and to accommodate its growth, several upgrades to the facility and its material handling equipment will take place in 2011. The various conveyor system and rail upgrades will support the exports of new coal cargos to Asia, Europe and Latin America.
- The Authority began the design of its new rail interchange yard. A significant project to support the growth of rail movements through the port. The new yard will be located at the west end of the inner harbor on the north side of the channel adjacent to the Viola Channel. The Viola Channel Interchange Yard will be capable of more efficiently handling the increasing number of unit trains and cars loading and unloading cargos at the Port.

#### **REQUESTS FOR INFORMATION**

This financial report is designed to provide a general overview of the Authority's finances for all those with an interest in its finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Authority's Director of Finance, 222 Power Street, Corpus Christi, TX 78401.

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

**Statement of Net Assets  
December 31, 2010 and 2009**

	<u>2010</u>	<u>2009</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (Note 2)	\$ 19,776,587	\$ 18,402,382
Cash and cash equivalents-restricted (Note 2)	6,604	5,588
Investments (Note 2)	5,490,614	-
Accounts receivable (net of allowance for doubtful accounts of \$52,463 and \$137,730 for 2010 and 2009, respectively)	6,895,702	4,943,161
Interest receivable	4,031	-
Intergovernmental receivable	3,700,172	1,723,932
Notes receivable, current portion (Note 3)	831,827	770,210
Inventory	846,071	793,052
Prepaid expenses	1,143,547	957,244
<i>Total Current Assets</i>	<u>38,695,155</u>	<u>27,595,569</u>
<b>NON-CURRENT ASSETS:</b>		
<b>RESTRICTED ASSETS:</b>		
Cash and cash equivalents (Note 2)	1,704,468	1,747,632
Other assets (Note 11)	223,194	-
<i>Total Restricted Assets</i>	<u>1,927,662</u>	<u>1,747,632</u>
<b>CAPITAL ASSETS:</b>		
Capital assets, not being depreciated (Note 4)	110,131,240	76,032,545
Capital assets, being depreciated, net (Note 4)	230,889,348	157,190,308
<i>Capital Assets, Net</i>	<u>341,020,588</u>	<u>233,222,853</u>
<b>OTHER NON-CURRENT ASSETS:</b>		
Notes receivable, net of current portion (Note 3)	960,804	2,748,491
Bond issuance costs, net of accumulated amortization	-	10,743
<i>Total Other Non-Current Assets</i>	<u>960,804</u>	<u>2,759,234</u>
<i>Total Non-Current Assets</i>	<u>343,909,054</u>	<u>237,729,719</u>
<b>TOTAL ASSETS</b>	<u>382,604,209</u>	<u>265,325,288</u>
<b>LIABILITIES AND NET ASSETS</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	3,947,099	2,548,270
Accrued expenses	681,907	835,657
Deferred income	1,951,004	669,969
Deferred lease income, current portion (Note 6)	457,040	457,040
Current maturities of long-term debt (Note 6)	1,265,000	1,210,000
Accrued interest payable	34,034	38,391
Capital leases, current portion (Note 6)	9,764	17,099
Compensated absences, current portion (Note 6)	1,009,077	1,133,876
Current restricted liabilities payable from restricted current assets	6,604	5,588
<i>Total Current Liabilities</i>	<u>9,361,529</u>	<u>6,915,890</u>
<b>NON-CURRENT LIABILITIES:</b>		
Long-term debt, net of current maturities (Note 6)	7,331,640	8,607,003
Deferred lease income, net of current portion (Note 6)	10,489,407	10,946,447
Capital leases, net of current portion (Note 6)	521	10,285
Compensated absences, net of current portion (Note 6)	1,933,491	2,102,894
Net OPEB obligation (Note 8)	288,351	152,549
<i>Total Non-Current Liabilities</i>	<u>20,043,410</u>	<u>21,819,178</u>
<b>TOTAL LIABILITIES</b>	<u>29,404,939</u>	<u>28,735,068</u>
<b>NET ASSETS:</b>		
Invested in capital assets, net of related debt	321,470,695	211,984,713
Restricted:		
Debt service	1,671,617	1,671,484
Channel improvements	225	225
Other assets (Note 11)	223,194	-
Law enforcement	32,626	75,923
Unrestricted	29,800,913	22,857,875
<b>TOTAL NET ASSETS</b>	<u>\$ 353,199,270</u>	<u>\$ 236,590,220</u>

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

**Statement of Revenues, Expenses  
and Changes in Net Assets  
For the Years Ended December 31, 2010 and 2009**

	2010	2009
<b>OPERATING REVENUES:</b>		
Wharfage	\$ 26,567,587	\$ 24,826,670
Dockage	8,138,326	7,319,259
Security fees	6,170,288	3,412,485
Freight handling	2,316,667	2,428,621
Building and land rentals	4,417,518	3,924,060
Conference center services	1,679,885	2,007,407
Warehouse handling charges	426,093	596,168
FTZ user fees	337,000	326,000
Other	2,226,488	1,585,220
<i>Total Operating Revenues</i>	<u>52,279,852</u>	<u>46,425,890</u>
<b>OPERATING EXPENSES:</b>		
Maintenance and operations	20,391,570	20,854,315
General and administrative	15,079,752	15,191,213
Depreciation	12,165,114	10,060,645
<i>Total Operating Expenses</i>	<u>47,636,436</u>	<u>46,106,173</u>
<i>Operating Income</i>	<u>4,643,416</u>	<u>319,717</u>
<b>NON-OPERATING REVENUES (EXPENSES):</b>		
Interest revenue	478,291	584,849
Federal and other grant assistance	60,806	17,570
Donation of NSI personal property	225,825	-
Gain (loss) on disposal of capital assets	(8,643)	7,266
Interest expense and fiscal charges	(450,602)	(504,030)
Amortization of bond issuance costs	(10,743)	(20,735)
<i>Net Non-Operating Revenues</i>	<u>294,934</u>	<u>84,920</u>
<i>Income Before Capital Grants and Contributions</i>	<u>4,938,350</u>	<u>404,637</u>
<b>CAPITAL GRANTS AND CONTRIBUTIONS</b>	111,670,700	2,090,573
<i>Change in Net Assets</i>	<u>116,609,050</u>	<u>2,495,210</u>
<i>Total Net Assets , Beginning of Year</i>	236,590,220	234,095,010
<i>Total Net Assets, End of Year</i>	<u>\$ 353,199,270</u>	<u>\$ 236,590,220</u>

See accompanying notes to financial statements

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

**Statement of Cash Flows  
For the Years Ended December 31, 2010 and 2009**

	2010	2009
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Cash received from customers	\$ 51,110,478	\$ 47,754,975
Cash received from other operating sources	30,530	30,820
Cash payments to suppliers for goods & services	(16,614,016)	(15,758,414)
Cash payments to employees for services	(18,804,311)	(19,919,353)
<i>Net Cash Provided by Operating Activities</i>	<u>15,722,681</u>	<u>12,108,028</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>		
Federal funds received as fiscal agent	8,301	275,747
Operating grants received	32,060	-
<i>Net Cash Provided (Used) for Noncapital Financing Activities</i>	<u>40,361</u>	<u>275,747</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>		
Acquisition and construction of capital assets	(17,546,101)	(16,974,089)
Capital grants and contributions	8,046,282	502,857
Proceeds from sale of assets	42,200	21,950
Principal payment of capital debt	(1,219,061)	(1,168,899)
Interest payments on capital debt	(464,021)	(512,305)
<i>Net Cash Used for Capital and Related Financing Activities</i>	<u>(11,140,701)</u>	<u>(18,130,486)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Interest on investments	21,629	75,780
Purchase of investments	(5,490,000)	-
Principal payments on notes receivable	1,726,070	1,273,037
Interest received on notes receivable	452,017	509,069
<i>Net Cash Provided (Used) by Investing Activities</i>	<u>(3,290,284)</u>	<u>1,857,886</u>
<i>Net Increase (Decrease) in Cash and Cash Equivalents</i>	1,332,057	(3,888,825)
<i>Cash and Cash Equivalents at Beginning of Year, Including Restricted Accounts</i>	20,155,602	24,044,427
<i>Cash and Cash Equivalents at End of Year, Including Restricted Accounts</i>	<u>\$ 21,487,659</u>	<u>\$ 20,155,602</u>
<b>RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED BY OPERATING ACTIVITIES:</b>		
Operating income	\$ 4,643,416	\$ 319,717
Adjustments to reconcile operating income to net cash provided (used) by operating activities:		
Depreciation expense	12,165,114	10,060,645
Interest expense (non-capital)	(1,301)	(764)
Supplies provided by NSI	2,631	-
Changes in assets and liabilities:		
Accounts receivable	(1,952,541)	1,754,792
Intergovernmental receivable	(2,804)	30,818
Inventories	(53,019)	3,701
Prepaid items	(186,303)	66,758
Accounts payable	602,665	35,477
Accrued expenses	(277,533)	257,364
Deferred income	1,281,035	33,585
Deferred lease income	(457,040)	(457,040)
Financing leases	(8,038)	(9,932)
Net OPEB obligation	135,802	49,408
Compensated absences	(169,403)	(36,501)
<i>Total Adjustments</i>	<u>11,079,265</u>	<u>11,788,311</u>
<i>Net Cash Provided by Operating Activities</i>	<u>\$ 15,722,681</u>	<u>\$ 12,108,028</u>
<b>Noncash Investing, Capital, and Financing Activities:</b>		
Amortization of issue costs and discount on revenue bonds	\$ 380	\$ 15,700
Gain (loss) on disposal of capital assets	(8,643)	7,266
Donations of personal property-NSI	223,194	-
Donations of capital assets	101,671,427	-

See accompanying notes to financial statements

## **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The financial statements of the Port of Corpus Christi Authority of Nueces County, Texas (Authority) have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as applied to government units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The more significant of the Authority's accounting policies are described below.

### **GENERAL HISTORY OF THE PORT OF CORPUS CHRISTI AUTHORITY**

The Nueces County Navigation District No. 1 was created November 30, 1922, by an order of the Commissioners Court of Nueces County, Texas after an election duly held on October 31, 1922, at which time the establishment of said district was submitted to the qualified taxpaying voters of Nueces County, Texas. The territorial boundaries of the District were made co-extensive with those of Nueces County. In 2003, Senate Bill 1934 was passed that allowed for the annexation of San Patricio County into the territorial jurisdiction of the Authority. The District was organized under Article III, Section 52, of the Constitution of the State of Texas, but has since been transferred to and is operating under Article XVI, Section 59, of the Texas Constitution and related laws of the State of Texas, particularly Sections 60 and 62 of the Texas Water Code and all amendments thereto. The Authority being a navigation district and political subdivision of the State of Texas is a separate and distinct entity from Nueces County and operates independently with its own Port Commission as its governing body. The only relationship the Authority and Nueces County have is that in the event the Port Commission deems it necessary to issue tax supported bonds, it must request the Commissioners Court to call an election. The Commissioners Court shall call the election, canvas the vote, and if the bond issue is approved, thereafter set the necessary tax rate to service the bonds. The original property, plant and equipment of the Authority were acquired with funds from the sale of bonds, the interest and sinking funds being provided from ad valorem taxes levied on the property within Nueces County, Texas. Additions to the property, plant and equipment of the Authority have been made with surplus funds arising from the operations of the Authority facilities, grants from the Federal Government, proceeds of general revenue bonds, and improvement bonds supported by ad valorem tax levies.

On May 20, 1981, the Governor of the State of Texas signed into law a bill changing the legal name of the Nueces County Navigation District No. 1 to the Port of Corpus Christi Authority of Nueces County, Texas.

### **REPORTING ENTITY**

In evaluating how to define the Authority for financial reporting purposes, management has considered all potential component units. The decision to include or exclude a potential component unit in the reporting entity was made by applying the criteria set forth in GAAP. GASB Statement No. 14 defines the reporting entity as the primary government and those component units for which the primary government is financially accountable. Financial accountability is defined as appointment of a voting majority of the component unit's board, and either (a) the ability to impose will by the primary government, or (b) the possibility that the component unit will provide a financial benefit to or impose a financial burden on the primary government. Based upon the application of these criteria, the following is a brief review of the component unit addressed in defining the Authority's reporting entity.

### **COMPONENT UNIT**

The Industrial Development Corporation (IDC) was organized by the Authority under the State of Texas Development Corporation Act of 1979. The IDC is a non-profit corporation that issues industrial development revenue bonds to promote and develop commercial, industrial and manufacturing enterprises and to promote and encourage employment and public welfare. The issuance of any such bonds is adopted by the Board of Directors (Board) of the IDC, and approved by the Texas Economic Development Commission (TEDC) and the Port Commission. Net earnings of the

IDC may be distributed to the Authority by action of the Board or upon dissolution of the IDC. The IDC is considered a blended component unit of the Authority as members of the Board of the IDC is comprised of two members of the Port Commission and staff of the Authority, and the Authority is able to impose its will on the IDC, as defined in Government Accounting Standards Board (GASB) Statement No. 14, *The Financial Reporting Entity*. The financial statements of the IDC are not material to the financial statements of the Authority, and have not been included in the basic financial statements. The condensed financial statement information of the IDC follows:

	2010	2009
Total Net Assets	\$ 3,000	\$ 2,699
Change in Net Assets	\$ 301	\$ (218)

The financial statements of the IDC may be obtained from the Authority's Director of Finance at 222 Power Street, Corpus Christi, Texas 78401.

#### **BASIS OF ACCOUNTING**

The Authority operates as an enterprise fund to report on its financial position and the results of its operations. Enterprise funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. Measurement focus is a term used to describe which transactions are recorded within the various financial statements. Basis of accounting refers to when transactions are recorded regardless of the measurement focus applied. All enterprise funds are accounted for on a flow of economic resources measurement focus, whereby all assets and all liabilities associated with the operation of these funds are included on the balance sheet. Proprietary fund equity is classified as net assets. Enterprise fund operating statements present increases (e.g., revenues) and decreases (e.g., expenses) in net total assets.

The accrual basis of accounting is utilized by enterprise funds. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the Authority's enterprise fund are charges to customers for the use of facilities and services provided. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

In accordance with GASB Statement No. 20, *Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting*, the Authority applies all FASB Statements and Interpretations, APB Opinions and ARB's issued on or before November 30, 1989 unless they conflict with or contradict GASB pronouncements. The Authority has elected to only apply GASB pronouncements after November 30, 1989.

An annual budget for the Authority is adopted on a basis consistent with generally accepted accounting principles for proprietary funds, as a prudent management tool. Monthly budget reports are prepared for management to maintain proper budgetary control, and are reviewed by the Port Commission on a monthly basis.

**CASH AND CASH EQUIVALENTS**

The Authority's cash and cash equivalents consists of cash on hand, cash held on deposit with financial institutions in demand deposit accounts, and short-term investments with original maturities of three months or less from the date of acquisition.

**INVESTMENTS**

State statutes authorize the Authority to invest in obligations of the United States Treasury, or its agencies and instrumentalities; direct obligations of the State of Texas or its agencies; obligations of states, agencies, counties, cities and other political subdivisions of any state having a rating of not less than A; certificates of deposits, prime domestic banker's acceptances; certain commercial paper, certain mutual funds; fully collateralized repurchase agreements, and public funds investment pools.

Investments that mature within one year of acquisition are stated at cost or amortized cost. Investments with the remaining maturity of more than one year at the time of purchase are carried at fair value. Any realized gains and losses in fair value are reported in the operations of the current period.

**INVENTORY AND PREPAID ITEMS**

Inventory is valued at cost utilizing the first in first out method. Inventory consists of expendable materials used in the construction and maintenance of port facilities.

Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items.

**BOND ISSUANCE COSTS**

Bond issue costs and original issue discount associated with the Revenue Bonds, Series 2002-A and B are being amortized using the interest rate method.

**PROPERTY, PLANT AND EQUIPMENT**

Property constructed or acquired by purchase is stated at cost. Authority policy has set the capitalization threshold for reporting capital assets at \$5,000. Contributed assets are stated at cost, if available, or estimated fair market value on the date received. Net interest costs, if material, are capitalized on major construction projects during the construction period. No interest was capitalized for the years ended December 31, 2010 and 2009.

Depreciation is computed using the straight-line method over the following useful lives:

Port facilities	10-50 Years
Buildings and improvements	5-50 Years
Machinery and equipment	3-50 Years
Intangibles	3-5 Years

**RESTRICTED ASSETS**

Certain resources set aside for the repayment of the Authority's revenue bonds are classified as restricted assets on the balance sheet because their use is limited by applicable bond covenants. The Authority has entered into escrow agreements with the United States Army Corp of Engineers to fund the Authority's cost share of channel improvements and maintenance. These funds are maintained in separate bank accounts and are specifically restricted for that purpose. All revenues received from participating in Federal equitable sharing of forfeited properties are restricted for use in the

*United States Department of Justice Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* or the *United States Department of Treasury Guide of Equitable Sharing For Foreign Countries and Federal, State and Local Law Enforcement Agencies*. Revenues received from participating in the State sharing of forfeited properties are also restricted for use as defined by state statutes. Cash is reported as a restricted asset. The Authority participates in an IRS Section 125 plan for the reimbursement of qualified medical, dental, and child care expenses. Employee deductions are held in a separate bank account and are specifically restricted for that purpose. The Authority receives an annual allocation payment from the Law Enforcement Officer Standards and Education (LEOSE) account and that cash is restricted until spent for qualified expenses related to the continuing education of law enforcement personnel.

When an expense is incurred for purposes for which restricted and unrestricted net assets are available, the Authority's policy is to apply restricted net assets first.

#### **COMPENSATED ABSENCES**

Authority employees are granted vacation at rates of 10 to 25 days per year and may accumulate up to a maximum of 20 to 50 days, depending on their length of employment. Upon termination, employees are paid for any unused accumulated vacation. Sick leave accumulates at the rate of 12 days per year. Upon termination for any reason other than for cause, employees are paid for any unused sick leave up to a maximum of 60 days. Compensated absences are accrued when incurred.

#### **DEFERRED INCOME**

Foreign trade zone user fees, non-refundable deposits for events at the Solomon P. Ortiz Conference and Convention Center, and operating lease payments are recognized as income over the term of related agreements. Amounts received but not yet earned are reflected as deferred income in the accompanying balance sheets.

#### **CONCENTRATION OF REVENUES**

The Authority's operating revenues are subject to risk, because of their concentration in the petroleum industry. Four customers from the petroleum industry made up over 66 percent of the Authority's wharfage and dockage revenue base for 2010, as compared to 66 percent for 2009. This risk is further enhanced by the fact that petroleum cargo continues to be the Authority's top commodity representing nearly 84 percent of the total cargo tonnage moved through the Authority in 2010, compared to 84 percent in 2009.

#### **ESTIMATES**

Management uses estimates and assumptions in preparing the financial statements. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses.

#### **RECLASSIFICATIONS**

Certain reclassifications have been made to prior year amounts to conform to the current year presentation.

#### **RECENT ACCOUNTING PRONOUNCEMENTS**

GASB Statement No. 51 "Accounting and Financial Reporting for Intangible Assets" establishes accounting and financial reporting requirements for intangible assets including easements, water rights, timber rights, patents, trademarks and computer software. The requirements of this Statement are effective for financial statements for periods beginning after June 15, 2009. The Authority is a Phase II government as defined by the Statement, and has retroactively reported intangible assets (Note 4 to financial statements) as required.

**RECENT ACCOUNTING PRONOUNCEMENTS (Continued)**

GASB Statement No. 53 “Accounting and Financial Reporting for Derivative Instruments” establishes accounting and financial reporting requirements for derivative instruments entered into by state and local governments. The requirements of this Statement are effective for financial statements for periods beginning after June 15, 2009. There was no current effect on the financial statements as a result of implementing this Statement.

GASB Statement No. 58 “Accounting and Financial Reporting for Chapter 9 Bankruptcies” establishes accounting and financial reporting guidance for governments that have petitioned for protection from creditors by filing for bankruptcy under Chapter 9 of the United States Bankruptcy Code. The requirements of this Statement are effective for financial statements for periods beginning after June 15, 2009. There was no current effect on the financial statements as a result of implementing this Statement.

**2. DEPOSITS AND INVESTMENTS**

The Authority’s investments at December 31, 2010 and 2009 are as follows:

Investment Type	2010		Weighted Average Maturity (Days)	2009		Weighted Average Maturity (Days)
	Carrying Value	Fair Value		Carrying Value	Fair Value	
Certificates of Deposit	\$ 5,490,614	\$ 5,490,614	331	\$ -	\$ -	
Mutual fund-AIM	-	-		19,464,158	19,464,158	1
Local government pool-TEXPOOL	20,113,066	20,113,066	1	-	-	
Total	25,603,680	25,603,680		19,464,158	19,464,158	
Short-term investments included in cash and cash equivalents	20,113,066	20,113,066		19,464,158	19,464,158	
<b>Equity in Total Investments</b>	<b>\$ 5,490,614</b>	<b>\$ 5,490,614</b>		<b>\$ -</b>	<b>\$ -</b>	
Portfolio weighted average maturity			72			1

**INTEREST RATE RISK**

In accordance with the Authority’s investment policy, the Authority manages its exposure to declines in fair values by limiting the weighted average maturity of its investment portfolio to one year or less.

**CREDIT RISK**

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Authority’s investment policy states that all investments will be of high quality with no perceived default risk. The Public Funds Investment Act (“PFIA”), Chapter 2256 of the Texas Government Code governs the types of investments that the Authority may invest in. The Authority’s policy for managing credit risk, in compliance with state law, allows the Authority’s to invest in obligations of the United States government, its agencies, and instrumentalities with a maximum stated maturity of two years, excluding mortgage backed securities; fully insured or collateralized certificates of deposit issued by banks doing business in Texas, with a maximum stated maturity of one year; fully collateralized repurchase agreements, with a maximum stated maturity of 90 days except for bond fund flex repurchase agreements, which will match expenditure plans on the bond funds; AAA Rated, constant dollar local government investment pools; money market mutual funds registered with the Securities and Exchange Commission whose assets consist exclusively of obligations of the United States Treasury, its agencies or instrumentalities and repurchase agreements backed by those securities; and interest bearing accounts in banks doing business in Texas.

TEXPOOL, a public funds investment pool in Texas was established under the authority of the Interlocal Cooperation Act, Chapter 79 of the Texas Government Code, and is subject to the provisions of the PFIA. In addition to other provisions of the PFIA designed to promote liquidity and safety of principal, the PFIA requires pools to: (1) have an advisory board composed of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool; (2) maintain a continuous rating of no lower than AAA or AAA-m or an equivalent rating by at least one nationally recognized rating services; and (3) maintain the market value of its portfolio within one half of one percent of the value of its shares.

The AIM Fund is an open-ended mutual fund, consisting of direct obligations of the United States Treasury and other securities issued or guaranteed as to principal and interest by the United States Government or by its agencies or instrumentalities, as well as repurchase agreements secured by such obligations. While these deposits are not covered by FDIC insurance or by pledged collateral, the AIM fund is rated AAAM by Standard & Poors and invests in compliance with Rule 2a-7 under the Investment Company Act of 1940.

#### **CONCENTRATION OF RISK**

The Authority's investment policy places no limit on the amount the Authority may invest in any one issuer. As of December 31, 2010, the Authority's investment portfolio consisted of the following:

- investment in one AAAM rated local government investment pool representing 78.6 percent, and
- investment in collateralized certificates of deposit representing 21.4 percent.

At December 31, 2009, 100% of the Authority's investments were in the AIM open-ended mutual fund.

#### **CUSTODIAL CREDIT RISK – DEPOSITS AND CERTIFICATES OF DEPOSIT**

Custodial risk is the risk that in the event of a bank failure, the Authority's deposits may not be returned to it. The Investment Policy of the Authority requires that all time and demand deposits of the Authority be secured by pledged collateral with a market value equal to or greater than 102% of the principal plus accrued interest less an amount insured by FDIC. At December 31, 2010 the Authority's deposits held at financial institutions of \$7,297,540 were covered by federal depository insurance (FDIC) or were secured by collateral held by the Authority's agent in the Authority's name.

At December 31, 2009, the Authority's deposits held at financial institutions of \$1,168,025 were covered by FDIC insurance or were secured by collateral held by the Authority's agent in the Authority's name.

**3. NOTES RECEIVABLE**

Notes Receivable as of December 31, 2010 and 2009 are summarized as follows:

	2010	2009
\$12,000,000 Note Receivable due in annual principal installments ranging from \$831,827 to \$898,373 through 2012; interest at 8.0%.	\$ 4,879,996	\$ 5,650,206
Less: Principal Prepayments	3,087,365	2,131,505
Principal Outstanding	1,792,631	3,518,701
Less: Current Maturities	831,827	770,210
<b>Notes Receivable - Net</b>	<b>\$ 960,804</b>	<b>\$ 2,748,491</b>

Total note receivable requirements as of December 31, 2010, are as follows:

	Principal	Interest	Total
2011	\$ 831,827	\$ 390,400	\$ 1,222,227
2012	898,373	323,853	1,222,226
2013	62,431	4,995	67,426
<b>Total</b>	<b>\$ 1,792,631</b>	<b>\$ 719,248</b>	<b>\$ 2,511,879</b>

Pursuant to a Construction and Installment Sale Agreement (Agreement) entered into on May 3, 1994, the Authority agreed to construct crude storage facilities on premises leased to an Authority User, and then sell the facilities to the User. On January 12, 1995, the Authority sold their undivided right, title and interest in the crude storage facilities to the User, and a Promissory Note (Note) was executed made payable to the Authority by the User in the amount of \$12,000,000.

The Note is due and payable in twenty-one annual installments, the first installment being interest only and the remaining twenty annual installments of equal principal and interest, at a rate of 8 percent, unless sooner paid. All payments are applied first to interest with the remainder, if any, applied to unpaid principal.

Note payments are based on revenue received from wharfage fees collected by the Authority for crude oil moving across the Authority's Oil Dock 1 to the User's crude storage facilities, and fifty percent of dockage fees collected by the Authority for ships berthing at the Authority's Oil Dock 1 for purpose of delivering crude oil to the User's crude storage facilities. Monthly amounts are credited to a debt service account that is used to make scheduled note payments when due. In the event there are insufficient funds in the debt service account to meet scheduled note payments, the User is required to make up any shortfall. Should a surplus exist, the excess is applied in inverse order against principal last coming due on the note. In 2010 and 2009, the Authority credited \$2,178,087 and \$1,782,106, respectively of applicable revenue received from wharfage and dockage fees collected to the debt service account.

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

**Notes to Financial Statements  
December 31, 2010 and 2009**

**4. CAPITAL ASSETS**

Capital asset activity for the year ended December 31, 2010 was as follows:

	Beginning Balance	Transfers and Additions	Retirements	Ending Balance
Capital assets, not being depreciated:				
Land	\$ 40,215,339	\$ 20,165,114	\$ 33,845	\$ 60,346,608
Channel and waterfront improvements	18,868,431	-	-	18,868,431
Intangibles	50,000	-	-	50,000
Construction in progress	16,898,775	13,967,426	-	30,866,201
Total capital assets, not being depreciated	76,032,545	34,132,540	33,845	110,131,240
Capital assets, being depreciated:				
Port facilities	182,044,334	50,611,684	-	232,656,018
Buildings and improvements	76,155,243	34,420,856	-	110,576,099
Machinery and equipment	28,584,933	848,612	94,904	29,338,641
Intangibles	1,651,656	-	-	1,651,656
Total capital assets, being depreciated	288,436,166	85,881,152	94,904	374,222,414
Less: accumulated depreciation for				
Port facilities	91,014,697	6,036,415	-	97,051,112
Buildings and improvements	24,164,238	3,667,416	-	27,831,654
Machinery and equipment	14,781,503	2,260,846	77,906	16,964,443
Intangibles	1,285,420	200,437	-	1,485,857
Total accumulated depreciation	131,245,858	12,165,114	77,906	143,333,066
Total capital assets, being depreciated, net	157,190,308	73,716,038	16,998	230,889,348
<b>Total capital assets, net</b>	<b>\$ 233,222,853</b>	<b>\$ 107,848,578</b>	<b>\$ 50,843</b>	<b>\$ 341,020,588</b>

Capital asset activity for the year ended December 31, 2009 was as follows:

	Beginning Balance	Transfers and Additions	Retirements	Ending Balance
Capital assets, not being depreciated:				
Land	\$ 40,215,339	\$ -	\$ -	\$ 40,215,339
Channel and waterfront improvements	18,868,431	-	-	18,868,431
Intangibles	50,000	-	-	50,000
Construction in progress	6,873,834	10,024,941	-	16,898,775
Total capital assets, not being depreciated	66,007,604	10,024,941	-	76,032,545
Capital assets, being depreciated:				
Port facilities	180,314,206	1,730,128	-	182,044,334
Buildings and improvements	70,730,405	5,424,838	-	76,155,243
Machinery and equipment	28,342,346	658,018	415,431	28,584,933
Intangibles	1,651,656	-	-	1,651,656
Total capital assets, being depreciated	281,038,613	7,812,984	415,431	288,436,166
Less: accumulated depreciation for				
Port facilities	86,140,740	4,873,957	-	91,014,697
Buildings and improvements	21,508,873	2,655,365	-	24,164,238
Machinery and equipment	12,861,004	2,321,246	400,747	14,781,503
Intangibles	1,075,343	210,077	-	1,285,420
Total accumulated depreciation	121,585,960	10,060,645	400,747	131,245,858
Total capital assets, being depreciated, net	159,452,653	(2,247,661)	14,684	157,190,308
<b>Total capital assets, net</b>	<b>\$ 225,460,257</b>	<b>\$ 7,777,280</b>	<b>\$ 14,684</b>	<b>\$ 233,222,853</b>

**5. LEASES**

**OPERATING LEASES**

The Authority leases to others certain land and improvements. These leases are classified as operating leases in accordance with the criteria of Statement of Financial Accounting Standards (SFAS) No. 13. As of December 31, 2010, minimum lease payments under these operating leases that have initial or remaining non-cancelable lease terms in excess of one year are as follows:

<b>Years Ending</b>	
2011	\$ 3,200,785
2012	2,726,040
2013	2,531,494
2014	1,888,899
2015	1,275,831
Thereafter	18,338,407
<b>Total</b>	<b>\$ 29,961,456</b>

**CAPITAL LEASES**

The Authority has entered into lease agreements as lessee for financing the acquisition of computer equipment. These lease agreements qualify as capital leases in accordance with SFAS No. 13 and, therefore, have been recorded at the present value of their future minimum lease payments as of the inception date of the lease. Certain assets acquired through these capital leases did not meet the Authority's capitalization threshold criterion, and therefore were expensed.

The assets acquired through capital leases are as follows:

<b>Assets:</b>	
Capitalized:	
Machinery & Equipment	\$ 36,026
Less: Accumulated Depreciation	31,276
<b>Capitalized, net</b>	<b>4,750</b>
Expensed	33,414
<b>Total</b>	<b>\$ 38,164</b>

The future minimum lease obligations and the net present value of these minimum lease payments as of December 31, 2010 are as follows:

<b>Years Ending</b>	
2011	\$ 10,012
2012	525
Total minimum lease payments	10,537
Less: Amount representing interest	(252)
Present value of minimum lease payments	\$ 10,285

The future minimum lease obligations and the net present value of these minimum lease payments as of December 31, 2009 are as follows:

Years Ending	
2010	\$ 18,042
2011	10,012
2012	525
Total minimum lease payments	28,579
Less: Amount representing interest	(1,195)
Present value of minimum lease payments	\$ 27,384

## 6. LONG-TERM LIABILITIES

### LONG-TERM DEBT

On March 26, 2002, the Authority issued revenue bonds, Series 2002-A, in the amount of \$10,390,000 to reimburse for the costs associated with the acquisition, construction, and equipment of a refrigerated warehouse facility and Series 2002-B, in the amount of \$7,865,000 to reimburse for the costs associated with the acquisition, construction, and equipment of a multipurpose cruise/terminal conference facility known as the "Congressman Solomon P. Ortiz International Center". These bonds will be repaid from the pledged revenues of the Authority. Pledged revenues, as defined by the bond resolutions include all of the Authority's revenues and expenses other than those related to a) interest expense on revenue bonds, and b) depreciation.

A statement of changes in long-term debt for the year ended December 31, 2010, is as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Current Portion
Revenue bonds	\$ 9,725,000	\$ -	\$ 1,210,000	\$ 8,515,000	\$ 1,265,000
Accumulated Accretion	92,003	-	10,363	81,640	
<b>Total</b>	<b>\$ 9,817,003</b>	<b>\$ -</b>	<b>\$ 1,220,363</b>	<b>\$ 8,596,640</b>	<b>\$ 1,265,000</b>

A statement of changes in long-term debt for the year ended December 31, 2009, is as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Current Portion
Revenue bonds	\$ 10,885,000	\$ -	\$ 1,160,000	\$ 9,725,000	\$ 1,210,000
Accumulated Accretion	97,038	-	5,035	92,003	
<b>Total</b>	<b>\$ 10,982,038</b>	<b>\$ -</b>	<b>\$ 1,165,035</b>	<b>\$ 9,817,003</b>	<b>\$ 1,210,000</b>

Long-term debt as of December 31, 2010 and 2009 is summarized as follows:

	2010	2009
<b>Revenue Bonds:</b>		
\$10,390,000 2002-A first lien revenue bonds, collateralized by a first lien on pledged revenues of the Authority, due in annual principal installments of \$720,000 to \$910,000 through 2016; interest at 4.6 percent to 5.2 percent.	\$ 4,865,000	\$ 5,555,000
\$7,865,000 2002-B first lien revenue bonds, collateralized by a first lien on pledged revenues of the Authority, due in annual principal installments of \$545,000 to \$680,000 through 2016; interest at 4.3 percent to 4.9 percent.	3,650,000	4,170,000
Total Revenue Bonds	8,515,000	9,725,000
Accumulated Accretion	81,640	92,003
Total Revenue Bonds and Accumulated Accretion	8,596,640	9,817,003
Less Current Maturities	1,265,000	1,210,000
<b>Long-term Debt - Net</b>	<b>\$ 7,331,640</b>	<b>\$ 8,607,003</b>

Total debt service requirements as of December 31, 2010 are as follows:

	Principal	Interest	Total
2011	\$ 1,265,000	\$ 408,405	\$ 1,673,405
2012	1,320,000	351,850	1,671,850
2013	1,380,000	291,505	1,671,505
2014	1,445,000	226,345	1,671,345
2015	1,515,000	155,955	1,670,955
Thereafter	1,590,000	80,640	1,670,640
<b>Total</b>	<b>\$ 8,515,000</b>	<b>\$ 1,514,700</b>	<b>\$ 10,029,700</b>

The Authority is required to maintain adequate insurance coverage as defined in the applicable covenants of the revenue bonds, Series 2002 A & B. As of December 31, 2010, the Authority had adequate insurance coverage and all insurance premiums had been paid.

**DEFERRED LEASE INCOME**

The Authority entered into a lease agreement with Gulf Compress. Under the terms of the lease, Gulf Compress constructed 550,000 square feet of cotton warehouses on property owned by the Port at the proposed site of the LaQuinta Container Terminal Facility. On January 21, 2005, the cotton warehouses were completed and ownership was transferred to the Authority in consideration of a thirty year prepaid lease. Prepaid lease rentals will be amortized over the lease term as follows:

Years Ending	
2011	\$ 457,040
2012	457,040
2013	457,040
2014	457,040
2015	457,040
Thereafter	8,661,247
<b>Total</b>	<b>\$ 10,946,447</b>

**CAPITAL LEASES**

The Authority has entered into lease agreements as lessee for financing the acquisition of computer equipment.

A statement of changes in capital leases for the year ended December 31, 2010, is as follows:

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
Capital leases	\$ 27,384	\$ -	\$ 17,099	\$ 10,285	\$ 9,764
<b>Total</b>	<b>\$ 27,384</b>	<b>\$ -</b>	<b>\$ 17,099</b>	<b>\$ 10,285</b>	<b>\$ 9,764</b>

A statement of changes in capital leases for the year ended December 31, 2009, is as follows:

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
Capital leases	\$ 46,215	\$ -	\$ 18,831	\$ 27,384	\$ 17,099
<b>Total</b>	<b>\$ 46,215</b>	<b>\$ -</b>	<b>\$ 18,831</b>	<b>\$ 27,384</b>	<b>\$ 17,099</b>

Capital leases as of December 31, 2010 and 2009 is summarized as follows:

	<b>2010</b>	<b>2009</b>
Capital leases	\$ 10,285	\$ 27,384
Less Current Portion	9,764	17,099
<b>Capital leases - Net</b>	<b>\$ 521</b>	<b>\$ 10,285</b>

**COMPENSATED ABSENCES**

A statement of changes in compensated absences for the year ended December 31, 2010, is as follows:

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
Vacation	\$ 972,052	\$ 696,907	\$ 770,773	\$ 898,186	\$ 654,899
Sickleave	2,264,718	412,286	632,622	2,044,382	354,178
<b>Total</b>	<b>\$ 3,236,770</b>	<b>\$ 1,109,193</b>	<b>\$ 1,403,395</b>	<b>\$ 2,942,568</b>	<b>\$ 1,009,077</b>

A statement of changes in compensated absences for the year ended December 31, 2009, is as follows:

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
Vacation	\$ 926,530	\$ 740,127	\$ 694,605	\$ 972,052	\$ 694,605
Sickleave	2,170,749	533,240	439,271	2,264,718	439,271
<b>Total</b>	<b>\$ 3,097,279</b>	<b>\$ 1,273,367</b>	<b>\$ 1,133,876</b>	<b>\$ 3,236,770</b>	<b>\$ 1,133,876</b>

Compensated Absences as of December 31, 2010 and 2009 are summarized as follows:

	<b>2010</b>	<b>2009</b>
Vacation	\$ 898,186	\$ 972,052
Sickleave	2,044,382	2,264,718
Total Compensated Absences	2,942,568	3,236,770
Less Current Portion	1,009,077	1,133,876
<b>Compensated Absences - Net</b>	<b>\$ 1,933,491</b>	<b>\$ 2,102,894</b>

**OPEB OBLIGATION**

A statement of changes in OPEB Obligation for the year ended December 31, 2010, is as follows:

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
OPEB Obligation	\$ 152,549	\$ 201,594	\$ 65,792	\$ 288,351	\$ -
<b>Total</b>	<b>\$ 152,549</b>	<b>\$ 201,594</b>	<b>\$ 65,792</b>	<b>\$ 288,351</b>	<b>\$ -</b>

A statement of changes in OPEB Obligation for the year ended December 31, 2009, is as follows:

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
OPEB Obligation	\$ 103,141	\$ 199,525	\$ 150,117	\$ 152,549	\$ -
<b>Total</b>	<b>\$ 103,141</b>	<b>\$ 199,525</b>	<b>\$ 150,117</b>	<b>\$ 152,549</b>	<b>\$ -</b>

OPEB Obligations as of December 31, 2010 and 2009 is summarized as follows:

	<b>2010</b>	<b>2009</b>
OPEB Obligation	\$ 288,351	\$ 152,549
Less Current Portion	-	-
<b>OPEB Obligation - Net</b>	<b>\$ 288,351</b>	<b>\$ 152,549</b>

**7. PENSION PLAN**

**Plan Description**

The Authority provides pension, disability, and death benefits for all its full-time employees through a nontraditional defined benefit pension plan in the state-wide Texas County and District Retirement System (TCDRS). TCDRS is responsible for the administration of the statewide agent multiple-employer public employee retirement system consisting of 602 defined benefit pension plans which function similarly to cash balance-account plans. TCDRS in the aggregate issues a comprehensive annual financial report (CAFR) on a calendar year basis. The CAFR is available upon written request from the TCDRS Board of Trustees at P.O. Box 2034, Austin, Texas 78768-2034.

The plan provisions are adopted by the governing body of the Authority, within the options available in the state statutes governing TCDRS (TCDRS Act). Members can retire at ages 60 and above with 10 or more years of service or with 30 years regardless of age or when the sum of their age and years of service equals 80 or more. Members are vested after 10 years but must leave their accumulated contributions in the plan to receive any employer-financed benefit. Members who withdraw their personal contributions in a lump sum are not entitled to any amounts contributed by the employer.

Benefit amounts are determined by the sum of the employee's contributions to the plan, with interest, and employer-financed monetary credits. The level of these monetary credits is adopted by the governing body of the Authority within the actuarial constraints imposed by the TCDRS Act so that the resulting benefits can be expected to be adequately financed by the employer's commitment to contribute. At retirement, death, or disability, the benefit is calculated by converting the sum of the employee's accumulated contributions and the employer-financed monetary credits to a monthly annuity using annuity purchase rates prescribed by the TCDRS Act.

**Funding Policy**

The Authority has elected the Annually Determined Contribution Rate plan provisions of the TCDRS Act. The plan is funded by monthly contributions from both employee members and the employer based on the covered payroll of employee members. Under the TCDRS Act, the contribution rate of the Authority is actuarially determined annually.

The actuarially determined rate for the calendar year 2010 was 8.10 percent and for the calendar year 2009 was 8.21 percent, however the governing body of the Authority adopted the rate of 11 percent for the calendar year 2010 and 2009.

The deposit rate payable by all employee members for the calendar year 2010 and 2009 was 7 percent as adopted by the governing body of the Authority. The employee deposit rate and the employer contribution rate may be changed by the governing body of the employer within the options available in the TCDRS Act. Employee and Authority contributions were \$828,848 and \$1,302,474, respectively for the year ended December 31, 2010, and \$797,857 and \$1,253,776, respectively for the year ended December 31, 2009.

**Annual Pension Cost**

For the Authority’s year ended December 31, 2010, the annual pension cost for the TCDRS plan for its employees and the actual contributions for its employees were \$1,302,474. Three-year annual trend information on annual pension cost is as follows:

<b>Years Ended December 31,</b>	<b>Annual Pension Cost</b>	<b>Percentage of APC Contributed</b>	<b>Net Pension Obligation</b>
2010	\$ 1,302,474	100.00%	\$ -
2009	1,253,776	100.00%	-
2008	1,132,885	100.00%	-

The required contribution was determined as part of the December 31, 2009 actuarial valuation using the entry age actuarial cost method. The actuarial assumptions at December 31, 2009 included (a) 8 percent investment rate of return (net of administrative expenses), and (b) projected salary increases of 5.4 percent. Both (a) and (b) included an inflation component of 3.5 percent. The actuarial value of assets was determined using techniques that spread the effects of short-term volatility in the market value of investments over a ten-year period. The unfunded actuarial accrued liability is being amortized as a level percentage of projected payroll on a closed basis. The remaining amortization period at December 31, 2009 was 6.4 years.

As of December 31, 2009, the most recent actuarial valuation date, the plan was 80.90 percent funded. The actuarial accrued liability for benefits was \$24,899,158, and the actuarial value of assets was \$20,143,863 resulting in an unfunded actuarial accrued liability (UAAL) of \$4,755,295. The covered payroll (annual payroll of active employees covered by the plan) was \$11,397,962, and the ration of the UAAL to the covered payroll was 41.72 percent.

The schedule of funding progress, presented as RSI following the notes to the financial statements, presents multi-year trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liability for benefits.

**8. POSTRETIREMENT BENEFITS**

GASB Statement No. 45 *Accounting and Financial Reporting by Employers for Postretirement Benefits Other than Pensions* (OPEB), established new accounting standards for postretirement benefits. The new standard does not require funding of OPEB expense, but any differences between the annual required contribution (ARC) and the amount funded during the year is to be recorded in the employer’s financial statements as an increase (or decrease) in the net OPEB obligation. The effective date for implementation of GASB 45 by the Authority was January 1, 2008. The Authority is required to obtain an actuarial valuation at least once every three years in accordance with GASB 45 standards. The Authority’s latest valuation is dated as of January 1, 2008, and discloses the following:

**Plan Description**

The Authority provides postretirement healthcare benefits to eligible retired employees and their spouses through provisions enacted by the authority of the Port Commission. At December 31, 2010, six former employees were eligible for these benefits. The Authority funds a portion of the premiums for health insurance. Continuation of these benefits and the Authority's contributions are dependent on periodic authorization by the Port Commission. The health insurance benefits provided to retirees are the same as those offered to active employees. The supplied benefits include hospital, doctor, dental and prescription drug charges.

Employees, who have reached age 62, may continue coverage under the Authority's healthcare plan as a retiree until the age of 65.

The plan is not accounted for as a trust fund, as an irrevocable trust has not been established to fund the plan. The plan does not issue a separate financial report.

**Funding Policy**

The required contribution is based on a projected pay-as-you-go basis, which is expected to continue. The cost of retiree health and life benefits, recorded on a pay-as-you-go basis was \$65,792 for the year ended December 31, 2010 and \$150,117 for the year ended December 31, 2009.

**Annual OPEB Cost and Net OPEB Obligation**

The annual other postemployment benefit (OPEB) cost(expense) is calculated based on the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with parameters of GASB Statement 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year and amortize any unfunded actuarial accrued liabilities (UAAL) or funding excess over a period not to exceed thirty years. The following table shows the components of the Authority's annual OPEB cost for the year, the amount actually contributed to the plan and changes in the Authority's net OPEB obligation.

<b>Determination of Annual Required Contribution</b>	
Normal Cost at Year End	\$ 118,405
Amortization of UAAL	85,909
Annual Required Contribution (ARC)	<u>204,314</u>
<b>Determination of Net OPEB Obligation</b>	
Annual Required Contribution	204,314
Interest on Prior Year Net OPEB Obligation	6,102
Adjustment to ARC	<u>(8,822)</u>
Annual OPEB Cost	201,594
Contributions Made	<u>(65,792)</u>
Increase in Net OPEB Obligation	135,802
Net OPEB Obligation - Beginning of Year	\$ 152,549
Net OPEB Obligation - End of Year	<u>\$ 288,351</u>

The end of year net OPEB Obligation is shown as a non-current liability on the Statement of Net Assets.

The Authority's annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and net OPEB obligation assuming the plan is not prefunded for the current and two preceding years were as follows:

<b>Years Ended December 31,</b>	<b>Discount Rate</b>	<b>Annual OPEB Cost</b>	<b>Percentage of OPEB Cost Contributed</b>	<b>Net OPEB Obligation</b>
2010	4.00%	\$ 201,594	74.47%	\$ 288,351
2009	4.00%	199,525	75.24%	152,549
2008	4.00%	195,399	47.22%	103,141

**Funding Status and Funding Progress**

The schedule of funding progress for the current and two preceding years is as follows:

<b>Actuarial Valuation Date</b>	<b>Actuarial Value of Assets</b>	<b>Discount Rate</b>	<b>Actuarial Accrued Liabilities (AAL) (1)</b>	<b>Unfunded Actuarial Accrued Liabilities (UAAL) (2)</b>	<b>Funded Ratio</b>
January 1, 2010	\$ -	4.0%	\$ 1,430,581	\$ 1,430,581	0.0%
January 1, 2009	-	4.0%	1,408,938	1,408,938	0.0%
January 1, 2008	-	4.0%	1,331,381	1,331,381	0.0%

(1) Actuarial Accrued Liability determined under the project unit credit cost method.

(2) Actuarial Accrued Liability less Actuarial Value of Assets.

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the Authority are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress, presented as required supplementary information following the notes to the financial statements, presents multiyear trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

**Actuarial Methods and Assumptions**

Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and the plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

The actuarial cost method used to determine the OPEB obligation is computed using the Unit Credit Actuarial Cost Method which consists of the following cost components:

- The Normal Cost is the Actuarial Present Value of benefits allocated to the valuation year.
- The Actuarial Liability is the Actuarial Present Value of benefits accrued as of the valuation date.
- Valuation Assets are equal to the market value of assets as of the valuation date, if any.

- Unfunded Actuarial Liability is the difference between the Actuarial Accrued Liability and the Valuation Assets. It is amortized over the maximum permissible period under GASB 45 of 30 years.

The latest actuarial valuation for the Authority was completed as of January 1, 2008. The significant assumptions underlying the actuarial calculations are as follows:

Actuarial Cost Method	Unit Credit
Discount Rate for Valuing Liabilities	4.0%
Mortality Rates	RP2000 Static Healthy Mortality Table (sex distinct)
Withdrawal Rates	Based on Years of Service
Disability Rates	Based on Age
Retirement Rates	Based on Age
Employee Coverage	100% eligible for benefits elect coverage
Spousal Coverage	85% eligible for benefits elect coverage
Spouse Age Difference	Same as employee
Administrative Expense Load	5.0% on Gross per Capita Claims Costs
Per Capital Medical Benefit Costs	Medical and Pharmacy Costs for Selected Ages
Per Annum Increase in Per Capita	
Medical Benefit Costs by Age	Percentage Increase with Age
Medical Inflation	Percentage Trend by Year

## **9. CONSTRUCTION AND IMPROVEMENT COMMITMENTS**

At December 31, 2010, the Authority had remaining contractual construction and improvement commitments of approximately \$7,350,149. These commitments are being financed through operating revenues and capital grants.

## **10. COMMITMENTS AND CONTINGENCIES**

### **LITIGATION**

From time to time, the Authority is subject to routine litigation incidental to its operations. Management believes that the results of any claims or litigation will not materially affect the Authority's financial position.

### **RISK MANAGEMENT**

The Authority is self-insured for \$4,000,000 on property and \$50,000 on general liability claims annually and has purchased excess loss policies for claims in excess of these amounts. The Authority has established a self-funded health and dental plan (plan) for its employees and dependents. A specific stop loss policy is in force for individual plan claims in excess of \$100,000 annually, and an aggregate stop loss policy is in force for annual aggregate claims in excess of approximately \$2,654,641. The Authority is covered for workers compensation claims through the Texas Municipal League Risk Pool. Prior to 2005, the Authority was self-insured for workers compensation and estimated remaining workers compensation claims are reflected below. The Authority has made no significant changes in its insurance coverage from coverage in the prior year. In the past three years the Authority has had no settlements that exceeded insurance coverage.

A liability for unpaid claims is reported when it is probable that a loss has occurred and the amount the loss can be reasonably estimated. The Authority's liability is an estimate and includes an amount for claims that have been incurred but not reported (IBNR). The methodology used to determine the liability is based on recent claim settlement trends, including frequency and amount of payouts, and other factors such as inflation, changes in legal doctrines and damage

awards. At December 31, 2010, the liability of \$207,216 is comprised of estimated health claims of \$195,987 and estimated workers compensation claims of \$11,229. At December 31, 2009, the liability of \$210,487 was comprised of estimated health claims of \$186,950 and workers compensation claims of \$23,537.

Changes in the balances of claims liabilities as of December 31, 2010 and 2009 are as follows:

	2010	2009
Unpaid claims, beginning of fiscal year	\$ 210,487	\$ 353,673
Incurred claims (including IBNRs)	2,242,105	2,182,638
Claims payments	(2,245,376)	(2,325,824)
<b>Unpaid claims, end of fiscal year</b>	<b>\$ 207,216</b>	<b>\$ 210,487</b>

#### **FACILITIES FINANCING BONDS**

The Authority and IDC have entered into agreements with five unrelated entities to finance construction of pollution control, environmental, and solid waste disposal facilities. To accomplish this, the Authority and IDC acted as issuers of facilities financing revenue bonds in the original amount of \$625,395,000. The bonds are secured solely by the facilities and installment sales agreements, and the Authority and IDC assumed no current or future obligation for repayment of the bonds. The installment sales agreements were entered into with the entities for an amount equal to the outstanding bonds to secure repayment. The proceeds of the bonds were received and used by the entities and are repaid when due directly by the entities. At December 31, 2010, facilities financing revenue bonds outstanding amounted to \$597,495,000.

#### **11. REVERSION OF NAVAL STATION INGLESIDE PROPERTY**

The Authority, by Special Warranty Deed, conveyed land in 1987 to the United States of America (“Navy”) for the purpose of construction of Naval Station Ingleside (NSI) with the provision that should the subject property no longer be used for maritime purposes by the Department of Defense, the subject property would revert to the Authority. On September 8, 2005, Naval Station Ingleside was recommended to the President for closure by the Base Realignment and Closure Commission. In accordance with the Defense Base Closure and Realignment Act of 1990, the recommendation became effective and binding in November, 2005. The Authority has exercised its reversionary rights to the subject property under the Deed and the title to the subject property reverted back to the Port in April, 2010. The fair market value as determined by the appraisal of the land and improvements has been reported as capital assets in the Authority’s statement of net assets and as a capital contribution on the statement of revenues, expenses and changes in net assets in the amount of \$101,671,427.

The Authority, acting as the Naval Station Ingleside Main Base Implementing Local Redevelopment Authority (ILRA) was conveyed the personal property remaining at NSI by Base Realignment and Closure Commission letter dated May 19, 2010. The personal property is restricted for use of support of the economic redevelopment of the former NSI. The economic value of the personal property has been estimated and is reported as a restricted asset and a restriction of net assets on the statement of net assets.

#### **12. SUBSEQUENT EVENTS**

On March 2, 2011, the Authority entered into a Surplus Sales Agreement with Flint Hills Resources Corpus Christi, LLC to sell 3.34 acres, including all improvements, and the Small Craft Pier located at Naval Station Ingleside for \$8,015,390.

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

**Required Supplementary Information (Unaudited)  
Schedule of Funding Progress**

**PENSION PLAN:**

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Actuarial Valuation Date	12/31/2009	12/31/2008	12/31/2007
Actuarial Value of Assets	\$ 20,143,863	\$ 18,097,936	\$ 17,772,707
Actuarial Accrued Liability (AAL)	\$ 24,899,158	\$ 23,421,983	\$ 22,044,720
Funded Ratio	80.9%	77.3%	80.6%
Unfunded Actuarial Accrued Liability (UAAL)	\$ 4,755,295	\$ 5,324,047	\$ 4,272,013
Annual covered Payroll	\$ 11,397,962	\$ 10,298,956	\$ 9,558,262
UAAL as a Percentage of Covered Payroll	41.7%	51.7%	44.7%

**OPEB Obligation:**

	<u>2010</u>	<u>2009</u>	<u>2008</u>
Actuarial Valuation Date	1/1/2008	1/1/2008	1/1/2008
Actuarial Value of Assets	\$ -	\$ -	\$ -
Actuarial Accrued Liability (AAL)	\$ 1,430,581	\$ 1,408,938	\$ 1,331,381
Funded Ratio	0.0%	0.0%	0.0%
Unfunded Actuarial Accrued Liability (UAAL)	\$ 1,430,581	\$ 1,408,938	\$ 1,331,381
Annual covered Payroll	\$ 11,840,674	\$ 11,397,962	\$ 10,298,956
UAAL as a Percentage of Covered Payroll	12.1%	12.4%	12.9%

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

**Schedule of Revenues and Expenses  
Actual and Budget (GAAP Basis)**

	Year Ended December 31, 2010		
	Actual	Budget	Variance (%)
<b>OPERATING REVENUES:</b>			
Wharfage	\$ 26,567,587	\$ 26,320,569	1
Dockage	8,138,326	7,593,324	7
Security fees	6,170,288	5,856,391	5
Freight handling	2,316,667	2,587,492	(10)
Building and land rentals	4,417,518	3,589,964	23
Conference center services	1,679,885	1,786,087	(6)
Warehouse handling charges	426,093	-	100
FTZ user fees	337,000	288,000	17
Other	2,226,488	1,984,523	12
<i>Total Operating Revenues</i>	<u>52,279,852</u>	<u>50,006,350</u>	<u>5</u>
<b>OPERATING EXPENSES:</b>			
Maintenance and operations	20,391,570	21,640,088	6
General and administrative	15,079,752	15,286,767	1
Depreciation	12,165,114	13,436,932	9
<i>Total Operating Expenses</i>	<u>47,636,436</u>	<u>50,363,787</u>	<u>5</u>
<i>Operating Income</i>	<u>4,643,416</u>	<u>(357,437)</u>	<u>1399</u>
<b>NON-OPERATING REVENUES (EXPENSES):</b>			
Interest revenue	478,291	562,135	(15)
Federal and other grant assistance	60,806	-	100
Donation of NSI personal property	225,825	-	100
Gain on disposal of fixed assets	(8,643)	-	(100)
Interest expense and fiscal charges	(450,602)	(463,692)	3
Amortization of bond issuance costs	(10,743)	(20,735)	48
<i>Net Non-Operating Revenues</i>	<u>294,934</u>	<u>77,708</u>	<u>280</u>
<i>Income Before Capital Grants and Contributions</i>	<u>4,938,350</u>	<u>(279,729)</u>	<u>1865</u>
<b>CAPITAL GRANTS AND CONTRIBUTIONS</b>	111,670,700	18,100,990	517
<i>Change in Net Assets</i>	<u>\$ 116,609,050</u>	<u>\$ 17,821,261</u>	<u>554</u>

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

**Schedules of Maintenance and  
Operations and General and  
Administrative Expenses  
For the Years Ended December 31, 2010 and 2009**

	<u>2010</u>	<u>2009</u>
<b>MAINTENANCE AND OPERATIONS:</b>		
Employee services	\$ 8,517,165	\$ 8,022,571
Maintenance	3,538,398	4,987,113
Utilities	1,702,868	1,631,307
Telephone	35,286	26,436
Insurance	2,266,112	1,844,918
Professional services	691,191	900,742
Police expenses	66,434	55,218
Contracted services	1,876,695	1,426,265
Office and equipment rental	73,983	97,627
Operator and event expenses	1,415,417	1,550,059
Warehouse supplies	9,037	44,700
Safety/Environmental	69,075	71,246
General	129,909	196,113
<i>Total Maintenance and Operations</i>	<u>\$ 20,391,570</u>	<u>\$ 20,854,315</u>
<b>GENERAL AND ADMINISTRATIVE:</b>		
Employee services	\$ 7,832,622	\$ 7,999,373
Maintenance	453,408	432,088
Utilities	172,703	224,245
Telephone	196,626	209,267
Insurance	124,620	96,638
Professional services	3,526,850	3,322,950
Police expenses	82	174
Contracted services	151,445	64,213
Office and equipment rental	59,809	40,406
Administrative	2,108,277	2,392,822
Trade and sales development	157,237	204,427
Media advertising	206,557	108,425
Production	25,678	48,319
Safety/Environmental	21,544	22,681
General	42,294	25,185
<i>Total General and Administrative</i>	<u>\$ 15,079,752</u>	<u>\$ 15,191,213</u>

**REVENUE BONDS, SERIES 2002-A**

<u>Years Ending December 31,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Requirements</u>
2011	\$ 720,000	\$ 239,605	\$ 959,605
2012	755,000	206,485	961,485
2013	790,000	171,000	961,000
2014	825,000	132,685	957,685
2015	865,000	91,435	956,435
2016	910,000	47,320	957,320
Total	<u>\$ 4,865,000</u>	<u>\$ 888,530</u>	<u>\$ 5,753,530</u>

**REVENUE BONDS, SERIES 2002-B**

<u>Years Ending December 31,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Requirements</u>
2011	\$ 545,000	\$ 168,800	\$ 713,800
2012	565,000	145,365	710,365
2013	590,000	120,505	710,505
2014	620,000	93,660	713,660
2015	650,000	64,520	714,520
2016	680,000	33,320	713,320
Total	<u>\$ 3,650,000</u>	<u>\$ 626,170</u>	<u>\$ 4,276,170</u>

**SUMMARY OF LONG-TERM DEBT**

<u>Years Ending December 31,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Requirements</u>
2011	\$ 1,265,000	\$ 408,405	\$ 1,673,405
2012	1,320,000	351,850	1,671,850
2013	1,380,000	291,505	1,671,505
2014	1,445,000	226,345	1,671,345
2015	1,515,000	155,955	1,670,955
2016	1,590,000	80,640	1,670,640
Total	<u>\$ 8,515,000</u>	<u>\$ 1,514,700</u>	<u>\$ 10,029,700</u>

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

**Schedules of Facilities Financing Bonds  
December 31, 2010**

<u>Description</u>	<u>Interest Rates</u>	<u>Issue Date</u>	<u>Series Maturity</u>	<u>Original Amount</u>	<u>Balance Outstanding</u>
<b>Pollution Control Revenue Bonds:</b>					
Union Pacific Res., Series 1989	Variable	06/30/1989	2022	\$ 40,000,000	\$ 40,000,000
Valero Refining, Series 1997A	* Variable	04/01/1997	2027	24,400,000	21,000,000
Valero Refining, Series 1997B	* Variable	04/01/1997	2027	32,800,000	30,500,000
Valero Refining, Series 1997C	* Variable	04/01/1997	2027	32,800,000	30,500,000
Hoechst Celanese, Series 2002A	6.450%	05/01/2002	2030	13,995,000	13,995,000
Hoechst Celanese, Series 2002B	6.700%	05/01/2002	2030	39,000,000	39,000,000
<b>Environmental Facilities Revenue Bonds:</b>					
Citgo Petroleum, Series 2003	* 8.250%	05/01/2003	2031	39,200,000	19,300,000
Citgo Petroleum, Series 2006	* Variable	10/01/2006	2036	50,000,000	50,000,000
Citgo Petroleum, Series 2007	* Variable	05/01/2007	2037	45,000,000	45,000,000
Citgo Petroleum, Series 2008	* Variable	04/01/2008	2043	50,000,000	50,000,000
<b>Solid Waste Disposal Revenue Bonds:</b>					
Flint Hills Res., Series 2002A	Variable	10/01/2002	2029	125,000,000	125,000,000
Flint Hills Res., Series 2002B	Variable	10/01/2002	2029	11,700,000	11,700,000
Flint Hills Res., Series 2003	Variable	04/01/2003	2028	19,500,000	19,500,000
Flint Hills Res., Series 2005	Variable	03/01/2005	2030	25,000,000	25,000,000
Flint Hills Res., Series 2006	Variable	04/01/2006	2030	42,000,000	42,000,000
Flint Hills Res., Series 2007	Variable	10/01/2007	2032	35,000,000	35,000,000
Total				<u>\$ 625,395,000</u>	<u>\$ 597,495,000</u>

\* - Issued by the Industrial Development Corporation (IDC)

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# *Statistical Section*

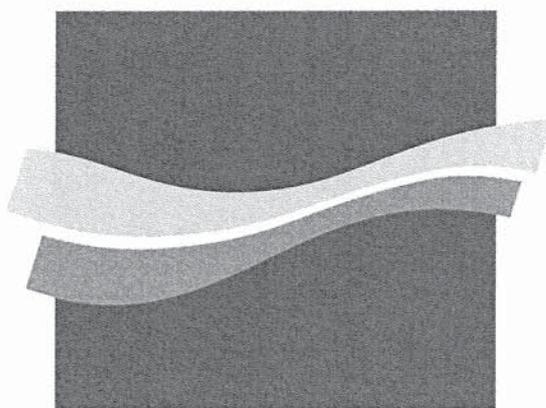
## *(Unaudited)*

This part of the Port of Corpus Christi’s comprehensive annual financial report presents detailed information as a context for understanding what the information in the financial statements, note disclosures, and required supplementary information says about the Authority’s overall financial health.

### Contents

	<u>Page</u>
<b>Financial Trends</b>	<b>39</b>
These schedules contain trend information to help the reader understand how the Authority’s financial performance and well-being have changed over time.	
<b>Revenue Capacity</b>	<b>43</b>
These schedules contain information to help the reader access the factors affecting the Authority’s ability to generate its most significant revenue sources.	
<b>Debt Capacity</b>	<b>49</b>
These schedules present information to help the reader assess the affordability of the Authority’s current level of outstanding debt and the Authority’s ability to issue additional debt in the future.	
<b>Demographic and Economic Information</b>	<b>51</b>
These schedules offer demographic and economic indicators to help the reader understand the environment with which the Authority’s financial activities take place and to help make comparisons over time and with other governments.	
<b>Operating Information</b>	<b>53</b>
These schedules contain information about the Authority’s operations and resources to help the reader understand how the Authority’s financial information relates to the services the Authority provides and the activities it performs.	
<b>Additional Information</b>	<b>59</b>
These schedules contain information as part of the Authority’s effort to meet continuing disclosure requirements related to outstanding bonds as permitted by SEC Rule 15c2-12.	

**Sources:** Unless otherwise noted, the information in these schedules is derived from the Authority’s comprehensive annual financial reports and business records for the relevant years. The Authority implemented Statement 34 in 2003; schedules presenting government-wide information include information beginning in that year.



PORT**CORPUSCHRISTI**

TABLE 1 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Net Assets and Changes in Net Assets  
Last Ten Years

	2001*	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Revenues</b>										
Operating revenues:										
Wharfage	\$ -	\$ 12,534,632	\$ 13,535,168	\$ 14,076,271	\$ 15,388,177	\$ 19,351,717	\$ 27,219,535	\$ 26,359,823	\$ 24,826,670	\$ 26,567,587
Dockage	-	2,733,667	3,218,880	3,858,120	4,153,902	3,354,723	3,655,333	7,078,197	7,319,259	8,138,326
Security fees	-	-	-	869,819	2,121,042	2,158,237	2,351,695	3,474,748	3,412,485	6,170,288
Freight handling	-	2,410,795	1,492,129	1,976,486	2,351,619	2,065,511	2,166,118	2,178,423	2,428,621	2,316,667
Building and land rentals	-	3,385,964	3,361,762	3,409,141	3,705,185	4,037,572	4,545,342	4,318,458	3,924,060	4,417,518
Conference center services	-	1,367,934	1,443,592	1,663,726	1,556,200	1,495,599	1,597,594	1,451,630	2,007,407	1,679,885
Warehouse handling charges	-	954,178	1,137,336	816,739	1,737,118	1,484,404	1,211,146	1,367,306	596,168	426,093
FTZ user fees	-	287,115	264,750	261,666	233,333	243,000	295,000	284,500	326,000	337,000
Compress	-	185,538	45,598	-	-	-	-	-	-	-
Other	-	1,301,176	2,380,598	1,439,329	1,485,316	1,845,648	1,887,694	4,538,108	1,585,220	2,226,488
Total operating revenues	-	25,160,999	26,879,813	28,371,297	32,731,892	36,036,411	44,929,457	51,051,193	46,425,890	52,279,852
Interest revenue	-	1,314,593	1,222,899	1,116,764	1,084,006	1,269,697	1,230,324	932,447	584,849	478,291
Federal and other grant assistance	-	-	-	-	78,914	-	-	284,048	17,570	60,806
Donation of NSI personal property	-	-	-	-	-	-	-	-	-	225,825
Gain on disposal of capital assets	-	236,214	-	1,242,935	60,268	-	-	-	7,266	-
Total Revenues	-	26,711,806	28,102,712	30,730,996	33,955,080	37,306,108	46,159,781	52,267,688	47,035,575	53,044,774
<b>Expenses</b>										
Operating expenses:										
Maintenance and operations	-	11,415,193	12,474,555	13,937,712	16,361,152	18,385,065	21,392,329	21,842,912	20,854,315	20,391,570
General and administrative	-	8,883,174	9,572,631	9,630,337	10,139,046	10,760,589	12,521,179	13,007,565	15,191,213	15,079,752
Depreciation	-	5,284,372	5,417,115	5,513,656	6,142,055	7,127,447	8,442,640	9,648,639	10,060,645	12,165,114
Total operating expenses	-	25,582,739	27,464,301	29,081,705	32,642,253	36,273,101	42,356,148	44,499,116	46,106,173	47,636,436
Interest expense and fiscal charges	-	656,585	781,399	739,852	712,323	689,611	620,495	562,442	504,030	450,602
Amortization of bond issuance costs	-	78,392	104,862	81,418	63,610	49,458	37,828	28,615	20,735	10,743
Fiscal payments to subrecipients	-	-	-	-	-	-	-	284,048	-	-
Loss on disposal of capital assets	-	-	90,856	-	-	15,395	10,293	308,883	-	8,643
Total Expenses	-	26,317,716	28,441,418	29,902,975	33,418,186	37,027,565	43,024,764	45,683,104	46,630,938	48,106,424
Income(Loss) Before Contributions	-	394,090	(338,706)	828,021	536,894	278,543	3,135,017	6,584,584	404,637	4,938,350
Capital Contributions	-	1,123,096	1,638,527	10,453,132	17,792,218	12,261,584	4,633,770	2,510,746	2,090,573	111,670,700
Changes in Net Assets	-	1,517,186	1,299,821	11,281,153	18,329,112	12,540,127	7,768,787	9,095,330	2,495,210	116,609,050
Total Net Assets, Beginning of Year	-	172,263,494	173,780,680	175,080,501	186,361,654	204,690,766	217,230,893	224,999,680	234,095,010	236,590,220
Total Net Assets, End of Year	\$ -	\$ 173,780,680	\$ 175,080,501	\$ 186,361,654	\$ 204,690,766	\$ 217,230,893	\$ 224,999,680	\$ 234,095,010	\$ 236,590,220	\$ 353,199,270
<b>Net Assets at Year End</b>										
Invested in capital assets, net of related debt	\$ -	\$ 135,287,438	\$ 137,188,296	\$ 156,056,302	\$ 178,351,445	\$ 195,074,359	\$ 204,800,725	\$ 202,587,244	\$ 211,984,713	\$ 321,470,695
Restricted	-	2,660,144	2,348,028	2,243,263	2,167,787	2,061,302	2,193,823	1,756,683	1,747,632	1,927,662
Unrestricted	-	35,833,098	35,544,177	28,062,089	24,171,534	20,095,232	18,005,132	29,751,083	22,857,875	29,800,913
Total Net Assets	\$ -	\$ 173,780,680	\$ 175,080,501	\$ 186,361,654	\$ 204,690,766	\$ 217,230,893	\$ 224,999,680	\$ 234,095,010	\$ 236,590,220	\$ 353,199,270

\* - Not available, prior to implementation of GASB 34

TABLE 2 (Unaudited)

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

**Revenues by Source  
Last Ten Years**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Operating Revenues:</b>										
Wharfage	\$ 13,215,302	\$ 12,534,632	\$ 13,535,168	\$ 14,076,271	\$ 15,388,177	\$ 19,351,717	\$ 27,219,535	\$ 26,359,823	\$ 24,826,670	\$ 26,567,587
Dockage	3,009,600	2,733,667	3,218,880	3,858,120	4,153,902	3,354,723	3,655,333	7,078,197	7,319,259	8,138,326
Security fees	-	-	-	869,819	2,121,042	2,158,237	2,351,695	3,474,748	3,412,485	6,170,288
Freight handling	2,033,916	2,410,795	1,492,129	1,976,486	2,351,619	2,065,511	2,166,118	2,178,423	2,428,621	2,316,667
Building and land rentals	3,363,438	3,385,964	3,361,762	3,409,141	3,705,185	4,037,572	4,545,342	4,318,458	3,924,060	4,417,518
Conference center services	833,712	1,367,934	1,443,592	1,663,726	1,556,200	1,495,599	1,597,594	1,451,630	2,007,407	1,679,885
Warehouse handling charges	102,623	954,178	1,137,336	816,739	1,737,118	1,484,404	1,211,146	1,367,306	596,168	426,093
FTZ user fees	281,750	287,115	264,750	261,666	233,333	243,000	295,000	284,500	326,000	337,000
Compress	1,477,844	185,538	45,598	-	-	-	-	-	-	-
Other	1,306,133	1,301,176	2,380,598	1,439,329	1,485,316	1,845,648	1,887,694	4,538,108	1,585,220	2,226,488
	<u>\$ 25,624,318</u>	<u>\$ 25,160,999</u>	<u>\$ 26,879,813</u>	<u>\$ 28,371,297</u>	<u>\$ 32,731,892</u>	<u>\$ 36,036,411</u>	<u>\$ 44,929,457</u>	<u>\$ 51,051,193</u>	<u>\$ 46,425,890</u>	<u>\$ 52,279,852</u>
<b>Non-Operating Revenues:</b>										
Other:										
Interest	\$ 1,261,435	\$ 1,314,593	\$ 1,222,899	\$ 1,116,764	\$ 1,084,006	\$ 1,269,697	\$ 1,230,324	\$ 932,447	\$ 584,849	\$ 478,291
Other	787,431	236,214	-	1,242,935	139,182	-	-	284,048	24,836	286,631
	<u>\$ 2,048,866</u>	<u>\$ 1,550,807</u>	<u>\$ 1,222,899</u>	<u>\$ 2,359,699</u>	<u>\$ 1,223,188</u>	<u>\$ 1,269,697</u>	<u>\$ 1,230,324</u>	<u>\$ 1,216,495</u>	<u>\$ 609,685</u>	<u>\$ 764,922</u>

TABLE 3 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Expenses by Type  
Last Ten Years

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Operating Expenses:</b>										
Maintenance and Operation:										
Employee services	\$ 3,570,749	\$ 3,929,041	\$ 4,144,531	\$ 5,206,360	\$ 6,296,241	\$ 6,768,333	\$ 6,952,412	\$ 8,255,443	\$ 8,022,571	\$ 8,517,165
Maintenance	1,761,065	1,970,104	2,686,825	2,641,655	3,317,396	4,173,668	6,483,605	6,340,774	4,987,113	3,538,398
Utilities	615,609	694,391	886,009	964,332	1,095,452	1,399,011	1,383,059	1,357,364	1,631,307	1,702,868
Telephone	33,212	34,045	22,358	20,468	19,694	23,716	35,699	29,991	26,436	35,286
Insurance	966,114	1,276,352	1,427,198	1,327,486	1,264,823	1,726,286	2,017,983	1,902,331	1,844,918	2,266,112
Professional services	137,700	202,418	228,158	444,902	544,189	400,085	344,073	424,975	900,742	691,191
Police expenses	-	-	-	64,252	36,788	53,276	39,442	74,106	55,218	66,434
Contracted services	1,205,445	1,597,049	1,485,158	1,483,850	2,155,840	2,110,723	2,166,855	1,834,442	1,426,265	1,876,695
Office and equipment rental	40,616	106,710	11,908	25,941	78,665	129,527	124,691	91,004	97,627	73,983
Operator and event expenses	708,885	1,225,868	1,310,806	1,438,345	1,287,428	1,311,334	1,523,025	1,280,002	1,550,059	1,415,417
Warehouse supplies	1,898	85,770	46,823	51,281	136,382	64,946	38,292	68,428	44,700	9,037
Ginning	546,622	-	-	-	-	-	-	-	-	-
Safety/Environmental	33,018	39,985	46,293	43,180	53,509	50,970	62,693	90,947	71,246	69,075
General	246,706	253,460	178,488	225,660	74,745	173,190	220,500	93,105	196,113	129,909
	<u>\$ 9,867,639</u>	<u>\$11,415,193</u>	<u>\$12,474,555</u>	<u>\$13,937,712</u>	<u>\$16,361,152</u>	<u>\$18,385,065</u>	<u>\$21,392,329</u>	<u>\$21,842,912</u>	<u>\$20,854,315</u>	<u>\$20,391,570</u>
General and Administrative:										
Employee services	\$ 4,485,094	\$ 4,523,035	\$ 5,048,655	\$ 5,367,098	\$ 5,711,388	\$ 6,150,455	\$ 6,808,607	\$ 7,349,030	\$ 7,999,373	\$ 7,832,622
Maintenance	234,515	297,592	272,419	274,342	229,548	324,760	351,566	320,610	432,088	453,408
Utilities	154,595	118,395	131,448	135,135	162,864	218,586	222,481	196,865	224,245	172,703
Telephone	124,877	98,649	103,287	108,862	209,939	205,520	213,248	231,958	209,267	196,626
Insurance	85,113	208,519	107,456	45,278	119,854	111,670	108,314	84,451	96,638	124,620
Professional services	1,914,403	1,794,626	1,781,500	1,642,718	1,713,073	1,864,026	2,290,016	2,419,843	3,322,950	3,526,850
Police expenses	-	-	-	1,429	1,341	654	216	314	174	82
Contracted services	105,890	94,226	68,343	60,516	54,189	134,754	198,260	88,262	64,213	151,445
Office and equipment rental	46,307	2,245	8,270	3,042	4,451	6,852	10,173	18,264	40,406	59,809
Administrative	1,262,105	1,279,119	1,533,738	1,598,908	1,483,098	1,647,031	1,925,958	1,873,318	2,392,822	2,108,277
Trade and sales development	178,538	129,229	125,484	143,296	107,450	123,054	146,161	148,946	204,427	157,237
Media advertising	211,051	124,256	88,530	102,957	91,527	73,557	157,725	109,262	108,425	206,557
Production	77,551	55,918	57,538	25,460	45,124	56,861	30,773	27,917	48,319	25,678
Safety/Environmental	11,241	13,638	19,889	20,992	20,439	36,047	26,992	38,206	22,681	21,544
General	106,490	143,727	226,074	100,304	184,761	(193,238)	30,689	100,319	25,185	42,294
	<u>\$ 8,997,770</u>	<u>\$ 8,883,174</u>	<u>\$ 9,572,631</u>	<u>\$ 9,630,337</u>	<u>\$10,139,046</u>	<u>\$10,760,589</u>	<u>\$12,521,179</u>	<u>\$13,007,565</u>	<u>\$15,191,213</u>	<u>\$15,079,752</u>
Depreciation	<u>\$ 5,224,868</u>	<u>\$ 5,284,372</u>	<u>\$ 5,417,115</u>	<u>\$ 5,513,656</u>	<u>\$ 6,142,055</u>	<u>\$ 7,127,447</u>	<u>\$ 8,442,640</u>	<u>\$ 9,648,639</u>	<u>\$10,060,645</u>	<u>\$12,165,114</u>
<b>Non-Operating Expenses:</b>										
Other:										
Interest	\$ 85,005	\$ 734,977	\$ 886,261	\$ 821,270	\$ 775,933	\$ 739,069	\$ 658,323	\$ 591,057	\$ 504,030	\$ 450,602
Other	-	-	90,856	-	-	15,395	10,293	592,931	20,735	19,386
	<u>\$ 85,005</u>	<u>\$ 734,977</u>	<u>\$ 977,117</u>	<u>\$ 821,270</u>	<u>\$ 775,933</u>	<u>\$ 754,464</u>	<u>\$ 668,616</u>	<u>\$ 1,183,988</u>	<u>\$ 524,765</u>	<u>\$ 469,988</u>

TABLE 4 (Unaudited)

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**
**Financial Performance Indicators  
Last Ten Years**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Operating Revenues (OR)	\$ 25,624,318	\$ 25,160,999	\$ 26,879,813	\$ 28,371,297	\$ 32,731,892	\$ 36,036,411	\$ 44,929,457	\$ 51,051,193	\$ 46,425,890	\$ 52,279,852
Operating Expenses (OE) *	(18,865,409)	(20,298,367)	(22,047,186)	(23,568,049)	(26,500,198)	(29,145,654)	(33,913,508)	(34,850,477)	(36,045,528)	(35,471,322)
Net Operating Income (NOI)	6,758,909	4,862,632	4,832,627	4,803,248	6,231,694	6,890,757	11,015,949	16,200,716	10,380,362	16,808,530
Non-Operating Revenues	2,055,366	1,550,807	1,222,899	2,359,699	1,223,188	1,269,697	1,230,324	1,216,495	609,685	764,922
Non-Operating Expenses	(85,005)	(734,977)	(977,117)	(821,270)	(775,933)	(754,464)	(668,616)	(1,183,988)	(524,765)	(469,988)
Net Income "A" (NI"A")	8,729,270	5,678,462	5,078,409	6,341,677	6,678,949	7,405,990	11,577,657	16,233,223	10,465,282	17,103,464
Depreciation	(5,224,868)	(5,284,372)	(5,417,115)	(5,513,656)	(6,142,055)	(7,127,447)	(8,442,640)	(9,648,639)	(10,060,645)	(12,165,114)
Net Income (Loss) "B" (NI"B")	\$ 3,504,402	\$ 394,090	\$ (338,706)	\$ 828,021	\$ 536,894	\$ 278,543	\$ 3,135,017	\$ 6,584,584	\$ 404,637	\$ 4,938,350
Net Capital Assets (NCA) **	\$ 143,840,270	\$ 145,906,446	\$ 143,298,109	\$ 139,998,166	\$ 156,723,984	\$ 175,997,745	\$ 173,486,988	\$ 218,586,423	\$ 216,324,078	\$ 310,154,387
Total Assets (TA)	\$ 179,679,554	\$ 196,391,543	\$ 197,115,656	\$ 212,289,063	\$ 242,045,429	\$ 252,168,291	\$ 258,145,439	\$ 263,271,819	\$ 265,325,288	\$ 382,604,209

**Operating Indicators:**

Operating ROI (NOI/NCA)	4.70%	3.33%	3.37%	3.43%	3.98%	3.92%	6.35%	7.41%	4.80%	5.42%
Operating Margin (NOI/OR)	26.38%	19.33%	17.98%	16.93%	19.04%	19.12%	24.52%	31.73%	22.36%	32.15%
Operating Ratio (OE/OR)	73.62%	80.67%	82.02%	83.07%	80.96%	80.88%	75.48%	68.27%	77.64%	67.85%

**Other ROI Indicators:**

ROI "A" (NI"A"/TA)	4.86%	2.89%	2.58%	2.99%	2.76%	2.94%	4.48%	6.17%	3.94%	4.47%
ROI "B" (NI"B"/TA)	1.95%	0.20%	-0.17%	0.39%	0.22%	0.11%	1.21%	2.50%	0.15%	1.29%

\* - Excludes Depreciation

\*\* - Excludes Construction in Progress

TABLE 5 (Unaudited)

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**
**Port Commerce By Commodity  
Last Ten Years**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Commodity By Port Division - Short tons</b>										
<b>Inner Harbor</b>										
Break Bulk	18,786	41,356	210,873	253,084	200,159	183,544	215,964	256,612	133,037	157,781
Grain	1,960,433	1,845,301	1,666,579	1,836,090	2,098,829	2,025,864	3,367,057	5,409,827	3,951,347	4,100,774
Chemical	65,394	48,861	37,243	47,295	66,514	59,851	52,709	68,760	43,982	37,814
Dry Bulk	2,259,592	2,501,157	2,062,015	2,541,606	2,544,880	2,008,088	2,420,282	2,318,675	1,974,232	2,038,029
Liquid Bulk	320,633	65,538	243,135	407,906	518,403	248,355	513,036	301,007	131,100	506,211
Petroleum	69,375,427	63,809,573	67,466,251	67,414,002	66,391,484	68,242,433	67,124,801	62,558,169	56,586,340	61,163,028
<b>Total</b>	<b>74,000,265</b>	<b>68,311,786</b>	<b>71,686,096</b>	<b>72,499,983</b>	<b>71,820,269</b>	<b>72,768,135</b>	<b>73,693,849</b>	<b>70,913,050</b>	<b>62,820,038</b>	<b>68,003,637</b>
<b>La Quinta</b>										
Break Bulk	-	-	-	-	-	-	-	-	-	1,369
Chemical	1,878,788	1,556,565	1,966,843	2,095,441	1,728,815	1,510,142	1,796,165	1,561,258	1,366,046	1,430,429
Dry Bulk	4,813,124	4,890,941	4,761,502	4,689,730	5,812,484	5,690,335	5,780,257	5,572,667	4,467,692	4,809,114
Petroleum	30,785	26,862	23,386	31,518	25,081	24,030	26,925	26,607	18,766	22,404
<b>Total</b>	<b>6,722,697</b>	<b>6,474,368</b>	<b>6,751,731</b>	<b>6,816,689</b>	<b>7,566,380</b>	<b>7,224,507</b>	<b>7,603,347</b>	<b>7,160,532</b>	<b>5,852,504</b>	<b>6,263,316</b>
<b>Harbor Island</b>										
Break Bulk	10,609	5,132	17,146	1,816	6	6	6	2	-	-
Petroleum	1,074	2,760	533	-	332	-	-	-	-	-
<b>Total</b>	<b>11,683</b>	<b>7,892</b>	<b>17,679</b>	<b>1,816</b>	<b>338</b>	<b>6</b>	<b>6</b>	<b>2</b>	<b>-</b>	<b>-</b>
<b>Ingleside</b>										
Break Bulk	186,428	93,260	133,165	241,882	226,899	46,637	224,714	277,147	178,826	169,609
Dry Bulk	48	-	3,506	(3,506)	-	-	42,722	-	-	7,012
Petroleum	6,111,062	6,061,259	6,531,995	6,769,131	7,115,455	6,909,586	7,741,913	7,475,838	7,660,416	7,715,429
<b>Total</b>	<b>6,297,538</b>	<b>6,154,519</b>	<b>6,668,666</b>	<b>7,007,507</b>	<b>7,342,354</b>	<b>6,956,223</b>	<b>8,009,349</b>	<b>7,752,985</b>	<b>7,839,242</b>	<b>7,892,050</b>
<b>Rincon Point</b>										
Break Bulk	-	-	62	6,234	17,918	26,510	4,519	18,829	6,130	10,500
Grain	-	-	-	-	-	5,746	10,329	14,040	-	12,503
Dry Bulk	3,774	10,358	6,890	61,574	38,690	1,707	(1,707)	-	1,734	12,291
<b>Total</b>	<b>3,774</b>	<b>10,358</b>	<b>6,952</b>	<b>67,808</b>	<b>56,608</b>	<b>33,963</b>	<b>13,141</b>	<b>32,869</b>	<b>7,864</b>	<b>35,294</b>
<b>Total</b>	<b>87,035,957</b>	<b>80,958,923</b>	<b>85,131,124</b>	<b>86,393,803</b>	<b>86,785,949</b>	<b>86,982,834</b>	<b>89,319,692</b>	<b>85,859,438</b>	<b>76,519,648</b>	<b>82,194,297</b>
<b>Commodity Totals - Short tons</b>										
Break Bulk	215,823	139,748	361,246	503,016	444,982	256,697	445,203	552,590	317,993	339,259
Grain	1,960,433	1,845,301	1,666,579	1,836,090	2,098,829	2,031,610	3,377,386	5,423,867	3,951,347	4,113,277
Chemical	1,944,182	1,605,426	2,004,086	2,142,736	1,795,329	1,569,993	1,848,874	1,630,018	1,410,028	1,468,243
Dry Bulk	7,076,538	7,402,456	6,833,913	7,289,404	8,396,054	7,700,130	8,241,554	7,891,342	6,443,658	6,866,446
Liquid Bulk	320,633	65,538	243,135	407,906	518,403	248,355	513,036	301,007	131,100	506,211
Petroleum	75,518,348	69,900,454	74,022,165	74,214,651	73,532,352	75,176,049	74,893,639	70,060,614	64,265,522	68,900,861
<b>Total</b>	<b>87,035,957</b>	<b>80,958,923</b>	<b>85,131,124</b>	<b>86,393,803</b>	<b>86,785,949</b>	<b>86,982,834</b>	<b>89,319,692</b>	<b>85,859,438</b>	<b>76,519,648</b>	<b>82,194,297</b>

TABLE 5 (Unaudited - Continued)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Port Commerce By Commodity  
Last Ten Years

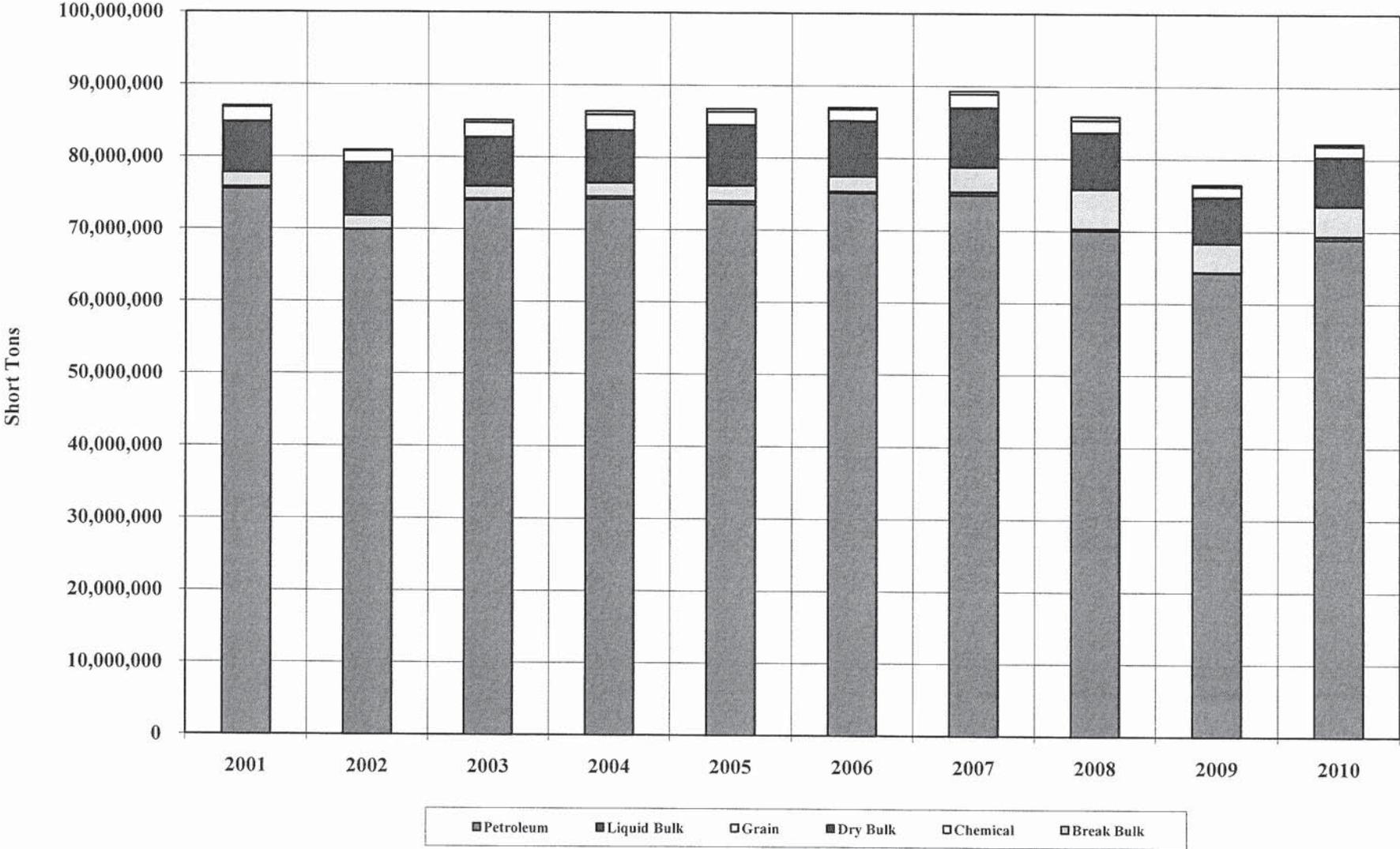


TABLE 6 (Unaudited)

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

**Vessel Traffic  
Last Ten Years**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Inner Harbor</b>										
<i>Ships</i>										
Dry Cargo	224	266	244	210	268	233	300	377	217	234
Tankers	843	744	841	803	808	817	825	819	779	816
<i>Barges</i>	4,625	4,066	4,465	4,818	4,820	4,440	4,393	4,112	3,691	4,168
<i>Total Vessels</i>	5,692	5,076	5,550	5,831	5,896	5,490	5,518	5,308	4,687	5,218
<b>La Quinta Harbor</b>										
<i>Ships</i>										
Dry Cargo	124	119	116	101	147	128	117	107	100	124
Tankers	119	112	152	167	104	110	135	104	85	69
<i>Barges</i>	132	161	257	281	310	175	166	102	80	123
<i>Total Vessels</i>	375	392	525	549	561	413	418	313	265	316
<b>Harbor Island</b>										
<i>Ships</i>										
Dry Cargo	681	628	540	581	610	566	632	227	-	-
Tankers	-	-	-	-	-	-	-	-	-	-
<i>Barges</i>	8	23	5	-	-	-	-	-	-	-
<i>Total Vessels</i>	689	651	545	581	610	566	632	227	-	-
<b>Ingleside Harbor</b>										
<i>Ships</i>										
Dry Cargo	4	13	6	13	12	15	28	19	22	58
Tankers	65	84	80	86	88	92	97	98	109	107
<i>Barges</i>	35	52	56	111	54	55	45	49	66	67
<i>Total Vessels</i>	104	149	142	210	154	162	170	166	197	232
<b>Rincon Point</b>										
<i>Ships</i>										
Dry Cargo	-	-	-	-	-	-	-	-	-	-
Tankers	-	-	-	-	-	-	-	-	-	-
<i>Barges</i>	-	3	4	66	114	2	6	8	2	3
<i>Total Vessels</i>	-	3	4	66	114	2	6	8	2	3
<b>Total</b>										
<i>Ships</i>										
Dry Cargo	1,033	1,026	906	905	1,037	942	1,077	730	339	416
Tankers	1,027	940	1,073	1,056	1,000	1,019	1,057	1,021	973	992
<i>Barges</i>	4,800	4,305	4,787	5,276	5,298	4,672	4,610	4,271	3,839	4,361
<i>Total Vessels</i>	6,860	6,271	6,766	7,237	7,335	6,633	6,744	6,022	5,151	5,769

TABLE 6 (Unaudited - Continued)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Vessel Traffic  
Last Ten Years

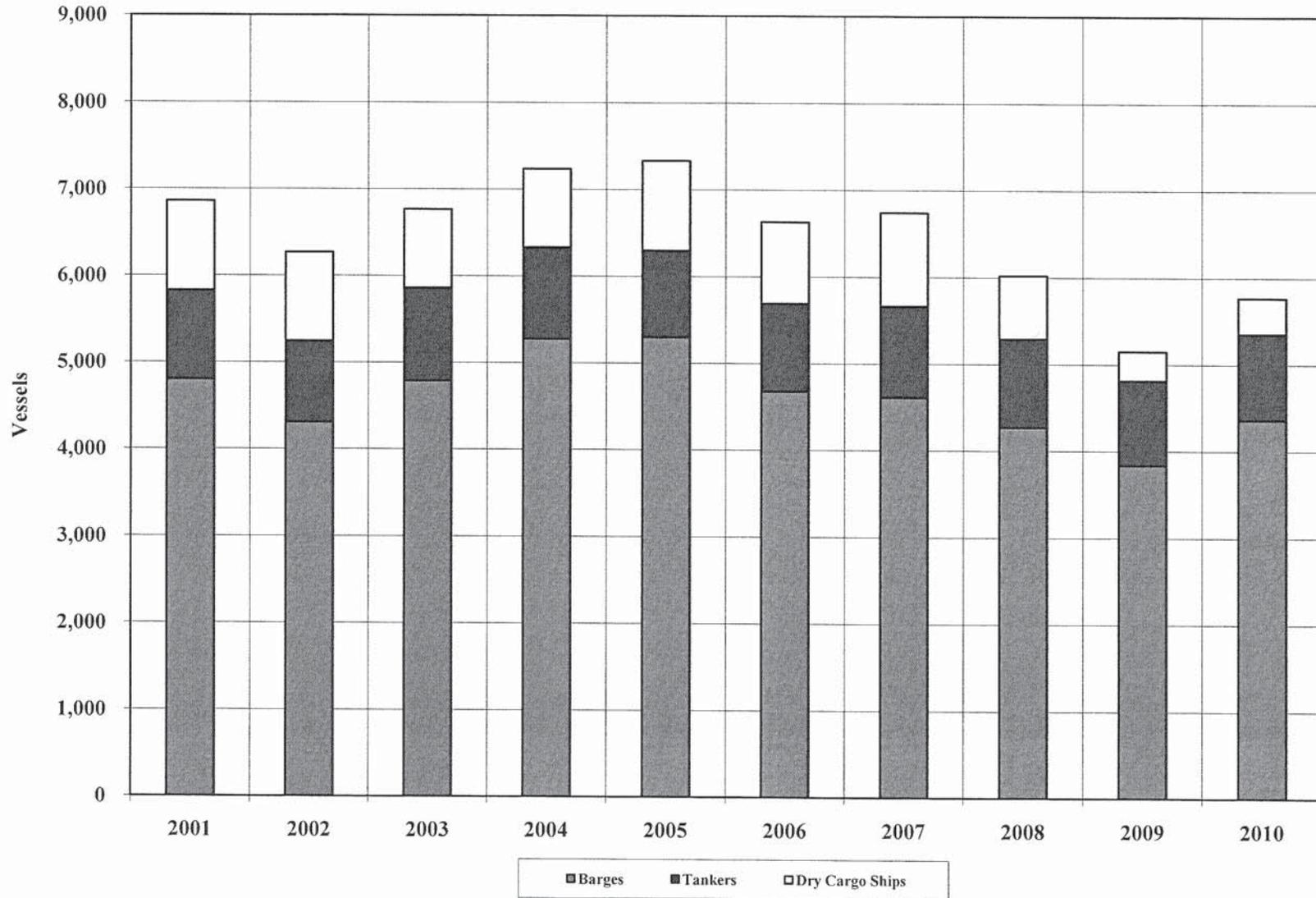


TABLE 7 (Unaudited)

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**
**Tariff Rates  
Last Ten Years**

	U/M	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Wharfage Rates</b>											
All Cargo NOS	W/M	\$2.5000	\$2.5000	\$2.5000	\$2.5000	\$2.5000	\$2.5000	\$2.5000	\$2.7500	\$2.8600	\$2.8500
Dry Bulk	S/T	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6200	\$0.9000
Liquid Bulk	BRL	\$0.0400	\$0.0400	\$0.0400	\$0.0400	\$0.0600	\$0.0600	\$0.0800	\$0.0800	\$0.0831	\$0.0828
Beans, Lentils & Peas	S/T	\$0.4000	\$0.4000	\$0.4000	\$0.4000	\$0.5000	\$0.5000	\$0.5000	\$0.5500	\$0.5700	\$0.5700
Cotton	Bale	\$0.1500	\$0.1500	\$0.1500	\$0.1500	\$0.4800	\$0.4800	\$0.4800	\$0.4800	\$0.5000	\$0.5000
Grain and Grain Products	S/T	\$0.4000	\$0.4000	\$0.4000	\$0.4000	\$0.5000	\$0.5000	\$0.5000	\$0.7000	\$1.3000	\$1.2900
Grain and Grain Products (bulk)	S/T	\$0.1700	\$0.1700	\$0.1700	\$0.1700	\$0.1700	\$0.1700	\$0.1700	\$0.2500	\$0.2600	\$0.2600
Iron and Steel Articles	S/T	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.8000	\$1.8700	\$1.8600
Machinery, agricultural	S/T	\$0.0000	\$0.0000	\$1.7600	\$1.7600	\$1.7600	\$1.7600	\$1.7600	\$2.7500	\$2.8600	\$2.8500
Machinery, grading, earth moving	S/T	\$2.0000	\$2.0000	\$2.0000	\$2.0000	\$2.0000	\$2.0000	\$2.0000	\$2.7500	\$2.8600	\$2.8500
Military Cargo	S/T	\$1.3000	\$1.3000	\$1.3000	\$1.3000	\$2.3000	\$2.3000	\$2.3000	\$2.3000	\$5.3800	\$5.3600
Milk, dehydrated	S/T	\$0.4000	\$0.4000	\$0.4000	\$0.4000	\$0.5000	\$0.5000	\$0.5000	\$0.7000	\$1.5200	\$1.5100
Passengers	Person	\$4.0000	\$4.0000	\$4.0000	\$5.0000	\$5.0000	\$5.0000	\$5.0000	\$5.0000	\$5.0000	\$4.9800
Power Generation/Plant Equipment	S/T	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$1.9000	\$1.9000	\$2.7500	\$2.8500	\$2.8400
Refrigerated Cargo	S/T	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$1.3000	\$1.3000	\$1.3000	\$1.3000	\$1.3000	\$1.2900
Rice and Rice Products	S/T	\$0.4000	\$0.4000	\$0.4000	\$0.4000	\$0.5000	\$0.5000	\$0.5000	\$0.7000	\$1.3000	\$1.2900
Sand, aggregates, caliche, limestone	S/T	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6000	\$0.6200	\$0.9000
Vegetable oil	S/T	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2000	\$1.2500	\$1.2500
Vehicles	S/T	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$4.7500	\$4.9400	\$4.9200
Vessels, pressure	S/T	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.4000	\$3.5300	\$3.5200
<b>Dockage Rates</b>											
General Cargo											
Vessels											
0-199	Feet	\$1.90	\$1.90	\$1.90	\$1.90	\$1.97	\$1.97	\$1.97	<u>Dry/Liquid</u>		
200-399	Feet	\$2.22	\$2.22	\$2.22	\$2.22	\$2.55	\$2.55	\$2.55	\$2.28/\$1.62	\$2.37	\$2.36
400-499	Feet	\$3.02	\$3.02	\$3.00	\$3.02	\$3.50	\$3.50	\$3.50	\$2.99/\$2.10	\$3.11	\$3.10
500-599	Feet	\$4.06	\$4.06	\$4.06	\$4.06	\$4.67	\$4.67	\$4.67	\$4.23/\$2.88	\$4.40	\$4.38
600-699	Feet	\$4.72	\$4.72	\$4.72	\$4.72	\$5.43	\$5.43	\$5.43	\$5.69/\$3.85	\$5.91	\$5.89
700-799	Feet	\$5.99	\$5.99	\$5.99	\$5.99	\$6.89	\$6.89	\$6.89	\$6.51/\$4.47	\$6.77	\$6.74
800-899	Feet	\$7.21	\$7.21	\$7.21	\$7.21	\$8.29	\$8.29	\$8.29	\$8.39/\$5.67	\$8.72	\$8.69
900 +	Feet	\$8.63	\$8.63	\$8.63	\$8.63	\$9.92	\$9.92	\$9.92	\$10.10/\$6.83	\$10.50	\$10.46
Barges - Inland Waterway		\$0.09 NRT	\$12.08/\$8.17	\$12.55	\$12.50						
Bulk Terminal	GRT	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$90.00 Flat	\$95.00 Flat	\$125.00
Liquid Bulk									\$0.49	\$0.51	\$0.41
Vessels											
Barges	DWT	\$0.025	\$0.025	\$0.025	\$0.025	\$0.025	\$0.025	\$0.025	See Dry/Liquid	See Dry/Liquid	See Dry/Liquid
0-360 Feet	Barge	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00	\$90.00	\$95.00	\$125.00
360 +	Barge	\$700.00	\$700.00	\$700.00	\$700.00	\$700.00	\$700.00	\$700.00	See Dry/Liquid	See Dry/Liquid	\$700.00
<b>Harbor Safety Fee <sup>2</sup></b>											
Ships	Ship	\$240.00	\$240.00	\$240.00	\$240.00	\$240.00	\$240.00	\$240.00	\$275.00	\$275.00	\$2,032.00
Barges	Barge	\$30.00	\$30.00	\$30.00	\$30.00	\$30.00	\$30.00	\$30.00	\$35.00	\$35.00	\$230.00
<b>Security Surcharge Fee <sup>1</sup></b>											
		-	-	-	10.0%	10.5%	11.0%	11.5%	12.0%	10.0%	10.0%

<sup>1</sup> Security surcharge fee is calculated on wharfage and dockage billings

<sup>2</sup> Harbor Safety Fees include fireboat fees and a marine patrol fee implemented in 2010

Tariff rates reported on this schedule represent the most significant of the Authority's revenue sources, all rates may be obtained from the Authority's published tariff

S/T - short tons; BRL - barrel; DWT - dead weight tons; NRT - net registered tons; GRT - gross registered tons; W/M - weight or measure

TABLE 8 (Unaudited)

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

**Ten Largest Customers  
December 31, 2010 and 2001**

**WHARFAGE and DOCKAGE REVENUE:**

Customer	2010			2001		
	Wharfage and Dockage Revenue	Rank	%	Wharfage and Dockage Revenue	Rank	%
Valero	\$ 9,261,166	1	25.11%	\$ 3,225,208	2	18.40%
Citgo	6,584,832	2	17.85%	3,751,134	1	21.40%
Flint Hills	5,266,471	3	14.28%	-		
NuStar Logistics	3,326,512	4	9.02%	-		
Equistar	1,172,641	5	3.18%	367,975	9	2.10%
Biehl & Company	938,177	6	2.54%	-		
Valls Shipping	740,887	7	2.01%	327,232	10	1.87%
Max Shipping	607,764	8	1.65%	-		-
Port Corpus	482,862	9	1.31%	-		-
Dix-Fairway	471,671	10	1.28%	397,402	7	2.27%
Koch Petroleum Group	-	-	-	2,675,662	3	15.27%
Shamrock Logistics	-	-	-	1,411,340	4	8.05%
Coastal Refining & Marketing	-	-	-	797,970	5	4.55%
Boyd Campbell	-	-	-	510,575	6	2.91%
Aimcor	-	-	-	395,298	8	2.26%
Subtotal (10 largest)	28,852,983		78.23%	13,859,796		79.08%
Other	8,031,016		21.77%	3,665,890		20.92%
Total	\$ 36,883,999		100.00%	\$ 17,525,686		100.00%

\* Flint Hills was formerly Koch Petroleum

**TONNAGE:**

Customer	2010			2001		
	Tonnage	Rank	%	Tonnage	Rank	%
Valero	23,677,163	1	28.81%	19,408,041	2	22.30%
Citgo	22,274,944	2	27.10%	25,857,493	1	29.71%
Flint Hills	15,131,243	3	18.41%	-		
Sherwin Alumina	4,809,471	4	5.85%	-		
NuStar Logistics	4,466,990	5	5.43%	-		
ADM/Growmark	2,388,517	6	2.91%	1,106,834	10	1.27%
Interstate Grain	1,704,255	7	2.07%	-		
Equistar	1,468,902	8	1.79%	1,267,162	9	1.46%
Occidental	1,431,882	9	1.74%	1,873,214	8	2.15%
Port Corpus Terminal	553,106	10	0.67%	-		
Koch Petroleum Group	-			13,016,148	3	14.95%
Koch Gathering	-			6,108,856	4	
Shamrock Logistics	-			4,982,316	5	5.72%
Reynolds Metals	-			4,820,339	6	5.54%
Coastal Refining & Marketing	-			3,048,016	7	3.50%
Subtotal (10 largest)	77,906,473		94.78%	81,488,418		93.63%
Other	4,287,825		5.22%	5,547,538		6.37%
Total	82,194,298		100.00%	87,035,956		100.00%

TABLE 9 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Ratios of Outstanding Debt  
Last Ten Years

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Unlimited Tax Bonds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Revenue Bonds	-	17,075,000	16,110,000	15,130,000	14,120,000	13,080,000	12,005,000	10,885,000	9,725,000	8,515,000
Total	\$ -	\$ 17,075,000	\$ 16,110,000	\$ 15,130,000	\$ 14,120,000	\$ 13,080,000	\$ 12,005,000	\$ 10,885,000	\$ 9,725,000	\$ 8,515,000
Per Capita	\$0	\$685	\$619	\$554	\$481	\$416	\$362	\$305	\$280	\$236
Percent of Personal Income	0.00%	0.17%	0.15%	0.14%	0.12%	0.10%	0.09%	0.07%	0.07%	0.06%

Details regarding the Authority's outstanding debt can be found in Note 6 of the Notes to the Financial Statements. See Table 11, schedule of Demographic and Economic Statistics for personal income and population data.

TABLE 10 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Revenue Bond Coverage  
Last Ten Years

Year	Gross Revenues (1)	Operating Expenses (2)	Net Revenue Available for Debt Service	Debt Service Requirements (A)			Coverage
				Principal	Interest	Total	
2001	-	-	-	-	-	-	-
2002	27,835,369	20,298,422	7,536,947	1,219,643	452,024	1,671,667	4.51
2003	29,740,622	22,047,186	7,693,436	1,239,231	432,315	1,671,546	4.60
2004	30,730,996	23,568,049	7,162,947	1,260,833	410,843	1,671,676	4.28
2005	33,955,080	26,500,198	7,454,882	1,283,636	387,819	1,671,455	4.46
2006	37,306,108	29,145,654	8,160,454	1,308,000	363,385	1,671,385	4.88
2007	46,159,781	33,913,508	12,246,273	1,333,889	337,589	1,671,478	7.33
2008	51,983,640	34,850,477	17,133,163	1,360,625	310,516	1,671,141	10.25
2009	47,035,575	36,045,528	10,990,047	1,389,286	282,198	1,671,484	6.58
2010	53,044,774	35,471,322	17,573,452	1,419,167	252,450	1,671,617	10.51

- (1) Gross revenues represent all revenues, income and receipts, including interest income, and any other revenues
- (2) Operating expenses represent maintenance and operating, and general and administrative expenses
- (A) Debt service requirements represent average annual debt service

TABLE 11 (Unaudited)

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

**Demographic and Economic Statistics  
Last Ten Years**

	2001	2002	2003	2004	2005	2006	2007	2008	2009 (P)	2010 (E)
Population (1)	401,387	403,153	403,892	407,440	411,035	413,365	413,054	413,206	416,095	422,315
Personal Income-(in thousands) (1)	\$ 9,706,189	\$ 10,047,316	\$ 10,504,810	\$ 11,128,603	\$ 12,065,045	\$ 13,006,066	\$ 13,701,255	\$ 14,724,818	\$ 14,456,510	\$ 15,237,162
Per Capita Personal Income (1)	\$24,182	\$24,922	\$26,009	\$27,313	\$29,353	\$31,464	\$33,171	\$35,636	\$34,743	\$36,080
Unemployment rate (2)	5.50%	6.30%	6.80%	6.60%	5.20%	4.70%	4.20%	4.70%	7.20%	8.19%

## Source:

- (1) Bureau of Economic Analysis  
(2) Texas Workforce Commission

(P) Preliminary

(E) Estimated based on growth trend from 1998-2008

TABLE 12 (Unaudited)

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

**Principal Employers  
December 31, 2010 and 2001**

Employer	2010			2001*		
	Number of Employees	Rank	Percent of Total MSA Employment	Number of Employees	Rank	Percent of Total MSA Employment
Corpus Christi Army Depot	5,800	1	2.97%	-	-	-
Naval Air Station Corpus Christi	5,525	2	2.83%	-	-	-
Corpus Christi ISD	5,178	3	2.66%	-	-	-
Christus Spohn Health System	5,144	4	2.64%	-	-	-
HEB Grocery Co.	5,000	5	2.56%	-	-	-
City of Corpus Christi	3,171	6	1.63%	-	-	-
Bay, Ltd.	2,100	7	1.08%	-	-	-
Driscoll Children's Hospital	1,800	8	0.92%	-	-	-
Del Mar College	1,542	9	0.79%	-	-	-
Corpus Christi Medical Center	1,300	10	0.67%	-	-	-
<b>Total</b>	<b>36,560</b>		<b>18.75%</b>	<b>-</b>		<b>-</b>

Corpus Christi Regional Economic and Development Corporation  
Texas Workforce Commission

\* Information for 2001 not available

TABLE 13 (Unaudited)

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

**Employees by Function  
Last Ten Years**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Operations:</b>										
Cold Storage Facility	8	12	12	13	13	13	12	9	0	0
Bulk Terminal Facility	17	16	16	16	16	17	16	17	17	14
Harbormaster's Office	19	19	12	12	12	11	10	10	10	9
Lift Bridge	0	0	8	8	8	8	5	0	0	0
Maintenance	29	34	38	37	38	39	43	43	48	46
Police Department	0	0	0	20	21	22	40	44	49	51
Corpus Christi Public Compress	5	0	0	0	0	0	0	0	0	0
	78	81	86	106	108	110	126	123	124	120
<b>Administration:</b>										
Executive Director	2	2	2	2	2	2	2	5	4	6
Deputy Port Directors	0	0	0	0	0	0	0	3	4	4
Government Affairs	1	1	1	1	1	1	1	1	1	1
Human Resources	5	5	5	5	4	4	5	5	5	5
Business Development	8	7	8	8	8	7	7	5	7	3
Communications	0	0	0	0	0	0	0	0	0	2
Industrial Development	1	1	1	1	1	1	1	1	1	1
Finance and Administration	2	2	2	2	2	2	2	2	2	2
Accounting	8	7	7	8	8	8	8	9	9	7
Information Technology	5	5	5	7	7	7	9	9	7	7
Engineering	12	12	12	12	11	13	13	10	14	12
Operations	6	6	7	6	7	7	7	5	7	4
	50	48	50	52	51	52	55	55	61	54
	128	129	136	158	159	162	181	178	185	174

TABLE 14 (Unaudited)

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**
**Capital Asset Statistics  
Last Five Years**

	2006	2007	2008	2009	2010
Harbor divisions	6	6	6	6	6
Turning basins	5	5	5	5	5
Corpus Christi Ship Channel (miles)	35	35	35	35	35
Authorized channel draft (feet)	45	45	45	45	45
General cargo docks	8	8	8	8	8
Covered docks	3	3	3	3	3
Open docks	2	2	2	2	2
Special public use dock	1	1	1	1	1
Covered storage (square feet)	295,500	295,500	295,500	295,500	295,500
Dockside rail access (docks)	4	4	4	4	4
Roll-on/ Roll-off ramps	1	1	1	1	1
Liquid bulk docks	11	11	11	11	11
Ship	6	6	6	6	6
Barge	5	5	5	5	5
Bulk material docks	2	2	2	2	2
Gantry cranes	1	1	1	1	1
Unloading rate per hour (short tons)	600	600	600	600	600
Radial ship loaders	1	1	1	1	1
Loading rate per hour (short tons)	1,500	1,500	1,500	1,500	1,500
Layberth facilities/docks	3	3	3	3	3
Intermodal terminal	1	1	1	1	1
Open storage (acres)	23	23	25	28	28
Container handling machines	2	2	2	2	2
Bagging facilities	2	2	2	2	2
Grain	1	1	1	1	1
General purpose	1	1	1	1	1
Grain elevator	1	1	1	1	1
Bushel capacity (bushels)	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Ship loading capacity per hour (bushels)	120,000	120,000	120,000	120,000	120,000
Truck unloading capacity per hour (bushels)	40,000	40,000	40,000	40,000	40,000
Railcar unloading capacity per hour (bushels)	80,000	80,000	80,000	80,000	80,000
Cotton warehouses	1	1	1	1	1
Covered storage (square feet)	575,000	575,000	575,000	575,000	575,000
Cold storage facilities	1	1	1	1	1
Refrigerated storage-chill and frozen (square feet)	100,000	100,000	100,000	100,000	100,000
Multi-purpose cruise terminal/meeting banquet center	1	1	1	1	1
Meeting rooms	5	5	5	5	5
Banquet hall	1	1	1	1	1
Outdoor plaza	1	1	1	1	1
Indoor square feet (approximate)	24,000	24,000	24,000	24,000	24,000
Outdoor square feet (approximate)	50,000	50,000	50,000	50,000	50,000
Industrial parks	1	1	1	1	1
Acreage	318	318	318	318	318
Barge canals	2	2	2	2	2
Land					
Submerged (acres)	18,750	18,750	18,750	18,750	18,750
Emerged (acres)	6,250	6,250	6,250	6,250	6,250
Dredge Placement Areas	4,688	4,688	4,688	4,688	4,688
Open storage/development (acres)	2,400	2,400	2,400	2,400	2,400
Railroads					
Railway (miles)	26	26	35	37	37
Security Command Center	1	1	1	1	1
Naval Station Ingleside					
Land-emerged (acres)	0	0	0	0	483
Land-submerged (acres)	0	0	0	0	429
Wharfs and piers (linear feet)	0	0	0	0	4050
Buildings-office/classrooms/barracks/warehouse (sq ft)	0	0	0	0	788,367

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

**Analysis of Funding Progress - Pension Plan**

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Funded Ratio</u>	<u>Unfunded Actuarial Accrued Liability (UAAL)</u>	<u>Annual Covered Payroll</u>	<u>UAAL As a Percentage of Covered Payroll</u>
2000	7,899,688	11,952,150	66.1%	4,052,462	5,759,469	70.4%
2001	8,736,367	13,220,605	66.1%	4,484,238	5,896,407	76.1%
2002	9,277,397	14,091,854	65.8%	4,814,457	6,094,250	79.0%
2003	10,728,469	15,445,423	69.5%	4,716,954	6,522,619	72.3%
2004	12,187,288	16,966,500	71.8%	4,779,212	7,918,506	60.4%
2005	13,572,671	18,177,881	74.7%	4,605,210	8,544,001	53.9%
2006	15,800,903	19,925,412	79.3%	4,124,509	9,020,233	45.7%
2007	17,772,707	22,044,720	80.6%	4,272,013	9,558,262	44.7%
2008	18,097,936	23,421,983	77.3%	5,324,047	10,298,956	51.7%
2009	20,143,863	24,899,158	80.9%	4,755,295	11,397,962	41.7%

TABLE 16 (Unaudited)

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

**Schedule of Insurance in Force  
December 31, 2010**

Details of Coverage	Policy Period	Deductible	Liability Limits
All Risk Property	04/01/10-11	\$4,000,000/\$100,000	\$ 125,000,000
Boiler and Machinery	04/01/10-11	50,000	10,000,000
	10/01/10-11	5,000	25,000,000
Business Auto Liability	10/01/10-11	-	10,000,000
Group Travel Accident	01/11/08-11	-	1,000,000
Foreign Liability	10/01/10-11	-	1,000,000
Pollution Legal Liability	10/16/08-13	100,000	5,000,000
Non-owned Aircraft Liability	10/01/10-11	-	2,000,000
Marine Liability and Primary P&I	10/01/10-11	50,000	10,000,000
Firebarge Hull & Machinery	10/01/10-11	25,000	3,500,000
29' Safeboat Hull & Machinery	10/01/10-11	7,500	259,065
31' Safeboat Hull & Machinery		7,500	350,000
Excess Marine Liability and Primary P & I	10/01/10-11	50,000	10,000,000 excess of 10,000,000
Firebarge and Excess P&I	10/01/10-11	50,000	80,000,000 excess of 20,000,000
Errors and Omissions Liability	10/01/10-11	50,000	10,000,000
Law Enforcement Liability	10/01/10-11	10,000	5,000,000
Executive Risk	10/01/10-13	-	5,000,000
Customs Bond/Importer Bond	09/28/10-11	-	50,000
Customs Bond - FTZ Operator	09/28/10-11	-	250,000
Customs Bond - Border Protection Bond	10/28/10-11	-	50,000
International Carrier Bond	02/16/10-11	-	100,000
Employee Fidelity (Crime) Bond	12/21/10-11	25,000	2,000,000
Public Officials Bonds (8)	Varies	-	5,000
Workers' Compensation	01/01/10-11	-	Statutory
Warehouse Legal Liability	03/10/10-11	20,000	5,000,000
Terrorism	04/01/10-11	100,000	25,000,000

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

**Miscellaneous Statistical Data  
December 31, 2010**

<b>Date of Incorporation:</b>	1922			
<b>Form of Government:</b>	A public corporation and political subdivision of the State of Texas			
<b>Number of Employees:</b>	174			
<b>Geographic Location:</b>	Southeastern coast of Texas on the Gulf of Mexico approximately 150 miles north of the Mexican Border			
<b>Area:</b>	6,250 - Emergent acres 18,750 - Submerged acres			
<b>Population:</b>		<b>City of Corpus Christi</b>	<b>Nueces County</b>	<b>San Patricio County</b>
	<b>Year</b>			
	1920	10,522	22,807	11,386
	1930	27,741	51,779	23,836
	1940	57,301	92,661	28,871
	1950	108,053	165,471	35,842
	1960	167,690	221,573	45,021
	1970	204,525	237,544	47,288
	1980	232,119	268,215	58,013
	1990	256,632	296,527	58,749
	2000	277,454	313,645	67,138
	2010 (1)	305,215	323,890	70,895
<b>Elevation:</b>	Sea level to 85 feet, average 35 feet			
<b>Tidal Data:</b>				
<b>Average Water Level:</b>				
Inner Harbor	2.08 feet above Mean Low Tide (MLT)			
<b>Tidal Range:</b>				
Inner Harbor	Insignificant			
Aransas Pass	1.5 feet			
<b>Aerial Clearance:</b>				
Harbor Bridge	138 feet			
<b>Temperature:</b>	Annual Average - 71° January Average - 55° July Average - 84°			
<b>Average Seasonal Rainfall:</b>	31.30 inches			

(1) Projected population values pending release of 2010 Census

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**
**Miscellaneous Statistical Data  
December 31, 2010**
**Public Docks:**

Bulk liquid		11 - Main Harbor
Dry cargo		8 - Main Harbor
Bulk materials		2 - Main Harbor
		<u>21</u>

**Private Docks:**

Bulk liquid	- Citgo	6 - Main Harbor	
	- Equistar	1 - Main Harbor	
	- Flint Hills	3 - Main Harbor	
	- Valero	3 - Main Harbor	
	- Occidental Chemical	1 - La Quinta	
Dry cargo	- Koch Gathering	1 - Ingleside	
	- Bay Inc.	2 - Main Harbor	
	- Heldenfels	1 - Main Harbor	
	- Texas Docks & Rail	2 - Main Harbor	
	- Texas Lehigh Cement	1 - Main Harbor	
	- Tor Minerals International, Inc.	1 - Rincon	
	- McDermott	1 - Harbor Island	
	- Gulf Marine Fabricators	1 - Ingleside	
	- Kiewit Offshore Services, Inc.	1 - Ingleside	
	- Helix Energy Solutions	1 - LaQuinta	
	- Signet Maritime	1 - Jewell Fulton	
	Bulk materials	- ADM/Growmark	1 - Main Harbor
		- Interstate Grain	1 - Main Harbor
- Sherwin Alumina		1 - La Quinta	
- Vulcan Materials		1 - Main Harbor	
		<u>31</u>	

TABLE 18 (Unaudited)

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

**Port Commerce By Commodity  
Last Ten Years**

Table 1:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Commodity By Port Division - Short tons</b>										
<b>Inner Harbor</b>										
Break Bulk	18,786	41,356	210,873	253,084	200,159	183,544	215,964	256,612	133,037	157,781
Grain	1,960,433	1,845,301	1,666,579	1,836,090	2,098,829	2,025,864	3,367,057	5,409,827	3,951,347	4,100,774
Chemical	65,394	48,861	37,243	47,295	66,514	59,851	52,709	68,760	43,982	37,814
Dry Bulk	2,259,592	2,501,157	2,062,015	2,541,606	2,544,880	2,008,088	2,420,282	2,318,675	1,974,232	2,038,029
Liquid Bulk	320,633	65,538	243,135	407,906	518,403	248,355	513,036	301,007	131,100	506,211
Petroleum	69,375,427	63,809,573	67,466,251	67,414,002	66,391,484	68,242,433	67,124,801	62,558,169	56,586,340	61,163,028
<b>Total</b>	<b>74,000,265</b>	<b>68,311,786</b>	<b>71,686,096</b>	<b>72,499,983</b>	<b>71,820,269</b>	<b>72,768,135</b>	<b>73,693,849</b>	<b>70,913,050</b>	<b>62,820,038</b>	<b>68,003,637</b>
<b>La Quinta</b>										
Break Bulk	-	-	-	-	-	-	-	-	-	1,369
Chemical	1,878,788	1,556,565	1,966,843	2,095,441	1,728,815	1,510,142	1,796,165	1,561,258	1,366,046	1,430,429
Dry Bulk	4,813,124	4,890,941	4,761,502	4,689,730	5,812,484	5,690,335	5,780,257	5,572,667	4,467,692	4,809,114
Petroleum	30,785	26,862	23,386	31,518	25,081	24,030	26,925	26,607	18,766	22,404
<b>Total</b>	<b>6,722,697</b>	<b>6,474,368</b>	<b>6,751,731</b>	<b>6,816,689</b>	<b>7,566,380</b>	<b>7,224,507</b>	<b>7,603,347</b>	<b>7,160,532</b>	<b>5,852,504</b>	<b>6,263,316</b>
<b>Harbor Island</b>										
Break Bulk	10,609	5,132	17,146	1,816	6	6	6	2	-	-
Petroleum	1,074	2,760	533	-	332	-	-	-	-	-
<b>Total</b>	<b>11,683</b>	<b>7,892</b>	<b>17,679</b>	<b>1,816</b>	<b>338</b>	<b>6</b>	<b>6</b>	<b>2</b>	<b>-</b>	<b>-</b>
<b>Ingleside</b>										
Break Bulk	186,428	93,260	133,165	241,882	226,899	46,637	224,714	277,147	178,826	169,609
Dry Bulk	48	-	3,506	(3,506)	-	-	42,722	-	-	7,012
Petroleum	6,111,062	6,061,259	6,531,995	6,769,131	7,115,455	6,909,586	7,741,913	7,475,838	7,660,416	7,715,429
<b>Total</b>	<b>6,297,538</b>	<b>6,154,519</b>	<b>6,668,666</b>	<b>7,007,507</b>	<b>7,342,354</b>	<b>6,956,223</b>	<b>8,009,349</b>	<b>7,752,985</b>	<b>7,839,242</b>	<b>7,892,050</b>
<b>Rincon Point</b>										
Break Bulk	-	-	62	6,234	17,918	26,510	4,519	18,829	6,130	10,500
Grain	-	-	-	-	-	5,746	10,329	14,040	-	12,503
Dry Bulk	3,774	10,358	6,890	61,574	38,690	1,707	(1,707)	-	1,734	12,291
<b>Total</b>	<b>3,774</b>	<b>10,358</b>	<b>6,952</b>	<b>67,808</b>	<b>56,608</b>	<b>33,963</b>	<b>13,141</b>	<b>32,869</b>	<b>7,864</b>	<b>35,294</b>
<b>Total</b>	<b>87,035,957</b>	<b>80,958,923</b>	<b>85,131,124</b>	<b>86,393,803</b>	<b>86,785,949</b>	<b>86,982,834</b>	<b>89,319,692</b>	<b>85,859,438</b>	<b>76,519,648</b>	<b>82,194,297</b>
<b>Commodity Totals - Short tons</b>										
Break Bulk	215,823	139,748	361,246	503,016	444,982	256,697	445,203	552,590	317,993	339,259
Grain	1,960,433	1,845,301	1,666,579	1,836,090	2,098,829	2,031,610	3,377,386	5,423,867	3,951,347	4,113,277
Chemical	1,944,182	1,605,426	2,004,086	2,142,736	1,795,329	1,569,993	1,848,874	1,630,018	1,410,028	1,468,243
Dry Bulk	7,076,538	7,402,456	6,833,913	7,289,404	8,396,054	7,700,130	8,241,554	7,891,342	6,443,658	6,866,446
Liquid Bulk	320,633	65,538	243,135	407,906	518,403	248,355	513,036	301,007	131,100	506,211
Petroleum	75,518,348	69,900,454	74,022,165	74,214,651	73,532,352	75,176,049	74,893,639	70,060,614	64,265,522	68,900,861
<b>Total</b>	<b>87,035,957</b>	<b>80,958,923</b>	<b>85,131,124</b>	<b>86,393,803</b>	<b>86,785,949</b>	<b>86,982,834</b>	<b>89,319,692</b>	<b>85,859,438</b>	<b>76,519,648</b>	<b>82,194,297</b>

TABLE 19 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Revenues by Source  
Last Ten Years

	<u>Table 2:</u>									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Operating Revenues:</b>										
Wharfage	\$ 13,215,302	\$ 12,534,632	\$ 13,535,168	\$ 14,076,271	\$ 15,388,177	\$ 19,351,717	\$ 27,219,535	\$ 26,359,823	\$ 24,826,670	\$ 26,567,587
Dockage	3,009,600	2,733,667	3,218,880	3,858,120	4,153,902	3,354,723	3,655,333	7,078,197	7,319,259	8,138,326
Security fees	-	-	-	869,819	2,121,042	2,158,237	2,351,695	3,474,748	3,412,485	6,170,288
Freight handling	2,033,916	2,410,795	1,492,129	1,976,486	2,351,619	2,065,511	2,166,118	2,178,423	2,428,621	2,316,667
Building and land rentals	3,363,438	3,385,964	3,361,762	3,409,141	3,705,185	4,037,572	4,545,342	4,318,458	3,924,060	4,417,518
Conference center services	833,712	1,367,934	1,443,592	1,663,726	1,556,200	1,495,599	1,597,594	1,451,630	2,007,407	1,679,885
Warehouse handling charges	102,623	954,178	1,137,336	816,739	1,737,118	1,484,404	1,211,146	1,367,306	596,168	426,093
FTZ user fees	281,750	287,115	264,750	261,666	233,333	243,000	295,000	284,500	326,000	337,000
Compress	1,477,844	185,538	45,598	-	-	-	-	-	-	-
Other	1,306,133	1,301,176	2,380,598	1,439,329	1,485,316	1,845,648	1,887,694	4,538,108	1,585,220	2,226,488
	<u>\$ 25,624,318</u>	<u>\$ 25,160,999</u>	<u>\$ 26,879,813</u>	<u>\$ 28,371,297</u>	<u>\$ 32,731,892</u>	<u>\$ 36,036,411</u>	<u>\$ 44,929,457</u>	<u>\$ 51,051,193</u>	<u>\$ 46,425,890</u>	<u>\$ 52,279,852</u>
<b>Non-Operating Revenues:</b>										
Other:										
Interest	\$ 1,261,435	\$ 1,314,593	\$ 1,222,899	\$ 1,116,764	\$ 1,084,006	\$ 1,269,697	\$ 1,230,324	\$ 932,447	\$ 584,849	\$ 478,291
Other	787,431	236,214	-	1,242,935	139,182	-	-	284,048	24,836	286,631
	<u>\$ 2,048,866</u>	<u>\$ 1,550,807</u>	<u>\$ 1,222,899</u>	<u>\$ 2,359,699</u>	<u>\$ 1,223,188</u>	<u>\$ 1,269,697</u>	<u>\$ 1,230,324</u>	<u>\$ 1,216,495</u>	<u>\$ 609,685</u>	<u>\$ 764,922</u>

TABLE 20 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Expenses by Type  
Last Ten Years

Table 3:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Operating Expenses:</b>										
Maintenance and Operation:										
Employee services	\$ 3,570,749	\$ 3,929,041	\$ 4,144,531	\$ 5,206,360	\$ 6,296,241	\$ 6,768,333	\$ 6,952,412	\$ 8,255,443	\$ 8,022,571	\$ 8,517,165
Maintenance	1,761,065	1,970,104	2,686,825	2,641,655	3,317,396	4,173,668	6,483,605	6,340,774	4,987,113	3,538,398
Utilities	615,609	694,391	886,009	964,332	1,095,452	1,399,011	1,383,059	1,357,364	1,631,307	1,702,868
Telephone	33,212	34,045	22,358	20,468	19,694	23,716	35,699	29,991	26,436	35,286
Insurance	966,114	1,276,352	1,427,198	1,327,486	1,264,823	1,726,286	2,017,983	1,902,331	1,844,918	2,266,112
Professional services	137,700	202,418	228,158	444,902	544,189	400,085	344,073	424,975	900,742	691,191
Police expenses	-	-	-	64,252	36,788	53,276	39,442	74,106	55,218	66,434
Contracted services	1,205,445	1,597,049	1,485,158	1,483,850	2,155,840	2,110,723	2,166,855	1,834,442	1,426,265	1,876,695
Office and equipment rental	40,616	106,710	11,908	25,941	78,665	129,527	124,691	91,004	97,627	73,983
Operator and event expenses	708,885	1,225,868	1,310,806	1,438,345	1,287,428	1,311,334	1,523,025	1,280,002	1,550,059	1,415,417
Warehouse supplies	1,898	85,770	46,823	51,281	136,382	64,946	38,292	68,428	44,700	9,037
Ginning	546,622	-	-	-	-	-	-	-	-	-
Safety/Environmental	33,018	39,985	46,293	43,180	53,509	50,970	62,693	90,947	71,246	69,075
General	246,706	253,460	178,488	225,660	74,745	173,190	220,500	93,105	196,113	129,909
	<u>\$ 9,867,639</u>	<u>\$11,415,193</u>	<u>\$12,474,555</u>	<u>\$13,937,712</u>	<u>\$16,361,152</u>	<u>\$18,385,065</u>	<u>\$21,392,329</u>	<u>\$21,842,912</u>	<u>\$20,854,315</u>	<u>\$20,391,570</u>
General and Administrative:										
Employee services	\$ 4,485,094	\$ 4,523,035	\$ 5,048,655	\$ 5,367,098	\$ 5,711,388	\$ 6,150,455	\$ 6,808,607	\$ 7,349,030	\$ 7,999,373	\$ 7,832,622
Maintenance	234,515	297,592	272,419	274,342	229,548	324,760	351,566	320,610	432,088	453,408
Utilities	154,595	118,395	131,448	135,135	162,864	218,586	222,481	196,865	224,245	172,703
Telephone	124,877	98,649	103,287	108,862	209,939	205,520	213,248	231,958	209,267	196,626
Insurance	85,113	208,519	107,456	45,278	119,854	111,670	108,314	84,451	96,638	124,620
Professional services	1,914,403	1,794,626	1,781,500	1,642,718	1,713,073	1,864,026	2,290,016	2,419,843	3,322,950	3,526,850
Police expenses	-	-	-	1,429	1,341	654	216	314	174	82
Contracted services	105,890	94,226	68,343	60,516	54,189	134,754	198,260	88,262	64,213	151,445
Office and equipment rental	46,307	2,245	8,270	3,042	4,451	6,852	10,173	18,264	40,406	59,809
Administrative	1,262,105	1,279,119	1,533,738	1,598,908	1,483,098	1,647,031	1,925,958	1,873,318	2,392,822	2,108,277
Trade and sales development	178,538	129,229	125,484	143,296	107,450	123,054	146,161	148,946	204,427	157,237
Media advertising	211,051	124,256	88,530	102,957	91,527	73,557	157,725	109,262	108,425	206,557
Production	77,551	55,918	57,538	25,460	45,124	56,861	30,773	27,917	48,319	25,678
Safety/Environmental	11,241	13,638	19,889	20,992	20,439	36,047	26,992	38,206	22,681	21,544
General	106,490	143,727	226,074	100,304	184,761	(193,238)	30,689	100,319	25,185	42,294
	<u>\$ 8,997,770</u>	<u>\$ 8,883,174</u>	<u>\$ 9,572,631</u>	<u>\$ 9,630,337</u>	<u>\$10,139,046</u>	<u>\$10,760,589</u>	<u>\$12,521,179</u>	<u>\$13,007,565</u>	<u>\$15,191,213</u>	<u>\$15,079,752</u>
Depreciation	<u>\$ 5,224,868</u>	<u>\$ 5,284,372</u>	<u>\$ 5,417,115</u>	<u>\$ 5,513,656</u>	<u>\$ 6,142,055</u>	<u>\$ 7,127,447</u>	<u>\$ 8,442,640</u>	<u>\$ 9,648,639</u>	<u>\$10,060,645</u>	<u>\$12,165,114</u>
<b>Non-Operating Expenses:</b>										
Other:										
Interest	\$ 85,005	\$ 734,977	\$ 886,261	\$ 821,270	\$ 775,933	\$ 739,069	\$ 658,323	\$ 591,057	\$ 504,030	\$ 450,602
Other	-	-	90,856	-	-	15,395	10,293	592,931	20,735	19,386
	<u>\$ 85,005</u>	<u>\$ 734,977</u>	<u>\$ 977,117</u>	<u>\$ 821,270</u>	<u>\$ 775,933</u>	<u>\$ 754,464</u>	<u>\$ 668,616</u>	<u>\$ 1,183,988</u>	<u>\$ 524,765</u>	<u>\$ 469,988</u>

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

**Debt Administration  
December 31, 2010**

At December 31, 2010, the Authority had one debt issue outstanding. This issue included \$8,515,000 in general revenue bonds. The Authority has maintained an A rating from Standard and Poor's Corporation and an A3 rating from Moody's Investor Service on general revenue bond issues.

The following is a statement of changes in long-term debt for the year ended December 31, 2010:

**Table 4:**

	<b>Beginning Balance</b>	<b>Additions</b>	<b>Reductions</b>	<b>Ending Balance</b>	<b>Current Portion</b>
Revenue bonds	\$ 9,725,000	\$ -	\$ 1,210,000	\$ 8,515,000	\$ 1,265,000
Accumulated Accretion	92,003	-	10,363	81,640	
<b>Total</b>	<b>\$ 9,817,003</b>	<b>\$ -</b>	<b>\$ 1,220,363</b>	<b>\$ 8,596,640</b>	<b>\$ 1,265,000</b>

At December 31, 2010, total debt service requirements are as follows:

**Table 5:**

	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
2011	\$ 1,265,000	\$ 408,405	\$ 1,673,405
2012	1,320,000	351,850	1,671,850
2013	1,380,000	291,505	1,671,505
2014	1,445,000	226,345	1,671,345
2015	1,515,000	155,955	1,670,955
Thereafter	1,590,000	80,640	1,670,640
<b>Total</b>	<b>\$ 8,515,000</b>	<b>\$ 1,514,700</b>	<b>\$ 10,029,700</b>

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

**Notes Receivable  
December 31, 2010**

**Table 6:**

A summary of changes in notes receivable for the year ended December 31, 2010, is as follows:

	Beginning Balance	Additions	Maturities	Ending Balance	Current Portion
Notes Receivable	\$ 3,518,701	\$ -	\$ 1,726,070	\$ 1,792,631	\$ 831,827

Notes Receivable as of December 31, 2010 is summarized as follows:

	Principal Outstanding
\$12,000,000 Note Receivable due in annual principal installments ranging from \$831,827 to \$898,373 through 2012; interest at 8.0%.	\$ 4,879,996
Less: Principal Prepayments	3,087,365
Principal Outstanding	1,792,631
Less: Current Maturities	831,827
<b>Notes Receivable - Net</b>	<b>\$ 960,804</b>

Total note receivable requirements as of December 31, 2010, are as follows:

	Principal	Interest	Total
2011	\$ 831,827	\$ 390,400	\$ 1,222,227
2012	898,373	323,853	1,222,226
2013	62,431	4,995	67,426
Thereafter	-	-	-
<b>Total</b>	<b>\$ 1,792,631</b>	<b>\$ 719,248</b>	<b>\$ 2,511,879</b>

Pursuant to a Construction and Installment Sale Agreement (Agreement) entered into on May 3, 1994, the Authority agreed to construct crude storage facilities on premises leased to an Authority User, and then sell facilities to the User. On January 12, 1995, the Authority sold their undivided right, title and interest in the crude storage facilities to the User, and a Promissory Note (Note) was executed made payable to the Authority by the User in the amount of \$12,000,000.

The Note is due and payable in twenty-one annual installments, the first installment being interest only and the remaining twenty annual installments of equal principal and interest, at a rate of 8 percent, unless sooner paid. All payments are applied first to interest with the remainder, if any, applied to unpaid principal.

Note payments are based on revenue received from wharfage fees collected by the Authority for crude oil moving across the Authority's Oil Dock 1 to the User's crude storage facilities, and fifty percent of dockage fees collected by the Authority for ships berthing at the Authority's Oil Dock 1 for purpose of delivering crude oil to the User's crude storage facilities. Monthly amounts are credited to a debt service account that is used to make scheduled note payments when due. In the event there are insufficient funds in the debt service account to meet scheduled note payments, the User is required to make up any shortfall. Should a surplus exist, the excess is applied in inverse order against principal last coming due on the note. In 2010, the Authority credited \$2,178,087 of applicable revenue received from wharfage and dockage fees collected to the debt service account.

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

**Leases  
December 31, 2010**

**Table 7:****Operating Leases**

The Authority leases to others certain land and improvements. These leases are classified as operating leases in accordance with the criteria of Statement of Financial Accounting Standards (SFAS) No. 13. As of December 31, 2010, minimum lease payments under these operating leases that have initial or remaining non-cancelable lease terms in excess of one year are as follows:

<b>Years Ending</b>	
2011	\$ 3,200,785
2012	2,726,040
2013	2,531,494
2014	1,888,899
2015	1,275,831
Thereafter	18,338,407
<b>Total</b>	<b>\$ 29,961,456</b>

TABLE 24 (Unaudited)

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

**Financial Performance Indicators  
Last Ten Years**

Table 8:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Operating Revenues (OR)	\$ 25,624,318	\$ 25,160,999	\$ 26,879,813	\$ 28,371,297	\$ 32,731,892	\$ 36,036,411	\$ 44,929,457	\$ 51,051,193	\$ 46,425,890	\$ 52,279,852
Operating Expenses (OE) *	(18,865,409)	(20,298,367)	(22,047,186)	(23,568,049)	(26,500,198)	(29,145,654)	(33,913,508)	(34,850,477)	(36,045,528)	(35,471,322)
Net Operating Income (NOI)	6,758,909	4,862,632	4,832,627	4,803,248	6,231,694	6,890,757	11,015,949	16,200,716	10,380,362	16,808,530
Non-Operating Revenues	2,055,366	1,550,807	1,222,899	2,359,699	1,223,188	1,269,697	1,230,324	1,216,495	609,685	764,922
Non-Operating Expenses	(85,005)	(734,977)	(977,117)	(821,270)	(775,933)	(754,464)	(668,616)	(1,183,988)	(524,765)	(469,988)
Net Income "A" (NI"A")	8,729,270	5,678,462	5,078,409	6,341,677	6,678,949	7,405,990	11,577,657	16,233,223	10,465,282	17,103,464
Depreciation	(5,224,868)	(5,284,372)	(5,417,115)	(5,513,656)	(6,142,055)	(7,127,447)	(8,442,640)	(9,648,639)	(10,060,645)	(12,165,114)
Net Income (Loss) "B" (NI"B")	\$ 3,504,402	\$ 394,090	\$ (338,706)	\$ 828,021	\$ 536,894	\$ 278,543	\$ 3,135,017	\$ 6,584,584	\$ 404,637	\$ 4,938,350
Net Capital Assets (NCA) **	\$ 143,840,270	\$ 145,906,446	\$ 143,298,109	\$ 139,998,166	\$ 156,723,984	\$ 175,997,745	\$ 173,486,988	\$ 218,586,423	\$ 216,324,078	\$ 310,154,387
Total Assets (TA)	\$ 179,679,554	\$ 196,391,543	\$ 197,115,656	\$ 212,289,063	\$ 242,045,429	\$ 252,168,291	\$ 258,145,439	\$ 263,271,819	\$ 265,325,288	\$ 382,604,209

**Operating Indicators:**

Operating ROI (NOI/NCA)	4.70%	3.33%	3.37%	3.43%	3.98%	3.92%	6.35%	7.41%	4.80%	5.42%
Operating Margin (NOI/OR)	26.38%	19.33%	17.98%	16.93%	19.04%	19.12%	24.52%	31.73%	22.36%	32.15%
Operating Ratio (OE/OR)	73.62%	80.67%	82.02%	83.07%	80.96%	80.88%	75.48%	68.27%	77.64%	67.85%

**Other ROI Indicators:**

ROI "A" (NI"A"/TA)	4.86%	2.89%	2.58%	2.99%	2.76%	2.94%	4.48%	6.17%	3.94%	4.47%
ROI "B" (NI"B"/TA)	1.95%	0.20%	-0.17%	0.39%	0.22%	0.11%	1.21%	2.50%	0.15%	1.29%

\* - Excludes Depreciation

\*\* - Excludes Construction in Progress

TABLE 25 (Unaudited)

PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS

Debt Service Requirements  
December 31, 2010

Table 9:

Year Ending	Series 2002-A Bonds			Series 2002-B Bonds			Grand Total
	Principal	Interest	Total	Principal	Interest	Total	
2011	720,000	239,605	959,605	545,000	168,800	713,800	1,673,405
2012	755,000	206,485	961,485	565,000	145,365	710,365	1,671,850
2013	790,000	171,000	961,000	590,000	120,505	710,505	1,671,505
2014	825,000	132,685	957,685	620,000	93,660	713,660	1,671,345
2015	865,000	91,435	956,435	650,000	64,520	714,520	1,670,955
2016	910,000	47,320	957,320	680,000	33,320	713,320	1,670,640
	<u>\$ 4,865,000</u>	<u>\$ 888,530</u>	<u>\$ 5,753,530</u>	<u>\$ 3,650,000</u>	<u>\$ 626,170</u>	<u>\$ 4,276,170</u>	<u>\$ 10,029,700</u>

Average \$ 1,671,617

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

**Pension Plan  
December 31, 2010**

**Table 10:**

**Plan Description**

The Authority provides pension, disability, and death benefits for all its full-time employees through a nontraditional defined benefit pension plan in the state-wide Texas County and District Retirement System (TCDRS). The Board of Trustees of TCDRS is responsible for the administration of the statewide agent multiple-employer public employee retirement system consisting of 602 cash-balance-account type defined benefit pension plans. TCDRS in the aggregate issues a comprehensive annual financial report (CAFR) on a calendar year basis. The CAFR is available upon written request from the TCDRS Board of Trustees at P.O. Box 2034, Austin, Texas 78768-2034.

The plan provisions are adopted by the governing body of the Authority, within the options available in the state statutes governing TCDRS (TCDRS Act). Members can retire at ages 60 and above with 10 or more years of service or with 30 years regardless of age or when the sum of their age and years of service equals 80 or more. Members are vested after 10 years but must leave their accumulated contributions in the plan to receive any employer-financed benefit. Members who withdraw their personal contributions in a lump sum are not entitled to any amounts contributed by the employer.

Benefit amounts are determined by the sum of the employee’s contributions to the plan, with interest, and employer-financed monetary credits. The level of these monetary credits is adopted by the governing body of the Authority within the actuarial constraints imposed by the TCDRS Act so that the resulting benefits can be expected to be adequately financed by the employer’s commitment to contribute. At retirement, death, or disability, the benefit is calculated by converting the sum of the employee’s accumulated contributions and the employer-financed monetary credits to a monthly annuity using annuity purchase rates prescribed by the TCDRS Act.

**Contributions**

The contribution rate for employees is 7% and the Authority’s rate is 11%, both as adopted by the governing body of the Authority. Employee and Authority contributions were \$828,848 and \$1,302,474, respectively for the year ended December 31, 2010. Both the employees and the Authority make monthly contributions.

**Annual Pension Cost and Net Pension Obligation**

The Authority’s annual pension costs were equal to the Authority’s required and actual contributions. Three-year trend information is as follows:

Years Ended December 31,	Percentage		Net Pension Obligation
	Annual Pension Cost	of APC Contributed	
2010	\$ 1,302,474	100.00%	\$ -
2009	1,253,776	100.00%	\$ -
2008	1,132,885	100.00%	\$ -

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

**Pension Plan  
December 31, 2010**

**Table 10 (Continued):**

The latest actuarial valuation for the Authority employees was completed as of December 31, 2009. The actuarial cost method and significant assumptions underlying the actuarial calculations are as follows:

Actuarial Cost Method	Entry Age
Asset Valuation Method	SAF: 10-year smoothed value ESF: Fund value
Projected Annual Salary Increases	5.4% average
Assumed Rate of Return on Investments	8.00%
Inflation Factor	3.5%
Amortization Method:	
Unfunded Actuarial Accrued Liability	Level percent, closed
Amortization Period:	
Unfunded Actuarial Accrued Liability	20 years
Cost of Living Adjustment	0.0

**Schedule of Funding**

Schedule of funding progress for the Pension Plan for the employees of the Authority is as follows:

Valuation Date December 31,	Actuarial Value of Assets	Actuarial Accrued Liability	Unfunded	Funded Ratio	Annual Covered Payroll	Percentage of Covered Payroll
2009	\$ 20,143,863	\$ 24,899,158	\$ 4,755,295	80.90%	\$ 11,397,962	41.72%
2008	18,097,936	23,421,983	5,324,047	77.27%	10,298,956	51.70%
2007	17,772,707	22,044,720	4,272,013	80.62%	9,558,262	44.69%

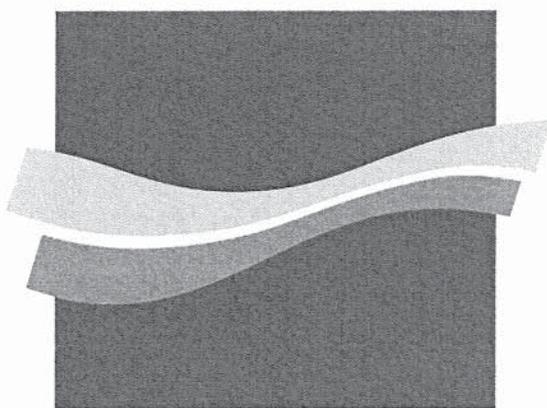
**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

**Current Investments  
December 31, 2010**

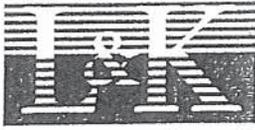
**Table 11:**

The Authority's investments at December 31, 2010, are shown below:

	Carrying Value	Fair Value	Category
Investments:			
Certificates of Deposit	\$ 5,490,614	\$ 5,490,614	1
Total investments	\$ 5,490,614	\$ 5,490,614	
Temporary investments shown as cash equivalents:			
Local government pool-TEXPOOL	\$ 20,113,066	\$ 20,113,066	Pooled
Total temporary investments shown as cash equivalents	\$ 20,113,066	\$ 20,113,066	



PORT**CORPUSCHRISTI**



# Lowvorn & Kieschnick

CERTIFIED PUBLIC ACCOUNTANTS

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## Independent Auditor's Report

### Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards

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

We have audited the basic financial statements of the Port of Corpus Christi Authority of Nueces County, Texas (the Authority), as of and for the year ended December 31, 2010 and 2009, and have issued our report thereon dated April 5, 2011. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

#### Internal Control over Financial Reporting

In planning and performing our audits, we considered the Port of Corpus Christi Authority's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over financial reporting.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all

deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

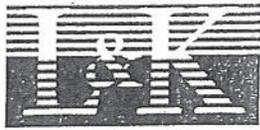
#### Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Port of Corpus Christi Authority's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended for the information and use of the Commissioners, management, others within the entity, federal awarding agencies and pass-through entities, and is not intended to be, and should not be used by anyone other than these specified parties

*Lovvorn + Kieschnick, LLP*

Lovvorn & Kieschnick, LLP  
April 5, 2011



**Lovvorn & Kieschnick**

CERTIFIED PUBLIC ACCOUNTANTS

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## **Independent Auditor's Report**

### Report on Compliance with Requirements Applicable to Each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133

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

#### Compliance

We have audited the compliance of the Port of Corpus Christi Authority of Nueces County, Texas (the Authority) with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) *Circular A-133 Compliance Supplement* that are applicable to each of its major federal programs for the year ended December 31, 2010. The Authority's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of the Authority's management. Our responsibility is to express an opinion on the Authority's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Authority's compliance with those requirements and performing such other procedures, as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination on the Authority's compliance with those requirements.

In our opinion, the Port of Corpus Christi Authority complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended December 31, 2010.

#### Internal Control Over Compliance

Management of the Port of Corpus Christi Authority is responsible for establishing and maintaining effective internal control over compliance with the requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing our audit, we considered the Authority's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.

This report is intended for the information and use of the Commissioners, management, others within the entity, federal awarding agencies and pass-through entities, and is not intended to be, and should not be used by anyone other than these specified parties.

*Lovvorn & Kieschnick, LLP*

Lovvorn & Kieschnick, LLP  
April 5, 2011

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
FOR THE YEAR ENDED DECEMBER 31, 2010

A. Summary of Auditor's Results

1. Financial Statements

Type of auditor's report issued: Unqualified

Internal control over financial reporting:

One or more material weaknesses identified?  Yes  No

One or more significant deficiencies identified that are not considered to be material weaknesses?  Yes  None Reported

Noncompliance material to financial statements noted?  Yes  No

2. Federal Awards

Internal control over major programs:

One or more material weaknesses identified?  Yes  No

One or more significant deficiencies identified that are not considered to be material weaknesses?  Yes  None Reported

Type of auditor's report issued on compliance for major programs: Unqualified

Any audit findings disclosed that are required to be reported in accordance with section 510(a) of Circular A-133?  Yes  No

Identification of major programs:

<u>CFDA Numbers(s)</u>	<u>Name of Federal Program or Cluster</u>
	U.S. Department of Homeland Security:
97.056	Port Security Grant #6
97.056	Port Security Grant #7
97.056	Port Security Grant #7 Supplemental
97.116	ARRA - Port Security Grant
	U.S. Department of Transportation
20.205	ARRA - Joe Fulton International Trade Corridor

Dollar threshold used to distinguish between type A and type B programs: \$301,802

Auditee qualified as low-risk auditee?  Yes  No

B. Financial Statement Findings

NONE

C. Federal Award Findings and Questioned Costs

NONE

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS  
SCHEDULE OF PRIOR AUDIT FINDINGS  
FOR THE YEAR ENDED DECEMBER 31, 2010

<u>Finding/Recommendation</u>	<u>Current Status</u>	<u>Management's Explanation If Not Implemented</u>
N/A - No prior findings		

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**  
**SCHEDULE OF FEDERAL/STATE EXPENDITURES OF AWARDS**  
**FOR THE YEAR ENDED DECEMBER 31, 2010**

<u>Program Title</u>	<u>CFDA Number</u>	<u>Grant Number</u>	<u>Expenditures</u>
<b>Federal Assistance</b>			
U.S. Environmental Protection Agency			
Direct Programs	66.039	DE-00F11601-0	\$ 1,849
Total U.S. Environmental Protection Agency			<u>1,849</u>
U.S. Department of Homeland Security			
Direct Programs			
Port Security Grant #6	97.056	2006-GB-T6-0090	4,226,134
Port Security Grant #7	97.056	2007-GB-T7-0033	309,362
Port Security Grant #7 Supplemental	97.056	2007-GB-T7-K038	137,194
ARRA Port Security Grant	97.116	2009-PU-R1-0173	411,197
Total U.S. Department of Homeland Security			<u>5,083,887</u>
U.S. Department of Transportation			
Passed through Texas State Department of Transportation			
ARRA Joe Fulton International Trade Corridor	20.205	CSJ0916-35-156	4,974,343
Total U.S. Department of Transportation			<u>4,974,343</u>
Total Federal and passed through assistance			<u>\$ 10,060,079</u>

The accompanying notes are an integral part of this schedule.

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**  
**NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**  
**FOR THE YEAR ENDED DECEMBER 31, 2010**

1. **General**

The accompanying Schedule of Expenditures of Federal Awards presents the activity of all Federal financial assistance programs of Port of Corpus Christi Authority of Nueces County, Texas (Authority). The Authority's reporting entity is defined in the Notes to the Authority's financial statements. All Federal financial assistance received directly from Federal agencies and passed through other governmental agencies is included on the schedule.

2. **Basis of Accounting**

The accompanying Schedule of Expenditures of Federal Awards is presented using the accrual basis of accounting, which is described in the Notes to the Authority's financial statements.





Staff recommends approval of Service Order No. 2 to provide design services for the upgrade of the fender system and replacement of the breasting structure at Oil Dock 6 at a cost not to exceed \$95,000. HDR maintains a local office in Corpus Christi with over 50 employees and has designed many marine projects for the Port in the past including the breasting structure upgrades and improvements at Oil Docks 1, 8, and 11 and the recent collision damage repairs to Oil Dock 9. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director



As of this date, staff and RVE have finalized the scope of work for project numbers 4, 5, 6, 8, and 9 listed above. The following is an estimate of the costs to perform both design and project management services for these five projects.

Basic Design Engineering	\$462,000
Project Management	\$169,900
Construction Inspection	\$169,900
Other Consultants/Costs	<u>\$55,600</u>
<b>Total Estimated Cost</b>	<b>\$857,400</b>

Staff recommends approval of a professional services purchase order with RVE Inc. in an amount not to exceed \$857,400 for design and project management services for project numbers 4, 5, 6, 8, and 9. These costs will be extended over several budget years. This item is included on the agenda of the April 12 commission meeting. If you have any questions, please contact me.

Sincerely,



John P. LaRue  
Executive Director

**Grant 8 Fee Proposal**  
3/30/11

	<b>Project 4 - TWIC Readers</b>	<b>Project 5 - North Bank Storage</b>	<b>Project 6 - Texaco Road Access Control</b>	<b>Project 7 - North Carge Storage</b>	<b>Project 8 - Fiber Loop</b>	<b>TOTALS</b>
<b>Grant Budget</b>						
<b>Basic Services (8%)</b>	\$ 8,608	\$ 150,130	\$ 34,265	\$ 109,600	\$ 178,288	\$ 480,891
<b>Project Management (3%)</b>	\$ 3,228	\$ 56,300	\$ 12,850	\$ 41,100	\$ 66,858	\$ 180,336
<b>Project Inspection (3%)</b>	\$ 3,228	\$ 56,300	\$ 12,850	\$ 41,100	\$ 66,858	\$ 180,336
<b>Miscellaneous Consultants/Other Costs (1%)</b>	\$ 1,076	\$ 18,770	\$ 4,285	\$ 13,700	\$ 22,286	\$ 60,117
<b>Grant Engineering Budget</b>	<b>\$ 16,140</b>	<b>\$ 281,500</b>	<b>\$ 64,250</b>	<b>\$ 205,500</b>	<b>\$ 334,290</b>	<b>\$ 901,680</b>
<b>Grant Construction Budget</b>	<b>\$ 107,600</b>	<b>\$ 1,876,700</b>	<b>\$ 428,300</b>	<b>\$ 1,370,000</b>	<b>\$ 2,228,601</b>	<b>\$ 6,011,201</b>
Grant Engineering Fee %	15%	15%	15%	15%	15%	15%
<b>Total Budget</b>	<b>\$ 123,740</b>	<b>\$ 2,158,200</b>	<b>\$ 492,550</b>	<b>\$ 1,575,500</b>	<b>\$ 2,562,891</b>	<b>\$ 6,912,881</b>
Grant Amount (75%)	\$ 92,805	\$ 1,618,650	\$ 369,413	\$ 1,181,625	\$ 1,922,168	\$ 5,184,661
PCCA Match (25%)	\$ 30,935	\$ 539,550	\$ 123,138	\$ 393,875	\$ 640,723	\$ 1,728,220
<b>Engineering Fee Proposal</b>						
<b>Basic Services</b>	\$ 8,600	\$ 150,100	\$ 15,500	\$ 109,600	\$ 178,200	\$ 462,000
<b>Project Management</b>	\$ 3,200	\$ 56,300	\$ 2,500	\$ 41,100	\$ 66,800	\$ 169,900
<b>Project Inspection</b>	\$ 3,200	\$ 56,300	\$ 2,500	\$ 41,100	\$ 66,800	\$ 169,900
<b>Miscellaneous Consultants/Other Costs</b>	\$ 1,000	\$ 18,700	\$ -	\$ 13,700	\$ 22,200	\$ 55,600
<b>Proposed Engineering Fee</b>	<b>\$ 16,000</b>	<b>\$ 281,400</b>	<b>\$ 20,500</b>	<b>\$ 205,500</b>	<b>\$ 334,000</b>	<b>\$ 857,400</b>
Proposed Engineering Fee %	15%	15%	5%	15%	15%	14%



Staff recommends approval of Change Order No. 14 in the amount of \$282,440 to the command and control system contract with G4S Technology, LLC. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

Attachment



# PORT CORPUS CHRISTI

## CHANGE ORDER

Change Order No. 14  
Date: April 12, 2011  
Page: 1 of 1

**PROJECT:** Security Grant 6 - Command and Control System  
**PROJECT NUMBER:** 06-052E  
**CONTRACTOR:** G4S Technology LLC (formerly Adesta, LLC)

\*\*\*\*\*  
This contract will be modified to include the changes listed below, and the contract price and/or contract time will be changed to reflect these modifications:

**1. Upgrade of the existing Corpus Christi Light Engine Wall Display upgrade, as described in G4S's Change Order Request #18R3 (attached).**

Increase in Contract Price:	\$ 282,440.00
Increase in Contract Time:	10 days
*****	
Original Contract Amount:	\$ 3,521,245.27
Total Amount of Previous Change Orders:	\$ 60,782.11
Amount of this Change Order:	\$ 282,440.00
Revised Contract Amount:	\$ 3,864,467.38
Notice to Proceed Date:	October 20, 2009
Original Contract Time:	450 days
Previous Changes in Contract Time:	143 days
Calendar Days for this Change Order:	10 days
Revised Contract Time:	603 days
Required Completion Date:	June 15, 2011
*****	

The change in contract price incorporates all costs for this Change Order including but not limited to the following—direct and indirect costs, overhead, profit, insurance, bonds, labor, materials, equipment, supervision, and delays. This Change Order is accepted and executed by the Port of Corpus Christi Authority and G4S Technology, LLC, as signed by their duly authorized representatives below.

**Port of Corpus Christi Authority**

**G4S Technology, LLC**

By: \_\_\_\_\_  
Patrick D. Veteto, P.E.  
Project Manager

By: \_\_\_\_\_  
Thomas Gillette  
Vice President

By: \_\_\_\_\_  
Greg Brubeck, P.E.  
Director of Engineering Services

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

Date: April 12, 2011





Oil Dock 9 is a very busy oil dock and standby charges were incurred during this repair project. Flint Hills found it necessary to keep the dock open far longer than originally planned in order to meet the shipping needs of their refinery. In most cases, the standby charges incurred were the direct result of a request by Flint Hills. In some limited cases, the standby charges incurred were the result of a request by the Port. A summary of these charges is as follows:

<u>Time Period</u>	<u>Total Standby Charges</u>	<u>Flint Hills</u>	<u>PCCA</u>
Aug. – Nov. 2010	\$46,730	\$40,840	\$5,890
Dec. 2010	\$80,600	\$80,600	\$0
Jan. 2010	<u>\$12,400</u>	Under Review	Under Review
Total	\$139,730		

Flint Hills has already reimbursed the Port for \$40,840 in charges for the August through November 2010 time period. They have also agreed to pay for the December charges and are currently reviewing the January standby charges.

Staff recommends an increase in contingency of \$100,000 for a total contingency of \$160,495.78 in order to cover all standby charges through January 2011 as well as any extra work that may be required to complete the project. The project is substantially complete, and no further standby charges are expected.

This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director





STATE OF TEXAS §  
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
AMENDMENT # 1**

**THIS AMENDMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of Corpus Christi (City), and the Port of Corpus Christi (Port), each acting by and through its duly authorized officials, hereinafter jointly called the "Local Governments."

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed a contract on the 10<sup>th</sup> day of January, 2011, to effectuate their agreement to install, operate and maintain decorative lighting on the Harbor Bridge, US 181, on-system project; and,

**WHEREAS**, the Local Governments are now contributing \$800,000 for Construction Costs; and,

**WHEREAS**, it has become necessary to amend that contract;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Local Government do agree as follows:

**AGREEMENT**

**Article 1. Description of Amended Items**

Articles 3.d., 7 and 12 of the executed Advance Funding Agreement are voided and replaced with the following:

**3. Local Project Sources and Uses of Funds**

- d. Each of the Local Governments will be responsible for all non-federal or non-State participation costs associated with this Project as noted in Attachment C-1, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.

**7. Utilities**

Each of the Local Governments shall be equally responsible, fifty percent (50%), for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Governments failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Governments will not be reimbursed with federal or state funds for the cost of required utility work. The Local Governments must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Governments shall provide, at the State's request, a certification stating that the Local Governments has completed the adjustment of all utilities that must be adjusted before construction is completed.

The Local Governments are responsible for all costs incurred due to utilities after the completion of the project.

**12. Project Maintenance**

The Local Governments shall be equally responsible, fifty percent (50%), for maintenance of the decorative lighting on the Harbor Bridge, which is an on-state system location after completion of the work.

The Local Governments are responsible for all costs incurred due to maintenance and operation after the completion of the project.

Attachment "C" of the executed Advance Funding Agreement is being deleted in its entirety and replaced with Attachment C-1, contained herein.

All other provisions of the original contract are unchanged and remain in full force and effect.

**Article 2. Signatory Warranty**

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization represented.

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this agreement.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
The City of Corpus Christi  
Name of Local Government

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Manager  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Signature

Janice Mullenix  
Director of Contract Services

\_\_\_\_\_  
Date

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
The Port of Corpus Christi  
Name of Local Government

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Executive Director  
Title

\_\_\_\_\_  
Date

## ATTACHMENT C-1

### BUDGET ESTIMATE, SOURCE OF FUNDS AND WORK RESPONSIBILITIES

The installation of the Harbor Bridge decorative lighting will be provided by the State and funded through Category 11 District Discretionary Funds in the amount of \$1,211,000.00. The Local Governments' contribution for Construction Costs will be \$800,000.00. The Local Governments, at no cost to the State, will be responsible for all utility, maintenance and operation of the Harbor Bridge decorative lighting once installed. The cost for the design work, including furnishing plans will be the responsibility of the Port, and the City then will reimburse the Port for half of the cost of the work. Maintenance and Operation shall include the maintenance and replacement of drivers, LED modules, fixtures, conductors, cable, conduit, electrical service, materials, equipment, labor, tools and incidentals to properly provide a functional Decorative Lighting System.

Description	Total Estimate of Cost	Federal Participation	State Participation (Category 11)	City of Corpus Christi	Port of Corpus Christi
Engineering (PE)	\$96,000	\$0	\$0	\$48,000	\$48,000
Construction	\$2,011,000	\$0	\$1,211,000	\$550,000	\$250,000
Utility, Maintenance and Operation	\$0	\$0	\$0	\$0	\$0
<b>Total Cost</b>	<b>\$2,107,000</b>	<b>\$0</b>	<b>\$1,211,000</b>	<b>\$598,000</b>	<b>\$298,000</b>
Direct State Cost (4%)	\$84,280	\$0	\$84,280	\$0	\$0
<b>Total Project Cost</b>	<b>\$2,191,280</b>	<b>\$0</b>	<b>\$1,295,280</b>	<b>\$598,000</b>	<b>\$298,000</b>

The Local Governments are responsible for all utility, maintenance and operation costs after the completion of the project.

Direct State Costs will be based on actual charges. It is understood that the above costs are estimates only. Final participation amounts will be based on actual charges to the project.

April 12, 2011

The Honorable Mike Carrell  
The Honorable Richard M. Borchard  
The Honorable Judy Hawley  
The Honorable Robert J. Gonzalez, Sr.  
The Honorable Francis I. Gandy, Jr.  
The Honorable Robert Kostelnik  
The Honorable Mike Scott  
Port Commissioners  
Port of Corpus Christi Authority

**Subject:** ***AGENDA ITEM NOS. 10-H & I***  
**Lease Agreement with Eslabon Terminal, LLC,  
for Vapor Recovery Facility at Oil Dock 12  
&  
Easement Agreement with Eslabon Terminal, LLC,  
for a 10-Inch Pipeline to Oil Dock 12**

Dear Commissioners:

Eslabon Terminal, LLC, purchased two tanks located on North Broadway and a 10-inch pipeline connecting these tanks to Oil Dock 12 from Hoechst Celanese in 2010. Eslabon will operate a truck terminal at this site to store and ship crude oil from the Eagle Ford Shale project. The crude oil will be trucked to the terminal for subsequent movement by inter-coastal barges to refining destinations in Houston and Louisiana. Eslabon projects a shipping volume of approximately 40,000 barrels per week. This use of the historically underutilized Oil Dock 12 will generate significant dockage and wharfage revenue from the outbound crude shipments.

Eslabon has requested a lease for a 20' x 30' pad as depicted on the drawing attached to the Lease Agreement for the installation of a vapor recovery system adjacent to Oil Dock 12 to allow them to meet air emission regulations while loading barges. Towards this end, staff negotiated a lease agreement for a term of 10 years at a rental rate of \$200.00 per month on the Port's standard long-term Lease Agreement; the terms of which are summarized on the attached Lease Agreement Summary.

In addition, Eslabon has requested an easement for the 10-inch pipeline (see map attached to the Pipeline Easement). To accommodate their needs, staff negotiated a Pipeline Easement on the Port's standard Pipeline Easement agreement for a term of 10 years at a fee of \$1,369.45; the terms of which are summarized on the attached Pipeline Easement Summary.

Staff recommends approval of both the Lease Agreement and Pipeline Easement as drafted. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

Attachments

**PORT OF CORPUS CHRISTI AUTHORITY  
LEASE SUMMARY**

Lessee: Eslabon Terminal, LLC  
P. O. Box 578  
Corpus Christi, Texas 78403

Leased Premises: As depicted on the attached drawing.

Use: For the construction and operation of a vapor recovery unit for loading or unloading of barges at Authority's Oil Dock 12.

Term: Five (5) years

Options: One (1), Five (5) year option term.

Start Date: April 12, 2011

Annual Rent: \$2,400.00 payable \$200.00 per month.

Additional Rent: None

Adjustment of Rent: Annual CPI adjustments and a land revaluation at the beginning of the option term.

Remarks: In addition to the rent, Eslabon also has agreed that it will pay for the cost for the needed improvements to relocate the Authority's Fire Barge from Oil Dock 12 to another dock and for the cost to move and return the PCCA's Fire Barge temporarily from Oil Dock 12 when the dock is needed by the Lessee until it is relocated to a new permanent dock location.

**LEASE AGREEMENT**

Between

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**  
(*“Authority”*)

And

**ESLABON TERMINAL LLC**  
(*“Lessee”*)

April 12, 2011

## LEASE AGREEMENT

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES     §

This LEASE AGREEMENT is made this 12<sup>th</sup> day of April, 2011, by and between PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, pursuant to authorization by its Port Commissioners (hereinafter called "Authority"), and ESLABON TERMINAL, LLC, a Texas limited liability corporation, whose principal address is P. O. Box 578, Corpus Christi, Texas 78403, (hereinafter called "Lessee").

### ARTICLE 1 LEASE OF PREMISES

#### Section 1.01. Description of Premises and Term

Authority, in consideration of the rents to be paid and the terms, covenants, and conditions hereinafter set forth, hereby leases to Lessee and Lessee leases from Authority for the entire term, including any extensions, stated in this Section, real property situated in Nueces County, Texas, which is described as follows:

The surface estate of that certain 20' by 30' tract of land, more or less, which tract is particularly described on Exhibit A attached hereto and incorporated herein by reference, (hereinafter called "Leased Premises").

TO HAVE AND TO HOLD the Leased Premises for a term of five (5) years, beginning on the 12<sup>th</sup> day of April, 2011, and (subject to earlier termination as herein provided) ending at midnight, Central Time, the 12<sup>th</sup> day of April, 2016.

In addition, Authority hereby grants to Lessee the option to extend the term of this lease agreement for one (1) additional option period of five (5) years, beginning on the first day after the expiration of the primary term; but if, at the date the original term expires, Lessee is in default beyond any grace period provided in this lease agreement in performing any of the terms of this lease agreement, the remaining option is void. The option to extend renew shall be exercised by Lessee giving to Authority notice in writing of such exercise at least sixty (60) days prior to the expiration of the primary term or any option term of this lease. Notice of an intention to exercise an option under this lease agreement must, to be effective, be sent by certified mail to Authority at the address provided in the Section in this lease agreement entitled Payments and Notices and must be postmarked no later than the latest date provided in this section for Lessee's exercising the option. Annual rent shall be determined for each option term pursuant to Section 3.02 and Section 3.03 of this lease agreement.

**Section 1.02. Holding Over**

If Lessee holds over beyond the primary term or any option 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.

**ARTICLE 2  
INSPECTION OF LEASED PREMISES**

Lessee has inspected the Leased Premises, including all improvements, fixtures, equipment and personal property situated on the Leased Premises and has conducted any environmental assessment survey it desired and on the date of this lease agreement accepts the Leased Premises As Is, Where Is, 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 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 purpose.

**ARTICLE 3  
RENT**

**Section 3.01. Annual Rent**

Subject to adjustments provided for herein, Lessee agrees to pay to Authority at its offices in Corpus Christi, Texas, annual rent for the Leased Premises in the amount of Two Thousand Four Hundred and NO/100 Dollars. The total sum to be paid Authority by Lessee as rent during the primary term of this lease, subject to any adjustments of rent made pursuant to this lease agreement, is Twelve Thousand and NO/100 Dollars (\$12,000.00), and may be paid in monthly installments of Two Hundred and NO/100 Dollars (\$200.00).

The first annual or monthly installment of rent hereunder is due and payable on or before the 12<sup>th</sup> day of April, 2011. Each annual payment of rent is due and payable on or before the 12<sup>th</sup> day of April of each succeeding year thereafter; each monthly installment of rent is due and payable on or before the 12<sup>th</sup> day of each succeeding month thereafter. Annual or monthly payments must be paid at the offices of Authority in Corpus Christi, Nueces County, Texas. 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 fifteen percent (15%) 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 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.

Rent must be paid to Authority at its address for notice hereunder or to such other person or at such other address in Nueces County, Texas, as Authority may from time to time designate in writing. Rent must be paid in legal tender of the United States of America without notice, demand, abatement, deduction or offset.

In addition to the rent, Lessee also agrees that it will pay for the cost for the needed improvements to relocate the Authority's Fire Barge from Oil Dock 12 to another dock and for the cost to move and return the Authority's Fire Barge temporarily from Oil Dock 12 when the dock is needed by the Lessee until it is relocated to a new permanent dock location.

This is a net lease. Authority shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease or the financing, ownership, construction, reconstruction, maintenance, operation, or repair of the Leased Premises or the improvements thereon.

### **Section 3.02. Adjustment of Rent**

The annual rent for each option period of this lease may be adjusted by Authority for changes in the Equalization Value in the following manner:

Ninety (90) days or more before the expiration of each five year period of the primary term or any option period of this lease, Authority has the right, in its sole discretion, to revalue the Leased Premises (excluding an improvements made to the Leased Premises by Lessee) for the purpose of fixing annual rent in each of the next succeeding option periods based on the fair market value of the Leased Premises, or some portion thereof, as determined by an independent appraiser designated by the Authority. If Authority revalues the Leased Premises or some portion thereof, Authority must notify Lessee in writing of the new valuation. If Lessee it not notified of the new valuation prior to ninety (90) days before expiration of the primary term or any option period of this lease, it is conclusively presumed that the Equalization Value for the next ensuing option period of this lease is to be the same as the then current Equalization Value. The annual rent for each option period for which there is a change in the Equalization Value must be equal to ten per cent (10%) of the Equalization Value of the Leased Premises established

by Authority, but in no event may it be less than ten per cent (10%) of the fair market value determined by such appraiser.

In the event Lessee does not agree to the increase in Equalization Value, Lessee has the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the increase in Equalization Value, to either (1) terminate this lease agreement and surrender the Leased Premises effective at Midnight, Central Time, of the last day of the current primary term or option period of this lease, or (2) agree in writing to binding arbitration to fix the Equalization Value of the Leased Premises for the ensuing option period.

In the event Lessee agrees to binding arbitration, the arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (although the parties do not have to use the services of the American Arbitration Association).

The arbitrator selected by the parties, as a part of his duties as an arbitrator will select an appraiser who is MIA certified, and has greater than ten (10) years experience appraising land such as the Leased Premises.

The appraiser selected by the arbitrator will make an appraisal of the Leased Premises using comparable property and the following criteria for the appraisal process:

Comparables used shall include all recent sales and lease information available on similarly situated properties along the channels of ports located on the Texas Gulf Coast.

The comparables used shall be the average values during the most recent year in which there are comparables sales or leases.

The fair market value of the Leased Premises shall be based on the highest and best use for the Leased Premises, regardless of the use to which the Leased Premises is being put.

The arbitrator will, within sixty (60) days after receipt of the appraisal, determine the Equalization Value for the next ensuing option term of this lease agreement. The arbitrator's decision will be final and is binding on all parties to this lease agreement.

In no event, however, will the process provided for in this Section result in a reduction of the annual rent below the annual rent paid by Lessee during the expiring primary, or any option term of this lease.

**Section 3.03. Cost of Living Adjustment**

In addition to any adjustment to the annual rent because of an adjustment to the Equalization Value, the annual rent for the primary or any option term of this lease agreement for which rent is to be adjusted will be adjusted to reflect changes, if any, in the cost of living with such adjustment to be made annually beginning with the start of the second year of the primary term of this lease agreement, as follows:

Adjustments in the annual rent are determined by multiplying the amount of the annual rent stated in Section 3.01 by a fraction, the numerator of which is the index number of the Consumer Price Index for urban wage earners and clerical workers, U.S. City average – all items (1982-84=100), Bureau of Labor Statistics, United States Department of Labor for the last month of the last year before the adjustment and the denominator of which is the index number of the same Consumer Price Index for the first month of the first year of the lease term. If the product is greater than the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement, Lessee will pay this greater amount as the annual rent until the time of the next rental adjustment as called for in this Section. If the product is less than the amount of the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement, the annual rent will not be adjusted at that time, and Lessee will pay annual rent until the time of the next rental adjustment as called for in this Section. In no event may any rental adjustment called for in this Section result in an annual rent less than the amount of the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement.

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 lease term, the remaining rental adjustments called for in this section will be made by using the most nearly comparable statistics published by a recognized financial authority selected by Authority.

**Section 3.04. Utilities and Taxes**

In addition to the annual rent described hereinabove, Lessee agrees to pay when due all charges it contracts for (a) water, gas, electricity, and other utilities, (b) garbage service, (c) security or guard services, or (d) railroad services in connection with the Leased Premises. If at Lessee's request or because of Lessee's failure to pay for services to the Leased Premises it contracted for, Authority provides any such services to the Leased Premises or pays the cost for any such services, Lessee will pay to Authority the cost of such services as additional rent upon receiving Authority's invoice therefore, payment to be made pursuant to the terms of said invoice.

Lessee will also pay as additional rent its pro rata share of any utility services provided by Authority.

During the term of this lease, Lessee must pay or cause to be paid when due all taxes, assessments, fees or charges imposed on the Leased Premises by virtue of Lessee's tenancy or upon Lessee's property on, or Lessee's interest in, the Leased Premises.

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. When the contest is resolved, Lessee must pay the tax, penalty and interest imposed and may use the money deposited with Authority to pay any tax, assessment, fee or charge, plus any penalty or interest, due under the final resolution and keep any balance of the deposit. If the deposit is insufficient to pay these amounts, Lessee must immediately pay the balance due to the entity imposing the tax, assessment, fee or charge.

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.

Any of said taxes, fees or charges that are payable by Lessee for the tax year in which this lease agreement commences, as well as during the year in which this lease agreement terminates, 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**

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:

For the construction and operation of a vapor recovery unit for Lessee's loading or unloading of barges at Authority's Oil Dock 12.

Lessee will not:

A. Use, occupy or permit the use or occupancy of the Leased Premises for any purpose or in any manner, which is directly or indirectly:

Inconsistent with the requirements of Section 4.01 hereof;

Violative of (a) 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; (b) Authority's Tariffs or Rules and Regulations; (c) insurance requirements; or (d) other documents, instruments or agreements (written or oral) relating to the Leased Premises or to which the Leased Premises may be bound or encumbered;

Dangerous to life or property or a public or private nuisance; or

Disruptive to the activities of any other tenant or occupant of property adjacent to the Leased Premises;

B. Bring or permit to remain on the Leased Premises any asbestos, petroleum or petroleum products, 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

C. Commit, or permit to be committed, any action or circumstance on or about the Leased Premises which, directly or indirectly, would or might 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, or those of other lessees of Authority's property adjacent to the Leased Premises.

D. The Leased Premises shall not be used for any purpose or business deemed as extra hazardous by the Insurance Services Office.

**Section 4.02. Environmental Representations, Restrictions and Environmental Indemnity**

Lessee hereby represents and warrants to Authority:

That Lessee's construction, occupancy, operation or use of the Leased Premises will not violate any applicable 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 and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Laws");

That, without limitation of Section 4.01A above, in its use of the Leased Premises Lessee will not violate any Applicable Laws 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; Authority's Tariffs, Rules and Regulations and the Port of Corpus Christi Authority's Design and Construction Guidelines set forth in Authority's Real Estate Manual.

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.

Lessee understands and agrees that the Leased Premises are being leased in an "As Is, Where Is" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "As-Is, Where Is" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and any adjacent channel or bay water and sediment, and that information received from Authority regarding such matters may not be complete or accurate and should not be accepted as such.

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 for each of the said environmental contaminants.

In addition, upon receipt from any agency or department of the state of Texas or the federal government, Lessee will immediately furnish PCCA 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:

A. A general description of the conduct that resulted in the citation, notice of violation, enforcement action or penalty; and

B. 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.

Further, 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.

Also, 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.

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.

Lessee will cooperate with the Authority's Tenant Audit Program (the "Program"). 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. 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.

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.

All of the foregoing representations and warranties made by Lessee are continuing and must be true and correct for the entire term of this lease, including any extensions hereof, and all of such representations and warranties will survive expiration or termination of this lease agreement.

**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 (a) 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 and (b) handle at the Leased Premises at least six tank turns of Lessee's nearby volume of tankage, on an annual basis, in export or import commerce.

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.

**Section 4.05. Throughput**

Lessee guarantees that it, or its affiliates, shall during the term of this lease, and any holdover period, move over Authority's Oil Dock 12) or pay Authority's then current tariff rates for each such movement a minimum of six (6) tank turns of Lessee's total volume of nearby tankage measured in barrels ("Cargo") per year ("Minimum Guaranteed Throughput "). Shipments from year to year shall not be cumulative and barrels for any single lease year shall not carry over into any succeeding lease year for the purpose of calculating the Minimum Guaranteed Throughput.

Lessee agrees to pay to the Authority as additional rent for each year this lease is in effect ("Lease Year") an amount equal to the total amount of Authority's then current tariff rates for each movement applied to the Minimum Guaranteed Throughput multiplied by the number of barrels by which the Minimum Guaranteed Throughput for such year exceeds the actual number of barrels of Cargo actually moved over Authority's Oil Dock 12 designated in this Section 4.05 during such Lease Year. The current tariff rates for any Lease Year are the Authority's rates per barrel for Cargo of the type or types to be moved that are in effect on the first day of such Lease Year. The additional rent payable pursuant to this Section 4.05 is referred to herein as "Throughput Rent."

An "affiliate," as herein used, is a corporation, the controlling interest of which is owned by the same persons or corporations owning controlling interest in the holder of this lease.

Lessee shall keep and maintain a complete and accurate set of books and records showing all Cargo shipped over Authority's Dock(s) designated in this Section 4.05 in order that Authority may ascertain therefrom any amounts due to Authority from Lessee as Throughput Rent. Such books and records shall be subject to inspection by Authority, its agents and attorneys at any reasonable time. Promptly after the end of each Lease Year a computation shall be made as to the amount of Throughput Rent payable by Lessee to Authority for such Lease Year, or part thereof, and Lessee shall pay to Authority the Throughput Rent due for such Lease Year, if any, on or before the sixtieth day after the end of such Lease Year ("Due Date"). If Lessee has been unable to determine with certainty the amount of Throughput Rent payable with respect to any Lease Year prior to the Due Date for such payment, then Lessee shall pay to the Authority on or before such Due Date an amount equal to Lessee's good faith estimate of what the Throughput Rent for such Lease Year will be. If the actual Throughput Rent for any Lease Year is different from the estimated Throughput Rent paid for such Lease Year, Lessee will notify the Authority of such discrepancy as soon as it is known and either Lessee will pay any deficiency to the Authority, or the Authority will refund any overpayment to Lessee, within thirty days after the date on which Lessee notifies the Authority of such discrepancy.

During any holdover period, Throughput Rent will be reported and paid monthly by Lessee on or before the 10th day of the month following each holdover month.

The covenants of this Section 4.05 are material to this lease, and should Lessee fail to satisfy such covenants, Authority may terminate this lease agreement.

## 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.

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 Antiquities Committee, 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 Antiquities Committee, as set out in the Committee's rules. Lessee, its contractors and employees, shall have no 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 and any extensions of it, 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 and so as not to cause depreciation in the value of the Leased Premises.

If Lessee fails to perform its obligation to repair, replace, or maintain, as set forth above, within a reasonable time after 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 notice to Lessee of the performance and cost of any maintenance, repairs, or replacements under this section, Lessee must immediately reimburse Authority for the costs incurred by Authority pursuant to this Section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Lessee to Authority.

At the expiration of the lease term or any renewals or extensions thereof, 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 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. 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 including, but not limited to, any area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, and existing channel depth elevations must be included with the plans submitted. The site plan must clearly show the bottom of cut line and top of slope line of any planned dredging. If any dredging is planned by Lessee, its agents, servants, contractors or employees that will, in Authority's judgment, based upon customary dredging operations, result in removal of a substantial quantity of earth or material from, or damage to, adjacent real property, Lessee must obtain the written permission of

the adjacent property owner to carry out the work described for the project and submit it to the Authority with the formal plans.

Slips at any dock located on the Leased Premises must be maintained by Lessee at a sufficient depth to prevent vessels berthed at the dock from striking bottom due to lowering of the water level from passing vessels or seasonal low tides.

Copies of all permits for work in navigable waters issued to Lessee by the Department of Army or any other federal, state or other governmental agency shall be filed with Authority.

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, specifications or other matters relating to the Leased Premises.**

#### **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. 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, to serve the Leased Premises. If requested by Authority or the railroad, Lessee will enter into a joint maintenance agreement with the railroad and bear Lessee's pro rata share of the cost of maintaining any railroad spur on the Leased Premises.

**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**

At the expiration or earlier termination of this lease, all alterations, modifications or improvements upon the Leased Premises made by Lessee, 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, or (b) not more than fifteen (15) days following any termination of this lease 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 end of the lease term. 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. Trade fixtures, furnishings and equipment, except for those referred to above, which are installed by Lessee, at its expense, may be removed by Lessee 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. Any trade fixtures not removed by Lessee when this lease terminates are considered abandoned by Lessee and will automatically become Authority's property. If any trade fixture installed by Lessee is abandoned when the lease terminates, Lessee must pay Authority any reasonable 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. Lessee must remove all its signs when this lease 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.

**ARTICLE 6  
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 for the laying of, pipelines for oil, petroleum, petroleum products, fiber optics and any other products over, under and upon the Leased Premises; 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, and Authority has the right to grant easements or rights of way reserved to Authority in this Article to other parties.

**ARTICLE 7**  
**SUBLETTING OR TRANSFER**

**Section 7.01. Sublease or Transfer**

Lessee may not assign or sublet 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. 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, less any costs of collection, attorneys' fees or other costs incurred by Authority, to the rent provided for in this lease agreement. No assignment, subletting, occupancy or collection waives the obligations of Lessee under this lease agreement upon acceptance of same by Authority. Authority may assign or transfer any of its interests under this Lease Agreement. Furthermore, Lessee shall not, without Authority's express written consent, 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, the 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; 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 more than 2,500,000 Dollars. 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**

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 acceptable to Authority in which:

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;

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;

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;

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;

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

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 \$500.00 to cover Authority's administrative and legal costs for each amendment, assignment, sublease, and any estoppel certificate requested from Authority by Lessee or any sublessee.

## **ARTICLE 8 DEFAULT**

### **Section 8.01. Rights and Remedies of Authority**

If for ten (10) calendar days after service by mail or otherwise to Lessee by Authority of written notice of a breach or default by Lessee under any provision of this lease agreement, the Lessee does not or shall neglect or fail to comply with or remedy such breach or default, or if the said breach or default complained of shall be of such a nature that the same cannot be completely remedied or cured within such ten (10) day period, then such breach or default shall not be an enforceable breach or default against Lessee if Lessee shall have commenced curing such breach or default within such ten (10) day period, and shall with reasonable diligence and in good faith, proceed to remedy the default complained of; or if any proceedings concerning Lessee or the

Leased Premises be had in bankruptcy, reorganization, arrangement or receivership, or if any assignment shall be attempted to be made of this lease agreement for the benefit of creditors; or if Lessee abandons or vacates a substantial portion of the Leased Premises for fourteen (14) consecutive days; then in any of said cases or in any similar case which, in the sole judgment of Authority, evidences a serious financial insecurity of Lessee, Authority shall have the rights and remedies that may be provided at law or in equity and the following options:

A. Without terminating this lease agreement, Authority may terminate Lessee's right of possession of the Leased Premises under this lease agreement by giving Lessee three (3) calendar days notice of termination of Lessee's right of possession and Lessee's right of possession shall thereupon cease and come to an end and Authority may reenter and take possession of the Leased Premises; provided, however, Authority shall not be required to give such notice prior to the filing of an action of forcible detainer or at common law upon default by Lessee in the payment of rent. Upon entering and taking possession of the Leased Premises, Authority may:

1. Relet for the account of, or as agent for, Lessee the Leased Premises or any part thereof, to a tenant acceptable to Authority, without terminating this lease agreement or working a forfeiture of the rent to be paid, and after receiving the rent therefrom apply the same, first to the payment of all expense the Authority may be put to in recovering possession of the Leased Premises and in reletting same, including but not limited to the costs of renovating, altering and repairing for a new tenant and attorneys' and brokers' fees, and then to the payment of the rent and additional rent payable under this lease agreement and to the fulfillment of Lessee's covenants hereunder. Lessee shall be entitled to any balance remaining after subtracting such costs and debts. Authority may at any time after reletting terminate this lease agreement for the breach or default on account of which it reentered and relet; or

2. Accelerate the future rent and additional rent due under this lease agreement and seek recovery of such rent and additional rent and any other damages provided for in this lease agreement, at law or in equity. Authority is entitled to recover future rent and additional rent from Lessee based upon the present value of the rent and additional rent discounted to present value at the rate of 3% per annum for the remainder of the term of the lease reduced by the fair market rental value of the Leased Premises during that period.

B. Terminate this lease agreement.

C. Lessee pledges with Authority all of its rents and profits from the Leased Premises in addition to the other security for the performance of the lease; and in connection with such pledging of the rents, the Lessee covenants and agrees with Authority that if Authority, upon default of Lessee, elects to file a suit to enforce this lease agreement and protect Authority's rights thereunder, Authority may apply to any court having jurisdiction, for the appointment of a Receiver of all and singular the demised premises, the improvements and buildings located thereon, and the personal property located therein, and thereupon it is expressly covenanted and agreed that the court shall without notice forthwith appoint a Receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such

court as a matter of strict right to Authority, and without reference to the adequacy or inadequacy of a remedy at law, the value of the property that is subject to Landlord's lien, or to the solvency or insolvency of Lessee; and without reference to the commission of waste.

**Section 8.02. No Waiver**

Any assent, expressed or implied, by the Authority or Lessee to any breach of any agreement, covenant or obligation herein contained 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 8.03. Consequential Damages**

Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless and until Authority shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by Lessee to Authority, properly specifying wherein Authority has failed to perform any such obligation.

**Notwithstanding anything in this lease agreement to the contrary, Authority shall in no event be charged with or liable for any consequential damages suffered by Lessee as a result of Authority's breach of this lease agreement or failure to perform any of its obligations under this lease agreement.**

**ARTICLE 9  
LIEN AND SECURITY INTEREST**

In consideration for the mutual benefits arising under this lease agreement, and as security for Lessee's performance of all its obligations under this lease agreement, Lessee hereby grants to Authority a lien and security interest in and on all property of Lessee now or hereafter placed in or upon the Leased Premises, and such property shall be and remain subject to such lien and security interest of Authority for payment of all rent and other sums agreed to be paid by Lessee herein. The provisions of this section shall constitute a security agreement under the Texas Uniform Commercial Code so that Authority has and may enforce a security interest on all property of Lessee now or hereafter placed in or on the Leased Premises, including but not limited to all fixtures, machinery, equipment, furnishings and other articles of personal property now or hereafter placed in or upon the Leased Premises by Lessee. An event of default under this lease agreement shall be default under the security agreement. Authority may at its election at any time file a copy of this lease agreement as a financing statement. Authority, as secured party, is entitled to all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code, which rights and remedies shall be in addition to and cumulative to the Authority's liens and rights provided by law or by the other terms and provisions of this lease. Promptly upon request, and without further consideration, Lessee agrees to execute as debtor such additional financing statement or statements as Authority may now or hereafter

reasonably request in order that Authority's security interests may be protected pursuant to the Texas Uniform Commercial Code, which financing statement Authority may at its election file in the appropriate records.

**ARTICLE 10  
SUBORDINATION**

**(DELETED IN ITS ENTIRETY)**

**ARTICLE 11  
INDEMNITY/WAIVER**

**Section 11.01. Indemnity and Waiver**

A. As used in this Section 11.01, each of the following terms shall have the meanings set forth in this Section 11.01A:

(1) "Beneficiary" means the intended recipient of the benefits of another party's Indemnity, Waiver or obligation to Defend.

(2) "Claims" means all claims, damages (including actual, consequential, and punitive), losses, fines, penalties, liens, causes of action, suits, judgments, settlements, and expenses [including court costs, attorney's fees (including attorney's fees in defending and/or settling a Claim and attorney's fees to collect on this Indemnity), costs of investigation, and expert witnesses] of any nature, kind or description by, through, or of any person or entity.

(3) "Defend" means to oppose on behalf of another party a Claim in litigation, arbitration, mediation or other alternative dispute resolution proceeding and to pay all costs associated with the preparation or prosecution of such Defense.

(4) "Indemnify" means to protect and hold harmless a party from and against a potential Claim and/or to compensate a party for a Claim actually incurred.

(5) "Indemnified Persons" means the Authority, its Port Commissioners, directors, managers, employees and agents.

(6) "Lessee Parties" means the Lessee, its agents, contractors, employees, owners, invitees, or licensees.

(7) "Waive" means to knowingly and voluntarily relinquish a right and/or to release another party from liability.

B. Subject to the terms of this Section 11.01, Lessee shall Defend and Indemnify the Indemnified Persons from and against all Claims resulting from, arising out of, or

alleged to have arisen out of or resulted from, in whole or in part, any of the following matters (these Claims being referred to herein as the "Indemnified Claims"):

- (1) the conduct of Lessee's business on the Leased Premises;
- (2) Lessee's breach of this lease agreement;
- (3) any property loss or damage occurring in, on, or about the Leased Premises or relating to the condition, use or occupancy of the Leased Premises;
- (4) any bodily or personal injury, sickness, disease, and/or death (including the bodily or personal injury and/or death of any employee of an Indemnified Person or a Lessee Party) occurring in, on, or about the Leased Premises or relating to the condition, use of occupancy of the Leased Premises; or
- (5) any act, omission, willful misconduct, strict liability, breach of warranty, express or implied, or violation of any laws, ordinances, rules, regulations, or codes, now or hereafter existing, of or by any Lessee Party, including the sole, joint, concurrent, or comparative negligence of any Lessee Party in connection with or pertaining to this lease agreement.

C. The Indemnities, Waivers and obligation to Defend in this Section 11.01 shall be enforced to the fullest extent permitted by applicable law for the benefit of the applicable Beneficiary thereof, regardless of any extraordinary shifting of risks, and even if the applicable Claim is caused by the joint, concurrent, or comparative negligence of such Beneficiary, and regardless of whether liability without fault or strict liability is imposed upon or alleged against such Beneficiary; provided, however, that an Indemnity will not be enforced to the extent that a court of competent jurisdiction holds in a final judgment that the applicable Claim against a Beneficiary was caused by the willful misconduct or sole negligence of such Beneficiary.

D. Notwithstanding anything to the contrary contained in this Section 11.01, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence, causation, responsibility or fault of the Indemnified Persons and the Lessee Parties, then the Lessee's obligation to the Indemnified Persons shall only extend to the percentage of the total responsibility of the Lessee Parties in contributing to such Indemnified Claim.

E. In claims against any Indemnified Person 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. If an action for damages is brought by an injured employee of Lessee, a legal beneficiary, or an insurance carrier against an Indemnified Person liable 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 Indemnified Person or a settlement by the Indemnified Person, Lessee expressly agrees to reimburse and hold harmless the Indemnified Person for the damages based on such judgment or settlement as provided in this Section 11.01.

F. Except as otherwise expressly limited in this Section 11.01, it is the intent of the parties to this lease agreement that all indemnity obligations and liabilities contracted for in this lease agreement be without monetary limit and without regard to the cause or causes thereof (including pre-existing conditions on Authority's Property or as the result of an indemnification agreement with a third party), and will not be limited by damages paid under the Workers' Compensation Act. The indemnity contained in this Section 11.01 applies, without limitation, to any violation of any law, rules or regulations referred to in Section 4.02 in effect during the term of this lease agreement, and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the term of this lease agreement, regardless of whether the act, omission, event or circumstance constituted a violation of any law, rules or regulations referred to in Section 4.02 at the time of its existence or occurrence.

G. If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this Section 11.01, the Indemnified Person will be represented by its general counsel, or another attorney selected by the Indemnified Person and approved by Lessee, which approval will not be unreasonably withheld.

H. If Lessee should fail or refuse, after written notice to Lessee that an Indemnified Person intends to make a settlement of an Indemnified Claim, to participate in the settlement of such Indemnified Claim, then the Indemnified Person may settle with the claimant without prejudice to the Indemnified Person's indemnity rights set forth herein, and a settlement after such notice to Lessee will constitute a settlement of the proportionate fault, including but not limited to negligence, of both Lessee and the Indemnified Person, which settlement may later be apportioned between Indemnified Person and Lessee.

I. Lessee agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage.

J. To the fullest extent provided by this Section 11.01, Lessee hereby Waives all Claims against the Indemnified Persons resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the Indemnified Claims.

**ARTICLE 12  
INSURANCE**

**Section 12.01. Insurance**

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees at all times this lease agreement is in effect to carry and maintain at its sole expense policies of insurance ("the Policies") of the types and in the minimum amounts as follows:

A. "All Risks" of Direct Physical Loss, including Flood, on buildings, improvements and betterments situated on the Leased Premises in an amount sufficient to cover 100% of the Insurable Value of the said buildings, improvements and betterments; and in builder's risk completed value form during substantial construction of improvements (including malicious mischief and vandalism); in amounts sufficient to provide coverage for 100% of the Insurable Value of such improvements. Lessee is responsible for insurance for its personal property on the Leased Premises. "Insurable Value" means replacement cost value.

B. For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and employer's liability insurance with limits of at least \$500,000.00 each employee accident and disease, or such similar insurance which is in accordance with state and federal law applicable to said employees.

C. Commercial General Liability (CGL) coverage with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000 general aggregate at the Leased Premises

D. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit.)

E. Umbrella liability coverage limits of not less than \$5,000,000.00 over and above the underlying primary coverage limits stated in subparagraph B, C and D in this Section.

F. Pollution Legal Liability including cleanup and defense costs for premises and operations including pollution of any body of water with limits of not less than \$5,000,000.00 per occurrence.

The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon request by Authority to an amount, which is commercially reasonable at the time.

Authority shall be furnished, to the attention of Authority's Risk Manager, prior to Lessee taking possession or occupancy of the Leased Premises, as proof of the insurance required of Lessee 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 acceptable, in their form and content, to PCCA. 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, Attention: Risk Manager, and (c) provide that notwithstanding any language in any policy of insurance held by Authority ("Authority Insurance") to the effect that the Authority Insurance is primary, the policy or policies held by Lessee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies.

In addition the Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm or organization shall automatically be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract." 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. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to Authority if either exceeds \$50,000.00; and, in such event, Authority may decline to approve this lease agreement without any liability to Lessee. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. 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 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 claims against it, or for loss of, or damage to, any of its property located within or upon, or constituting a part of, the Leased Premises, covered by applicable insurance policies, to the extent that such claim, loss or damage is covered or recoverable under said insurance policies. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this lease agreement with respect to any loss of or damage to property of the parties hereto. Lessee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this lease agreement 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; and Lessee will provide to Authority a copy of said endorsement or endorsements or evidence that such endorsement is not necessary to prevent the invalidation of the insurance coverage by reason of such waiver.**

**ARTICLE 13  
PROPERTY LOSS**

**Section 13.01. Obligation to Restore**

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 Authority's good faith judgment reasonably exercised, it would be uneconomic to cause the same to be restored (and Authority shall give written notice of such determination to Lessee within ninety (90) days after the date 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.

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 Authority, and Authority shall distribute such insurance proceeds to Lessee to the extent necessary to reimburse Lessee for costs incurred by Lessee in restoring the damaged Leased Premises in satisfaction of this Section 12.01, and any balance of such proceeds remaining after such restoration is complete shall be paid to Lessee within sixty (60) days after the restoration is complete and approved by Authority.

**Section 13.02. Damage Near End of Term**

If the Leased Premises are damaged to the extent of fifty per cent (50%) or destroyed in whole or in part during the last twenty-four (24) months of the lease 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 or Lessee will rebuild as provided herein.

If the Port of Corpus Christi or its ship channel are damaged or destroyed in whole or in part to the extent that it is not economically or physically feasible to re-open the same, in Authority's sole judgment, then Authority shall have the option to terminate this lease agreement.

The party electing to terminate this lease agreement shall give notice to the other party of such election within ninety (90) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and 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, and Authority is entitled to receive and retain the award for the taking 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 the event of a partial taking of the Leased Premises, Authority is entitled to receive and retain the award for the portion of the Leased Premises taken. In addition, upon a partial taking, the annual 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 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. 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 of part or all of the Leased Premises or a lessee in an oil, gas or mineral lease granted by any mineral owner of all or part of the Leased Premises, (c) all matters of record in Nueces County, Texas, and (d) any unrecorded easements or licenses executed by Authority to the extent the foregoing are validly existing and applicable to the Leased Premises. 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 MEDIATION**

### **Section 16.01. 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) 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.

## **ARTICLE 17 GENERAL PROVISIONS**

### **Section 17.01. Compliance**

Lessee must comply with all federal, state and local laws, rules or regulations, including Authority's Tariff 100-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, for purposes of maintaining, repairing or

altering the premises, or for the purposes of showing the Leased Premises to prospective lessees, purchasers, mortgagees or beneficiaries under deeds of trust.

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. 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**

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**

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. All payments, notices, demands or requests from Authority to Lessee shall be given to Lessee, Eslabon Terminal, LLC, at P.O. Box 578, Corpus Christi, Texas 78403, or at such other address as Lessee shall request in writing. 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 defaults by Authority and provides any other information reasonably requested.

**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 agreement must be construed and its performance enforced under Texas law. 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.

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

**Section 18.11. Recording**

Neither this lease agreement (including any exhibit hereto) nor any memorandum shall be recorded without the prior written consent of Authority.

**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 and delivering written notice of such *force majeure* to the other party within five (5) calendar days of the event causing the *force majeure*, and 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.

**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. There are no written or oral representations or understandings that are not fully expressed in this lease 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.

**IN TESTIMONY WHEREOF**, this lease agreement is executed in duplicate originals, either of which shall be deemed to be an original, at Corpus Christi, Texas, on the date first above mentioned.

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

By: \_\_\_\_\_  
John P. LaRue  
Executive Director  
  
"Authority"

**ESLABON TERMINAL, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
"Lessee"

STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on the 12<sup>th</sup> day of April, 2011, 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 \_\_\_\_\_ §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, \_\_\_\_\_ of Eslabon Terminal, LLC, a Texas Limited Liability Corporation, on behalf of said Corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_



**PORT OF CORPUS CHRISTI AUTHORITY  
EASEMENT SUMMARY**

Grantee: Eslabon Terminal, LLC  
P. O. Box 578  
Corpus Christi, Texas 78403

Easement Location: As depicted on the attached drawing.

Use: For the operation and maintenance of an existing 10-inch pipeline from Eslabon's crude oil storage tanks to Oil Dock 12.

Term: Term (10) years.

Options: None

Start Date: April 12, 2011

Fee: One time payment of \$1,369.45.

Adjustment of Fee: None

Remarks: None

**PIPELINE EASEMENT**

**THE STATE OF TEXAS   §  
                                  §           **KNOW ALL MEN BY THESE PRESENTS THAT:**  
COUNTY OF NUECES   §**

Port of Corpus Christi Authority of Nueces County, Texas, acting herein by and through its Port Commissioners hereunto duly authorized (hereinafter called "Authority") for good and valuable consideration as described below, and including the covenants and conditions herein made and provided to be kept and performed by Grantee, has **GRANTED AND CONVEYED** and by these presents does **GRANT AND CONVEY** to **ESLABON TERMINAL, LLC**, a Texas limited liability corporation, whose principal address is P.O. Box 578, Corpus Christi, Texas 78403, (hereinafter called "Grantee"), a right-of-way and easement (the "Pipeline Easement") on and through the Authority's land located in Nueces County, Texas, for the purpose of operating, maintaining, repairing, replacing and removing one (1) existing ten (10) inch pipeline (the "Pipeline") for the uses herein set out upon, over and across the Pipeline Easement hereby granted, together with such valves, fittings, meters and other equipment and appurtenances as may be necessary for such purposes. The centerline of the Pipeline Easement is described and depicted on Exhibit A attached hereto, which is incorporated herein by reference for all purposes. The width of the Pipeline Easement shall be one (1) foot on either side of the centerline of the Pipeline Easement described and depicted on Exhibit A.

**TO HAVE AND TO HOLD** unto Grantee, its successors and assigns, the rights and privileges hereby conveyed for ten (10) years beginning on the 12<sup>th</sup> day of April, 2011, and ending at midnight on the 11<sup>th</sup> day of April, 2021, subject to the exceptions and reservations herein set forth, and upon the following covenants and conditions which are a part of the consideration for this grant, which covenants and conditions are and shall be construed as covenants running with the land, and which covenants and conditions by its acceptance hereof Grantee covenants and agrees to keep and perform.

This Pipeline Easement is granted subject to the following:

- A. **Size of Pipeline.** The Pipeline shall not exceed the following number of pipelines and a nominal inside diameter as follows: Nominal inside diameter: ten inches (10").
- B. **Fee.** For the ten (10) year term of this Agreement, Grantee will pay to the Authority a fee in the amount of One Thousand Three Hundred Sixty-Nine and 45/100 Dollars (\$1,369.45) payable in advance.
- C. **Access.** The rights of ingress and egress hereinabove referred to in Grantee shall be confined to the above-described easement and Grantee shall not have the right to cross Authority's adjacent land, store materials or equipment on Authority's adjacent land, or conduct any of Grantee's operations on Authority's adjacent land, unless the prior consent of the Authority is obtained in writing, which consent will not be unreasonably withheld, conditioned or delayed. Except in the case of an emergency, Grantee agrees to notify the Authority not less than seventy-two (72) hours

prior to Grantee's employees, agents or contractors entering upon the easement for construction, maintenance, repairs or other operations. In the case of an emergency, necessitating entry upon the easement by Grantee, its employees, agents or contractors without first giving at least seventy-two (72) hours prior notice to Authority, Grantee agrees to notify the Authority of the nature and extent of any such emergency within twenty-four (24) hours after any such entry.

D. Maintenance and Use. Grantee shall maintain the Pipeline in a good and workmanlike manner and in compliance with all applicable governmental and industry standards for maintenance of the same. Warning signs for the existence of the Pipeline that conform to Federal and State laws applicable to such warning signs will be posted at the required locations along the Pipeline Easement.

Grantee will immediately, notify the appropriate State and Federal agencies who regulate pipelines of the type in the Pipeline Easement, and no later than twenty-four (24) hours after discovery, notify Authority, of any visible or apparent contamination discovered in the Pipeline Easement during maintenance of the Pipeline.

Grantee will immediately, notify the appropriate State and Federal agencies who regulate pipelines of the type in the Pipeline Easement, and no later than twenty-four (24) hours after discovery, notify Authority, of any visible or apparent contamination discovered in, on, under, or adjacent to the Pipeline Easement.

If the contamination is coming from the Pipeline, then Grantee will immediately take all steps necessary to shut down the pipeline or pipelines in the Pipeline Easement from which the contamination is coming, repair or replace the pipeline, and restore the Pipeline Easement to the condition it was in prior to the discovery of the contamination. If the contamination is not coming from a pipeline in the Pipeline Easement, then Grantee and Authority shall cooperate to determine the source of the contamination and advise the appropriate State and Federal agencies of the occurrence.

Grantee's use of the Pipeline Easement herein granted and its operations in relation to it will at all times comply with all applicable laws, statutes, rules and regulations of federal, state and local government.

Grantee shall furnish Authority, upon any modification of the pipeline, an as-built drawing of the location of the Pipeline and any modification.

Grantee shall be responsible for coordination of its use in the Pipeline Easement with any other existing users and easement holders in or near the Pipeline Easement. Grantee shall promptly restore any portion of the right-of-way damaged by Grantee to its condition prior to such damage. All restoration work shall be appropriately tested at Grantee's expense. Authority shall be promptly notified in writing of the method used and results of all tests of any such restoration work.

E. Reservations and Exceptions. The easement herein granted shall be subject to any and all easements heretofore granted by Authority to other parties which is either of record in Nueces

County or physically evident on the property. The Authority reserves the right to grant easements upon, over, under and across its property within the Pipeline Easement, and to grant rights of use, leases and easements above, below and on the surface of the Pipeline Easement, provided that such grants shall not materially interfere with the rights granted herein.

**F. Indemnity/Waiver.**

**(a) As used in this Section F. each of the following terms shall have the meanings set forth in this Section F.(a):**

**(1) “Beneficiary” means the intended recipient of the benefits of another party’s Indemnity, Waiver or obligation to Defend.**

**(2) “Claims” means all claims, damages (including actual, consequential, and punitive), losses, fines, penalties, liens, causes of action, suits, judgments, settlements and expenses [including court costs, attorney’s fees (including attorney’s fees in defending and/or settling a Claim and attorney’s fees to collect on this Indemnity), costs of investigation, and expert witnesses) of any nature, kind or description by, through or of any person or entity, including property loss or damage in, on, about or adjacent to the Pipeline Easement and right of way herein granted, bodily or personal injury, sickness, disease, and/or death (including bodily or personal injury and/or death of employees of an Indemnified Person or a Grantee Party).**

**(3) “Defend” means to oppose on behalf of another party a Claim in litigation, arbitration, mediation or other alternative dispute resolution proceeding and to pay all costs associated with the preparation or prosecution of such Defense.**

**(4) “Indemnify” means to protect and hold harmless a party from and against a potential Claim and/or to compensate a party for a Claim actually incurred.**

**(5) “Indemnified Persons” means the Authority, its Port Commissioners, directors, managers, employees and agents.**

**(6) “Grantee Parties” means the Grantee, its agents, contractors, employees, owners, invitees, or licensees.**

**(7) “Waive” means to knowingly and voluntarily relinquish a right and/or to release another party from liability.**

**(b) Subject to the terms of this Section F, Grantee shall Defend and Indemnify the Indemnified Persons from and against all Claims resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the following matters (these Claims being referred to herein as the “Indemnified Claims”):**

(1) The conduct of Grantee's business on the easement and right of way herein granted;

(2) Grantee's breach of the terms and conditions of this Agreement; and

(3) any act, omission, willful misconduct, strict liability, breach of warranty, express or implied, or violation of any laws, ordinances, rules, regulations, or codes, now or hereafter existing and applicable to Grantee and its operations under this Agreement, of or by any Grantee Party, including the sole, joint, concurrent, or comparative negligence of any Grantee Party in connection with or pertaining to this Agreement.

(c) Subject to the terms of subparagraph (d) below, the Indemnities, Waivers and obligation to Defend in this Section F. shall be enforced to the fullest extent permitted by applicable law for the benefit of the applicable Beneficiary thereof, regardless of any extraordinary shifting of risks, and even if the applicable Claim is caused by the joint, concurrent, or comparative negligence of such Beneficiary, and regardless of whether liability without fault or strict liability is imposed upon or alleged against such Beneficiary; provided, however, that an Indemnity will not be enforced to the extent that a court of competent jurisdiction holds in a final judgment that the applicable Claim against a Beneficiary was caused by the willful misconduct or sole negligence of such Beneficiary.

(d) Notwithstanding anything to the contrary contained in this Section F., to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence, causation, responsibility or fault of the Indemnified Persons and the Grantee Parties, then the Grantee's obligation to the Indemnified Persons shall only extend to the percentage of the total responsibility of the Grantee Parties in contributing to such Indemnified Claim.

(e) In claims against any Indemnified Person by or for an employee of a Grantee Party, the Grantee's indemnification obligation under this Section F. shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Grantee Party 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 Grantee, a legal beneficiary, or an insurance carrier against an Indemnified Person liable 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 Indemnified Person or a settlement by the Indemnified Person, Grantee expressly agrees to reimburse and hold harmless the Indemnified Person for the damages based on such judgment or settlement as provided in this Section F.

(f) Except as otherwise expressly limited in this Section F., it is the intent of the parties to this Agreement that all indemnity obligations and liabilities contracted for in this Agreement be without monetary limit and without regard to the cause or causes thereof (including pre-existing conditions on Authority's Property or as the result of an indemnification agreement with a third party), and will not be limited by damages paid under the Workers' Compensation Act. The indemnity contained in this Section F. applies, without

limitation, to any violation by a Grantee Party of 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 Water Code; 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; Authority's Tariffs, Rules and Regulations, and the Port of Corpus Christi Authority's Design and Construction Guidelines set forth in Authority's Real Estate Manual (collectively, "Environmental Laws, Rules and Regulations") in effect during the term of this Agreement and to the extent applicable to Grantee and its operations hereunder., and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the term of this Agreement, regardless of whether the act, omission, event or circumstance constituted a violation of any of the Environmental Laws, Rules and Regulations at the time of its existence or occurrence.

(g) If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this Section F., the Indemnified Person will be represented by its general counsel, or another attorney selected by the Indemnified Person and approved by Grantee, which approval will not be unreasonably withheld.

(h) If Grantee should fail or refuse, after prior written notice to Grantee that an Indemnified Person intends to make a settlement of an Indemnified Claim, to participate in the settlement of such Indemnified Claim, then the Indemnified Person may settle with the claimant without prejudice to the Indemnified Person's indemnity rights set forth herein, and a settlement after such notice to Grantee will constitute a settlement of the proportionate fault, including but not limited to negligence, of both Grantee and the Indemnified Person, which settlement may later be apportioned between Indemnified Person and Grantee.

(i) Grantee agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage.

(j) To the fullest extent provided by this Section F., Grantee hereby Waives all Claims against the Indemnified Persons resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the Indemnified Claims.

G. Insurance

Without limiting the indemnity obligations or liabilities of Grantee, or its insurers, provided herein, Grantee agrees at all times this Agreement is in effect to carry and maintain at its sole expense policies of insurance (“the Policies”) of the types and in the minimum amounts as follows:

(a) For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and Employer's Liability insurance with limits of at least \$500,000.00 each employee accident and disease, or such similar insurance which is in accordance with state and federal law applicable to said employees.

(b). Commercial General Liability (CGL) coverage with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000 general aggregate in the right of way and easement.

(c) Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit.)

(d) Umbrella liability coverage limits of not less than \$5,000,000.00 over and above the underlying primary coverage limits stated in subparagraph (a), (b) and (c) in this Section.

(f) Pollution Legal Liability including cleanup and defense costs for premises and operations including pollution of any body of water with limits of not less than \$5,000,000.00 per occurrence.

The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon request by Authority to an amount which is commercially reasonable at the time.

Authority shall be furnished, to the attention of Authority's Risk Manager, prior to the commencement of any work by Grantee on the Pipeline Easement, as proof of the insurance required of Grantee 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 acceptable, in their form and content, to Authority. Each of the Policies will be endorsed to (a) (except for Workers' Compensation and Employee'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, Attention: Risk Manager, and (c) provide that notwithstanding any language in any policy of insurance held by Authority (“Authority Insurance”) to the effect that the Authority Insurance is primary, the policy or policies held by Grantee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies.

In addition the Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm or organization shall automatically

be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract." Grantee shall deliver to Authority certificates of insurance at least thirty (30) days prior to the expiration date of each 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 if either exceeds \$50,000.00; and, in such event, Authority may decline to approve this Agreement. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Grantee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority may procure such insurance at Grantee's expense, and Authority is entitled to reimbursement from Grantee for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Grantee receives Authority's notice of payment until reimbursement.

**H. Waiver of Subrogation. Grantee agrees that all insurance policies required herein shall include full Waivers of Subrogation in favor of Authority. Grantee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this Agreement 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; and Grantee will provide to Authority a copy of said endorsement or endorsements or evidence that such endorsement is not necessary to prevent the invalidation of the insurance coverage by reason of such waiver.**

**I. Assignment. The rights herein granted may not be assigned without the prior written consent of the Authority, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, Authority consents to assignment of this Agreement to any corporation or other entity which is an affiliate of, and controlled by, Grantee. An affiliate, as used herein, is a person or entity which is controlled by or the controlling interest of which is owned by the same persons or entities controlling Grantee. This Pipeline Easement shall be deemed a covenant running with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment by Grantee shall not relieve Grantee from liability for the performance of the covenants and indemnities hereof.**

**J. Termination. This Agreement and all rights to use and occupy the Pipeline Easement shall terminate if the pipeline(s) shall cease to be used for the transmission of petroleum products, collectively, out of any forty-eight (48) month period during the term of this Pipeline Easement or if Grantee shall at any time expressly abandon this Pipeline Easement for the use of the same for the purposes herein granted. This Pipeline Easement and all of Grantee's interest hereunder, at the option of Authority, shall forthwith terminate upon breach by Grantee of any of the conditions hereof and the failure of Grantee to remedy the same within ninety (90) days after Grantee's receipt of written notice from the Authority so to do. Grantee agrees it will within ninety (90) days after the termination of this Pipeline Easement remove the Pipelines and all other equipment, facilities or appurtenances existing in the Pipeline Easement and restore the land in the Pipeline Easement to substantially the same condition in which same existed prior to the existence of the Pipeline, equipment, facilities and appurtenances. In the event Grantee fails to remove the said Pipeline, equipment, facilities and appurtenances within the above-described time period, Authority may either declare the termination of Grantee's interest in the Pipeline, equipment, facilities and appurtenances**

and all of Grantee's interest therein shall thereupon terminate, or the Authority may cause the Pipeline, equipment, facilities and appurtenances, or any part thereof, to be removed and disposed of, and the lands of the Authority restored, all at the cost of Grantee. In the event of a breach of the requirements of Section L ("Compliance with Authority Security Requirements"), this easement and all of Grantee's interest hereunder, at the option of Authority, shall forthwith terminate in the event Grantee fails to remedy the same within ten (10) days after Grantee's receipt of written notice from the Authority of such breach.

K. Relocation. The Authority may require Grantee to remove, lower or relocate the Pipeline, equipment, facilities and appurtenances situated in the aforesaid Pipeline Easement in the event the same materially interferes with or will materially interfere with: (1) the development of Authority's lands; (2) any facility, facility modification, or proposed facility of Authority, Authority Lessee or Authority Franchisee; (3) any road or proposed road; or (4) any operation or proposed operation of Authority, Authority Lessee or Authority Franchisee; The Authority may also require Grantee to remove, lower or relocate the Pipeline, equipment, facilities and appurtenances situated in the aforesaid Pipeline Easement in the event the same materially interferes with or will materially interfere with any railroad or proposed railroad under which the Pipeline passes. In the event Authority requires Grantee to remove, lower or relocate pursuant to the provisions of this paragraph, the cost of such removal, lowering or relocation shall be paid solely by Grantee; and in such event, Authority will use its best efforts to provide Grantee with an alternate Pipeline Easement on Authority's land at no additional cost to Grantee; provided, however, Authority shall not be required to provide the alternate easement.

L. Compliance with Authority Security Requirements. Grantee, its employees, agents, representatives and subcontractors shall at all times comply with all Authority mandated security requirements and regulations pertaining to the Pipeline Easement and right of way location and access thereto, regardless of whether now existing or hereinafter imposed, pursuant to Authority's Tariffs (the "Security Measures"). Failure to comply with Authority's Security Measures will be grounds for terminating this Agreement as described in Paragraph J above. Authority's Security Measures applicable to the Pipeline Easement and right of way can be ascertained by contacting the Authority's Police Department.

M. Notice. All notices, demands, or requests from Grantee 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. All notices, demands, or requests from Authority to Grantee shall be given to Grantee at One Valero Way, San Antonio, Texas 78249, Attn: Director, Real Estate & Right of Way, with a copy to P.O. Box 9370, Corpus Christi, Texas 78469-9370, Attn: Contract Administrator, or at such other address as Grantee shall request in writing.

The execution of this Agreement shall be conclusive of the agreement of Grantee to all of the terms and conditions hereof, whereupon this easement and all of its provisions shall extend to and be binding upon the legal representatives, successors and assigns of Grantee and Authority, respectively.

WITNESS this 12<sup>th</sup> day of April, 2011.

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

By: \_\_\_\_\_

John P. LaRue  
Executive Director

"Authority"

**ESLABON TERMINAL, LLC**

By: \_\_\_\_\_

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

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

"Grantee"

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

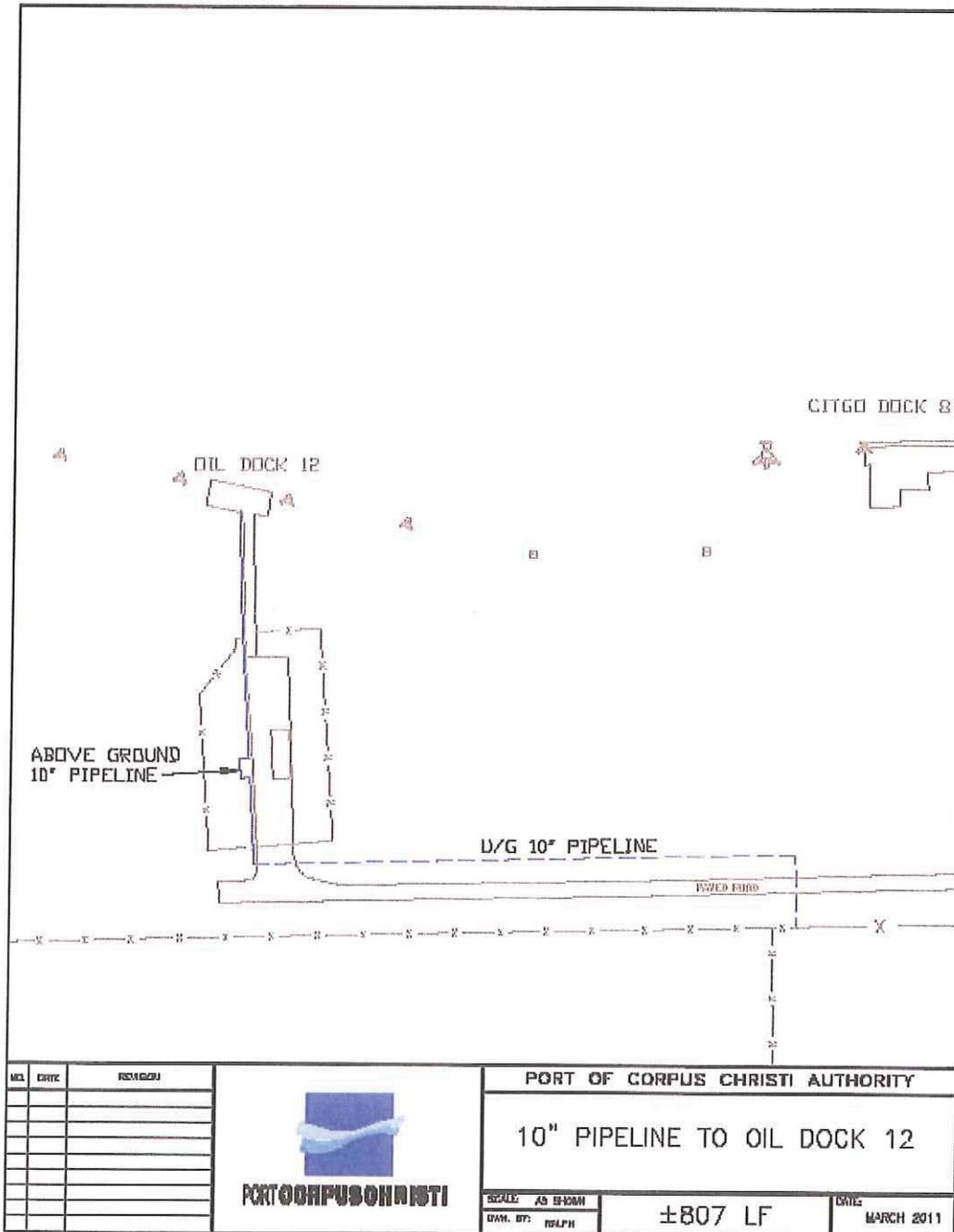
This instrument was acknowledged before me on the 12<sup>th</sup> day of April, 2011, by JOHN P. LaRUE, Executive Director of Port of Corpus Christi Authority of Nueces County, Texas, on behalf of the Port.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF \_\_\_\_\_       §  
  §  
COUNTY OF \_\_\_\_\_   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, \_\_\_\_\_, of Eslabon Terminal, LLC, a Texas limited liability corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



NO.	DATE	REVISION



<b>PORT OF CORPUS CHRISTI AUTHORITY</b>	
<b>10" PIPELINE TO OIL DOCK 12</b>	
SCALE: AS SHOWN	DATE: MARCH 2011
DRAWN BY: RALPH	<b>±807 LF</b>

April 12, 2011

The Honorable Mike Carrell  
The Honorable Richard M. Borchard  
The Honorable Judy Hawley  
The Honorable Robert J. Gonzalez, Sr.  
The Honorable Francis I. Gandy, Jr.  
The Honorable Robert Kostelnik  
The Honorable Mike Scott  
Port Commissioners  
Port of Corpus Christi Authority

**Subject:**

***AGENDA ITEM NO. 10-J***  
**Consent to a Sublease of a Lease Agreement with  
Cemex Construction Materials South, LLC,  
for 1.54 Acres of PCCA Property, Located North and West  
of the Avery Point Turning Basin, to Sand Storage, LLC**

Dear Commissioners:

At the February 8, 2011 commission meeting, Cemex Construction Materials South, LLC, renewed their lease for a 1.54-acre tract of Port-owned land located on the north side of the ship channel across from the Avery Point oil dock complex. Constructed in 1963, the Cemex facility consists of a small boat dock and two cement silos, which were used to unload and store shipments of imported cement for the South Texas construction industry. The dock and leasehold improvements, however, have been inactive for a number of years.

Cemex has requested that their lease be assigned to Sand Storage, LLC. Sand Storage plans to utilize the leasehold improvements to store sand for use in the development of the Eagle Ford Shale oil and gas field between Laredo and Victoria. Initially, Sand Storage will bring in sand by train; however, they have indicated that sand could be brought in by vessel in the future.

The new Lease Agreement with Cemex was negotiated using our standard long-term Lease Agreement and provides for a primary term of five years with five 5-year option periods at a rental of \$1,604.17 per month based on a current land valuation of \$125,000 per acre and a 10% rate of return. Under the terms and conditions of the Lease Agreement, Sand Storage will sublease the property at a rental of \$2,000.00 per month; the difference in rental fees being paid to the Port as “additional rent” as defined in the Lease Agreement.

Staff recommends approval of the attached Sublease Agreement as drafted. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

Attachment

**PORT OF CORPUS CHRISTI AUTHORITY  
SUB-LEASE SUMMARY**

Sub-Lessee: Sand Storage, LLC  
5449 Ocean Drive  
Corpus Christi, Texas 78412

Leased Premises: As depicted on the attached drawing.

Use: For receipt and storage of frac sand for the Eagle Ford Shale oil and gas field development between Laredo and Victoria.

Term: Five (5) years.

Options: One (1) year option terms as mutually agreed to.

Start Date: April 12, 2011.

Annual Rent: \$2,000.00.

Additional Rent: None

Adjustment of Rent: None

Remarks: Section 7.02 of the PCCA lease to Cemex stipulates that should Cemex receive rent or other consideration to be paid by the sub-lessee that exceeds the rent for the PCCA lease space, then Cemex shall pay to the PCCA as additional rent all such excess rent and other consideration immediately upon Cemex's receipt thereof.

## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered into effective as of the 8th day of March, 2011, by and between CEMEX CONSTRUCTION MATERIALS SOUTH, LLC, a Delaware limited liability company ("Sublessor"), and SAND STORAGE, LLC, a Texas limited liability company ("Sublessee").

### WITNESSETH:

In consideration of the mutual covenants and agreements of the parties, and on and subject to the following terms and conditions, Sublessor and Sublessee hereby agree as follows:

1. **PREMISES.** Sublessor hereby subleases to Sublessee, and Sublessee hereby takes and subleases from Sublessor, approximately 1.54 acres of land, more or less located at the Port of Corpus Christi Authority of Nueces County, City of Corpus Christi, Texas (hereinafter referred to as the "Subleased Premises"). The Subleased Premises are more particularly described and depicted on Exhibit A attached hereto.

2. **TERM.** This Sublease shall be for a term commencing on April 12, 2011 (the "Commencement Date"), and expiring on April 11, 2016 (the "Termination Date"). The parties may agree to any number of one year extension periods provided that written agreement is reached at least thirty (30) days prior to expiration of the applicable Sublease term, subject, however, to the terms of the Landlord Consent as hereinafter defined. A Lease Year shall be defined as a period of 12 months, with the first such Lease Year beginning on the Commencement Date of this Sublease.

3. **PRIME LEASE.** Except as expressly limited or increased herein, this Sublease and Sublessee's rights hereunder are expressly made subject to all of the terms, conditions, restrictions and limitations relating to the Subleased Premises contained in that certain Lease Agreement between Sublessor and the Port of Corpus Christi Authority of Nueces County, Texas, ("Landlord") (as Lessor), dated February 8, 2011, and that certain Amendment and Consent of even date herewith ("Landlord Consent") executed in connection with this Sublease (all as amended, and hereinafter collectively referred to as the "Prime Lease"). All capitalized terms used herein which are not otherwise defined shall have the meanings assigned to such terms in the Prime Lease. Sublessee acknowledges that it has received and reviewed a complete copy of the Prime Lease. Except as expressly set forth herein, Sublessee hereby agrees to assume all obligations, duties and responsibilities of Sublessor (as Lessee under the Prime Lease) as to the Subleased Premises, "as is," in their present condition, without representation or warranty as to physical condition or habitability, express or implied, by or from Sublessor or the Landlord. Any leasehold improvements that Sublessee elects to install within the Subleased Premises shall be subject to Section 8 below and the written approval of Landlord and Sublessor prior to installation of said leasehold improvements. Upon the expiration or termination of this Sublease, Sublessee shall quit and surrender the Subleased Premises "broom clean" in the same condition as on the Commencement Date

subject only to reasonable modifications approved in writing by Landlord and ordinary wear and tear and casualty.

If Landlord shall default in the performance of any of its obligations under the Prime Lease and such default has a material adverse affect on Sublessee's use and occupancy of the Subleased Premises, Sublessor shall, upon the written request of Sublessee and at Sublessee's cost and expense, use its diligent good faith efforts to enforce the Prime Lease and obtain Landlord's compliance with its obligations thereunder.

The Prime Lease shall not be amended in any way that affects the Subleased Premises without the prior written consent of the Landlord, Sublessor and Sublessee, such consents not to be unreasonably withheld, delayed or conditioned.

4. **RENT. Base Rent and Supplemental Rent.** In consideration of this Sublease, no later than fifth (5<sup>th</sup>) of each month, Sublessee agrees and promises to pay Sublessor by wire transfer, as "Base Rent" for the Subleased Premises, to the following account:

Account Name:	Cemex Materials LLC
Bank Name	JP Morgan Chase N.A
Bank ABA #	071000013
Account #	55-67513

in lawful money of the United States of America an amount of Two Thousand and no/100 Dollars (\$2,000.00) per month, not including the applicable Texas sales tax and a furniture, fixture and equipment rental payment ("FF&E). The FF&E payment shall be subject to an agreement executed concurrently with this Sublease. Rental for the partial months in which this Sublease commences and expires, if applicable, shall be prorated. Base Rent shall be escalated in compliance with the rent escalation clause set forth in the Prime Lease and any amendments thereto. Sublessee shall pay Sublessor for all property taxes in which Sublessor is obligated to pay.

5. **SECURITY DEPOSIT.** None required.

6. **USE AND QUIET ENJOYMENT.** The Subleased Premises shall be used by Sublessee and its employees, invitees, licensees and agents for the receiving, shipping, loading, unloading, transportation, buying, selling, dealing, distribution and sorting of aggregates received and distributed by waterborne transportation at the Port of Corpus Christi, and distribution via rail or truck and all activities reasonably considered necessary or incidental to such operation by the Sublessee. Sublessor recognizes the

nature of Sublessee's business and that Sublessee shall have the right to use and short-term (less than seven (7) consecutive days) park trucks and use and store equipment on the Subleased Premises. Sublessee and Sublessor shall have access to the Subleased Premises seven (7) days per week and twenty-four (24) hours per day in accordance with the security at the Port of Corpus Christi. Sublessee warrants and represents that it will not permit the use or storage of any substances that violate federal, state or local environmental hazardous laws or regulations. As a material inducement to Sublessor's agreement to lease the Premises to Sublessee, Sublessee and its heirs or assigns shall not develop, use or operate the Subleased Premises, or permit the Subleased Premises to be used, developed or operated, for the purpose of producing, manufacturing, selling or distributing ready-mix concrete, concrete aggregates, fly ash, slag, cement, concrete block, pipe, cementitious material or other products or services competitive with those sold or furnished by Sublessor. Sublessor shall have the right to enforce, by proceedings at law or in equity, the restrictions and covenants imposed by this provision including the right to prevent the violation of such restrictions and covenants, and the right to recover damages or other amounts due for such violation. Sublessee acknowledges that breach of this restriction would cause immediate and irreparable harm to Sublessor for which money damages would be inadequate.

7. **MAINTENANCE AND EXPENSES.** Sublessee shall be responsible for all other maintenance, repairs and replacements costs (including, but not limited to, "common area" maintenance and all interior and mechanical maintenance) and operating expenses, including, but not limited to utilities, janitorial, trash removal and all other costs of Sublessee's operation. Notwithstanding anything to the contrary, in no event shall Sublessor be responsible for any maintenance or repair of the Subleased Premises if the required maintenance and/or repair was needed before Sublessee took possession of the Subleased Premises.

Sublessee shall be responsible for all maintenance required by the Landlord's engineers. Sublessee will be required to abide by all laws, regulations and ordinances, and to perform any external cleanup on the properties of the Landlord arising from materials proven to be dislodged by loading, unloading and transportation conducted by Sublessee to and through the Port of Corpus Christi.

8. **IMPROVEMENTS.** Sublessee shall have the right, subject to Landlord approval of any specific plans and at Sublessee's sole cost and risk of loss, to create those improvements on the Subleased Premises that are necessary to conduct its business ("Improvements"). All Improvements shall become the property of the Sublessor upon termination of the Sublease, and, upon demand of Landlord, Sublessee shall restore said area to the condition it was in on the Commencement Date, reasonable wear and tear excepted. Provided that removal does not violate the required condition of the Subleased Premises upon termination of this Sublease or the Prime Lease (as described further in the Prime Lease and this Sublease), Sublessee may remove such Improvements upon the termination of this Sublease. Sublessee is obligated to insure such Improvements as set forth in Section 10 below.

9. **COMPLIANCE WITH PRIME LEASE.** Except as expressly set forth herein, Sublessee shall abide by and comply with all of the terms and provisions of the Prime Lease which directly or indirectly pertain to the use and occupancy of the Subleased Premises or are to be observed or performed during the Term hereof by Sublessor. If Sublessee fails or refuses to perform, observe or comply with any obligation of Sublessee hereunder, Sublessor may, at its option, in addition to all other rights and remedies given hereunder or in law or at equity, take, at the sole expense of Sublessee, any and all actions required to be taken to prevent a default hereunder by Sublessee or enforce specific performance of this Sublease. In this regard, Sublessor shall have all rights, liens and remedies of the landlord under the Prime Lease and in addition thereto, all rights, remedies and liens available to landlords under the laws of the State of Texas. If Sublessor shall institute suit for collection of any sums owing by Sublessee, the Sublessor shall be entitled to recover all reasonable attorneys' fees and disbursements incurred by Sublessor with respect to such suit, plus interest at the rate of eighteen percent (18%) per annum (not to exceed the maximum lawful rate) on all sums owed from the due date thereof until paid.

10. **INSURANCE.** The following types of insurance policies and minimum limits of coverage shall be maintained by the Sublessee during the term of this Agreement:

(a) **Automobile Liability Insurance.** Automobile Comprehensive Bodily Injury and Property Damage Liability Insurance with a combined single limit of \$500,000 per occurrence. The coverage shall include all owned, nonowned, and rented automotive equipment.

(b) **General Liability Insurance including Marine Terminal Operator Liability Insurance.** Comprehensive Liability Insurance including Marine Terminal Operator Liability Insurance, with limits of \$1,000,000 combined single limit per occurrence, including but not limited to coverage for public liability, bodily/personal injury, advertising injury, property damage premises coverage, contractual liability for those liabilities assumed by the Sublessee herein, cross liability and or severability of interest, liability for pollution on a sudden and accidental basis, products and completed operations, protective liability/independent contractors/work sublet, and with the "watercraft exclusion" deleted.

(c) **Excess or Umbrella Liability Insurance.** Coverage in excess of the limits provided in paragraph 10 (a) and 10 (b) with a minimum combined single limit for Bodily Injury and Property Damage of at least \$5,000,000 per occurrence.

All required insurance shall be primary of any other insurance that may be applicable, it being the intention of the Parties that the aforementioned policies shall primarily respond. Any and all deductibles in the above-described insurance policies shall be assumed by, for the account of, and at the Sublessee's sole risk. All policies providing coverage hereunder shall contain provisions that no cancellation or material changes in the policies shall become effective except on thirty (30) days' written notice thereof to Sublessor. Before commencing work anticipated under the terms of this Sublease, Sublessee shall

submit to Sublessor a Certificate evidencing coverages equal to or in excess of those set forth above. For liabilities assumed by the Party herein, all of the above insurance shall be endorsed to provide that: (i) the Sublessee's insurers waive their right of subrogation (equitable or by assignment, express or implied, loan receipt or otherwise) against Sublessor; (ii) the Sublessee's insurers name Sublessor as an additional named insured.

11. **ASSIGNMENT AND SUBLEASE.** No part of Sublessee's rights or interests under this Sublease may be assigned or transferred in whole or in part either by act of Sublessee except in accordance with the terms of the Prime Lease. Sublessor shall not be obligated to consent to any such transfer, assignment, or sublease or until the Landlord under the Prime Lease has given its consent to such assignment, transfer, sublease or other arrangement. Under no circumstance shall an encumbrance be placed upon the Leased Premises.

12. **NOTICES.** Any notice or other communication given pursuant to this Sublease shall be in writing and shall be deemed to have been duly given when actually delivered to the addressee in person or by a nationally recognized delivery service, or when mailed, postage prepaid, certified or registered mail, return receipt requested, and shall be addressed as follows:

If to Sublessor:

Cemex Construction Materials South, LLC  
920 Memorial City Way, Suite 100  
Houston, Texas 77024  
Attn: Real Estate

With a copy to:

Cemex, Inc.  
920 Memorial City Way, Suite 100  
Houston, Texas 77024  
Attn: General Counsel

If to Sublessee:

5449 Ocean Drive  
Corpus Christi, Texas 78412

Each party hereto may change its address for notice purposes of this Sublease by giving ten (10) days prior written notice of such change.

13. **LIABILITY AND INDEMNIFICATION.** Sublessor shall not be liable to Sublessee or to Sublessee's employees, agents, invitees or servants for any claim, loss

or damage occasioned by any of the following (except if caused by Sublessor's acts or omissions):

- a. Except as expressly set forth herein, failure to keep facilities, fixtures or equipment in repair;
- b. Except as expressly set forth herein, failure to provide the facilities or services set forth herein or in the Prime Lease; or
- c. Plumbing, water, electricity, gas, steam, bursting of pipes, running or leaking of any wash stands, or toilet or waste pipes, wherever situated, or other such event.

Neither the Landlord nor the Sublessor shall be liable to Sublessee, or any of its agents, employees, servants, or invitees, for any injury to persons or damage to property resulting from the condition or design or any defect in the Subleases Premises or its mechanical systems which may exist or subsequently occur, and Sublessee, with respect to itself and its agents, employees, servants, and invitees, hereby expressly assumes all risks and damage to persons and property, either proximate or remote by reason of the present or future condition of the facilities or the Subleased Premises or any adjacent area. Sublessee agrees that it will indemnify and hold Sublessor and Landlord harmless of, from and against all suits, claims and actions of every kind by reason of any breach, violation, or nonperformance of any term or condition on the part of the Sublessee hereunder. **NOTWITHSTANDING ANYTHING TO THE CONTRARY, SUBLESSEE AND SUBLESSOR (EACH IN ITS CAPACITY AN "INDEMNITOR"), TO THE FULLEST EXTENT PERMITTED BY LAW, AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY, ITS OFFICERS, EMPLOYEES AND DIRECTORS AND LANDLORD ("INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, ACTIONS, DAMAGES, LIABILITIES AND EXPENSES ASSERTED AGAINST THE INDEMNIFIED PARTIES ON ACCOUNT OF INJURIES (INCLUDING DEATH) OR DAMAGE TO PROPERTY WHEN AND ONLY TO THE EXTENT THAT A PORTION OF SUCH DAMAGE OR INJURY WAS CAUSED PROXIMATELY BY THE INDEMNITOR, ITS EMPLOYEES, INVITEES, AGENTS OR REPRESENTATIVES ("INDEMNITOR PARTIES"). IN THE EVENT OF A SHARED LIABILITY SITUATION, THE INDEMNITOR'S LIABILITY HEREUNDER SHALL BE LIMITED TO THE PORTION OF THE HARM CAUSED PROXIMATELY BY INDEMNITOR PARTIES.**

14. **EXPIRATION OF PRIME LEASE.** If the Prime Lease shall expire or terminate as to the Subleased Premises: (i) this Sublease shall automatically and simultaneously terminate; (ii) the rental and all other amounts paid or to be paid hereunder shall abate proportionately; (iii) any rentals or other amounts paid to Sublessor for a period beyond such termination shall be refunded to Sublessee; and (iv) all amounts owed by Sublessee for services rendered hereunder shall be immediately due and payable to Sublessor. This Sublease is derivative of the Prime Lease and no privity of contract is established between Landlord and Sublessee except as set forth in the Consent to Sublease.

15. **DEFAULT BY LANDLORD.** Sublessor, including its parent and affiliates, shall not be responsible, answerable or liable to Sublessee for, or by reason of, any defaults by Landlord as Landlord under the Prime Lease except if such default is a result of, or arises out of, the actions or omissions of Sublessor, its parent and affiliates or its agents.

16. **SURRENDER OF SUBLEASED PREMISES.** The Sublessee shall promptly surrender possession of the Sublease Premises to Sublessor upon the Termination Date in accordance with the terms of the Prime Lease.

17. **MISCELLANEOUS PROVISIONS.**

(a) This Sublease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns (but without affecting the provisions of Section 11 above).

(b) The parties hereto represent to the other that this Sublease, the transaction contemplated herein, and the execution and delivery hereof, have been duly authorized by all necessary partnership, corporate trust proceedings and actions.

(c) Time is of the essence in this Sublease.

(d) The failure or delay in the enforcement of the rights provided herein to each party shall not constitute a waiver of said rights or be construed as a basis for estoppel. Each party may exercise its rights herein despite said delay or failure to enforce said rights.

(e) In the event a dispute occurs or an action in law or equity arises out of the operation, construction or interpretation of this Sublease, the losing party shall bear the expense of the attorney's fees and costs of said action which are incurred by the prevailing party.

(f) This Sublease shall be subject to and governed by the laws of the State in which the Subleased Premises is located. Any and all payments due and payable to Sublessor shall be made directly to Sublessor's notice address.

(g) If any provision of this Sublease shall for any reason be held violative of any applicable law, then the invalidity of such a specific provision herein shall not be held to invalidate any other provisions herein, which other provisions shall remain in full force and effect unless removal of said invalid provisions destroys the legitimate purposed of this Sublease, in which event this Sublease shall be cancelled.

(h) This Sublease shall represent the entire agreement by and between the parties hereto, except this Sublease is expressly made subject to all of the terms, conditions and limitations of the Prime Lease as provided herein and it may not be changed except by written amendment duly executed by all parties hereto.

(i) This Sublease may be executed in any number of facsimile counterparts and each of which shall be an original, but all of which shall constitute one and the same instrument.

(j) Sublessor and Sublessee represent and warrant to each other that they have dealt with no broker in connection with this Sublease and agree to indemnify and hold each other harmless from any claim made by any broker engaged by them.

(k) Force Majeure. If either party hereto is unable to perform any obligation hereunder in a timely manner (but not including obligations to make payments hereunder in a timely fashion) because of fire, hurricanes, earthquakes, tornados or the like, unavoidable casualties, or other cause beyond the party's control, then the time within which the performance of such obligation must be completed shall be extended for such reasonable period of time as to allow said party to complete said performance.

(l) Due Dates. Notwithstanding any provision hereof to the contrary, any payment of any amount due under this Sublease due on a day which is not a business day may be paid on the next day which is a business day without interest for the period from due date to such date of payment.

(m) Relationship of the Parties. The parties agree that they intend this Sublease to create only the relationship of sublandlord and subtenant. No provision of this Sublease, or act of either party under this Sublease, shall be construed as creating the relationship of principal and agent, or as creating a partnership, joint venture, or other enterprise, or render either party liable for any of the debts or obligations of the other party, except under any provisions of this Sublease.

(n) Construction of Sublease. It is hereby mutually acknowledged and agreed that the provisions of this Sublease have been fully negotiated between the parties of comparable bargaining power with the assistance of counsel and shall be applied according to the normal meaning and tenor thereof without regard to the general rule that contractual provisions are to be construed narrowly against the party which drafted the same or any similar rule of construction.

(o) Authority. The parties represent and warrant to each other that each has full power and authority to execute and deliver this Sublease and

perform their respective obligations hereunder, and any action necessary to authorize this Sublease has been duly taken and the person or persons executing this Sublease have been duly authorized to do so.

(p) No Violation. The parties represent and warrant to each other that the execution of this Sublease by the parties and the performance of their respective obligations hereunder are not and shall be prohibited by or cause a breach of any other agreement, mortgage, trust deed, ground lease, contract, or other instrument or document to which they are a party or by which it or the Subleased Premises are bound.

(q) Good Standing. The parties represent and warrant to each other that they are duly organized, validly existing and in good standing under the laws of the State in which they were organized and that each has paid all organizational and filing fees and that they have the power and authority to perform all of their respective obligations hereunder.

(r) No Lien. On a conditional basis (i.e., provided that proper payment is made in a timely manner in accordance with the terms of this Agreement and/or applicable law), Sublessor waives any and all liens, statutory or at common law, which it may have or be entitled to by virtue of this Sublease, in Sublessee's property located at the Subleased Premises.

18. **LANDLORD'S CONSENT**. Notwithstanding anything to the contrary contained in this Sublease, the agreements and obligations of Sublessor hereunder are expressly contingent upon the consent of the Landlord to this Sublease.

EXECUTED on the date first set forth above by the undersigned parties, who hereby acknowledge that they have read and understand this Sublease.

**SUBLESSOR:**

**SUBLESSEE:**

**Cemex Construction Materials  
South, LLC.**

**Sand Storage, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Print Name: Susanne Bonilla

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

Title: Manager

**LANDLORD'S CONSENT OF SUBLEASE AGREEMENT**

Port of Corpus Christi Authority of Nueces County, Texas ("Landlord") hereby consents to this Sublease Agreement.

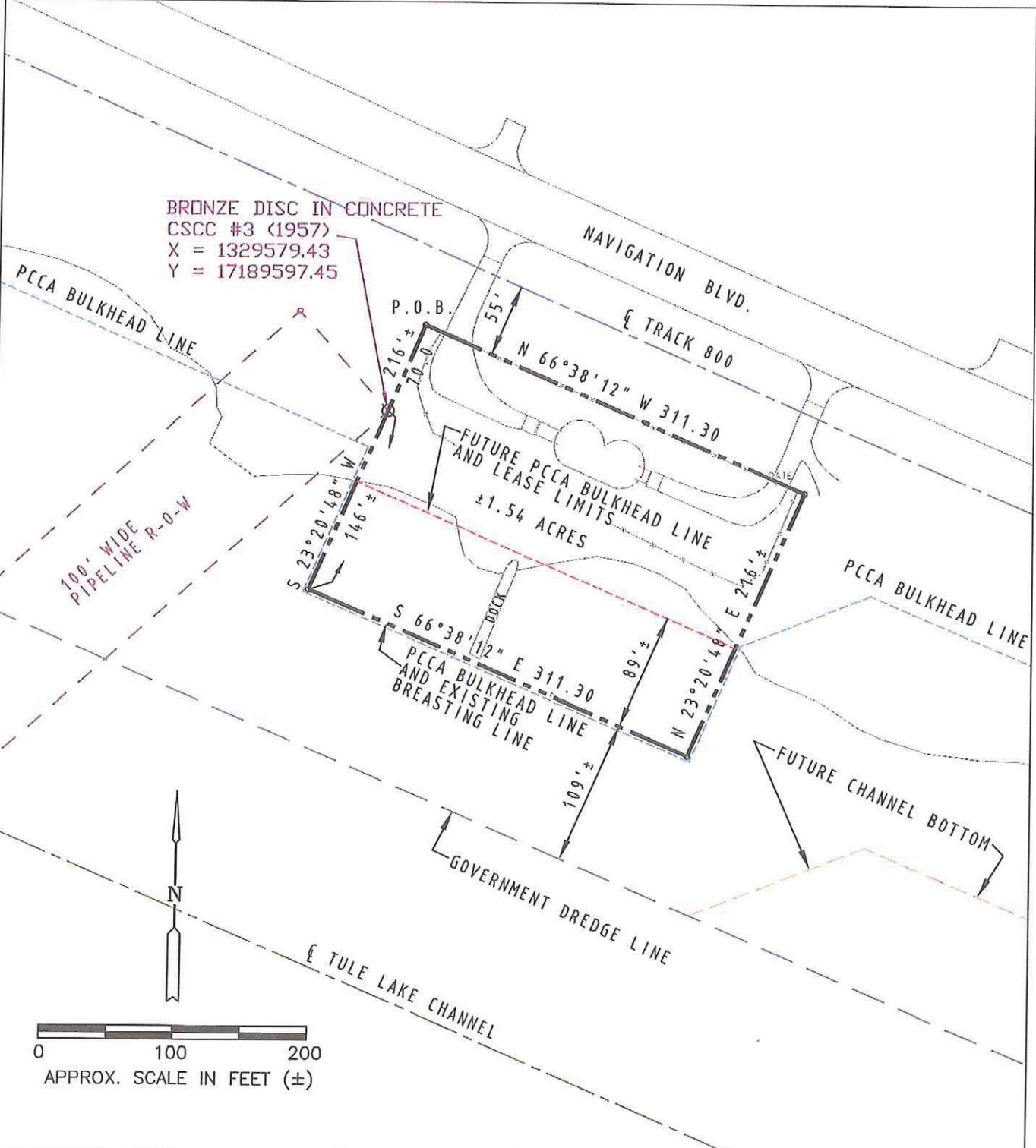
LANDLORD:

Port of Corpus Christi Authority of Nueces County, Texas

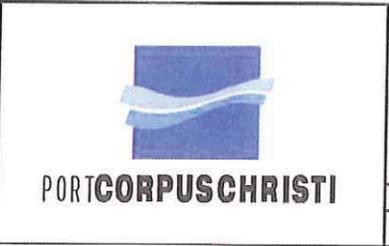
By: \_\_\_\_\_

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

Exhibit A  
(Subleased Premises)



NO.	DATE	REVISION



PORT OF CORPUS CHRISTI AUTHORITY

CEMEX CONSTRUCTION MATERIALS SOUTH, LLC  
 ±1.54 ACRE LEASE

SCALE: AS SHOWN	EXHIBIT A	DATE: SEPT. 2010
DWN. BY: RALPH		



## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** made and entered into December 14, 2010, by and between Port of Corpus Christi Authority of Nueces County, Texas (PCCA), and W. L. Bates Co., Inc. (Consultant), whose address is 901 N. Carancahua, Corpus Christi, Texas 78401 is for the performance by Consultant of the professional services described in paragraph number 2 of this Agreement and is as follows:

1. **DESCRIPTION OF PROJECT SITE:** Real estate consulting and property management for redevelopment of approximately 576-acre main base of Naval Station Ingleside and adjoining 435 acre undeveloped property in Ingleside, Texas.

2. **DESCRIPTION OF PROFESSIONAL SERVICES TO BE PROVIDED BY W. L. BATES CO., INC.:** Consultant will perform the professional services described in Attachment A hereto, which is incorporated herein by reference and which services will be performed in accordance with generally-accepted planning and real estate development standards in the state of Texas.

3. **COMPENSATION:** The compensation to be paid Consultant for providing the requested services shall be the compensation described in Attachment B hereto, which is incorporated herein by reference. Consultant will obtain the approval of PCCA's NSI Project Consultant, Mr. T. Moore, relative to incurring travel and other expenses before incurring such costs.

4. **INVOICE PROCEDURE AND PAYMENT:** The term of this Agreement is from January 1, 2011 to April 30, 2011. Consultant shall submit invoices monthly to the Authority beginning February 1, 2011, for work accomplished during each preceding calendar month. Such invoices shall be due and payable by Authority on or before thirty (30) days from receipt by Authority. Monthly compensation for the services to be performed in accordance with Attachment A and Attachment B. Payment for Consultant's services will be divided into equal monthly payments. Invoices shall also describe any work performed by Professional Associates retained by Consultant, and reimbursable costs. Consultant is an independent contractor for the performance of his duties under this agreement. Accordingly, the Consultant shall be responsible for payment of all taxes including federal, state and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required. Consultant is responsible for the compensation, including any withholding, Social Security, or other taxes on such compensation, of any Professional Associates, or Consultant's employees performing work on the Project.

5. **ATTORNEY'S FEES:** In the event Consultant or PCCA breach any of the terms of this 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 reasonable attorney's fees and costs incurred by the prevailing party.

6. **COST ESTIMATES:** PCCA hereby acknowledges that Consultant cannot warrant that estimates of probable market value provided by Consultant will not vary from actual market prices obtained by PCCA.

7. **LIMITS OF LIABILITY:** The PCCA agrees that the total aggregate of liability of Consultant to the PCCA due to the errors, omissions, or negligent acts of Consultant shall not exceed the total amount of applicable insurance coverage which Consultant has in force on the date of this Agreement.

8. **INSURANCE:** Consultant shall at all time carry worker's compensation insurance, comprehensive general liability, and automotive public liability and property damage insurance with limits of liability and with insurance companies approved by the Authority.

9. **ASSIGNMENT:** Neither PCCA nor Consultant will assign or transfer its interest in this Agreement without the written consent of the other.

10. **SUSPENSION, TERMINATION, CANCELLATION, OR ABANDONMENT:** Both parties may suspend, cancel, terminate, or abandon this Agreement. The parties shall be given thirty (30) days prior written notice of such action. Consultant shall be compensated for the professional services provided up to the date of suspension, termination, cancellation, or abandonment in accordance with the provisions of this Agreement for all work performed up to the date of suspension, termination, cancellation, or abandonment, including reimbursable expenses.

11. **MEDIATION:** PCCA and Consultant agree they will, before taking any other action, including filing suit, 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 PCCA and Consultant. PCCA and Consultant must agree upon a mediator within fifteen (15) 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. PCCA and Consultant will each pay one-half of the costs of mediation to the mediator.

12. **PROMOTIONS:** Consultant shall have the right to include representations of the design of the Project. Consultant will be made aware of, and have access to any Project photography produced by PCCA, consultants, or contractors, and have rights to duplicate photography for promotional and professional use, at Consultant's expense.

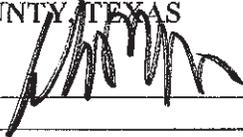
Consultant's materials shall not include PCCA's or proprietary information if PCCA has previously advised Consultant of the specific information considered by PCCA to be confidential or proprietary.

13. **STAFFING:** Consultant designates Richard A. Dupriest Jr. its Project representative. Consultant may not change its project representative without the written consent of PCCA. PCCA designates Mr. T. Moore as its Project representative.

14. **ENTIRETY OF AGREEMENT:** This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereto that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

**IN WITNESS WHEREOF,** this Agreement is made, effective on the first date written above.

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

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

"PCCA"

**W. L. BATES CO., INC.**

By: Richard A. Dupriest Jr.  
Name: RICHARD A. DUPRIEST JR.  
Title: PRESIDENT  
Date: 12-17-10

"Consultant"

## ATTACHMENT A

### SCOPE OF SERVICES FORMER NAVAL STATION INGLESIDE (NSI) REDEVELOPMENT PROJECT

#### Overview

Naval Station Ingleside (NSI) officially closed on April 30, 2010 and was reverted to the Port of Corpus Christi Authority (PCCA). Since that time, Port's NSI Project Manager and Consultant have worked with TAMUS to forward for the Port Commissions approval, prospective purchasers and tenants. Consultant has also served as property manager overseeing the current Base Operations Services (BOS) contract provided by LINC Services.

In 2009, NSI Project Manager responsible for redevelopment of the 576 acre main base recommended to the PCCA's Port Commission that industrial development real estate expertise for the Project should be obtained by selecting a real estate professional with special knowledge in the field of development and redevelopment of industrial real estate. In 2010, Project Manager recommended Consultant to be property manager providing technical expertise and management of current BOS contract.

#### Tasks

The Consultant/ Property Manager will perform the following tasks:

**Task 1:** Perform as property manager for property marketing and contract services oversight under the supervision and guidance of Mr. T. Moore.

**Task 2:** Oversee and insure the contract duties are performed per the PCCA's executed contract documents for the Facility Maintenance, Repair Minor Construction Services at the former Naval Station Ingleside property with LINC (PCCA Project No. 10-028A), for as long as that is in force. If that contract should be cancelled by either party, Property Manager shall be responsible for oversight if a new contractor is picked or if the PCCA decides to perform those services in house. These duties include but are not limited to the following:

- Ensuring quality control by overseeing, inspecting and reviewing sampling of all materials and work;
- Keeping and maintaining good project records;
- Keep up with any changing conditions of improvements which require IDIQ delivery orders or supplemental agreements;
- Reviewing and verifying contractor (LINC) or in house monthly pay estimates;
- Setting and maintaining a high professional standard; and,
- Reporting to the requirements of the PCCA contract

**Task 3:** Work on behalf of the Port with the City of Ingleside to create zoning for NSI property. All of NSI is in the city limits of Ingleside, and all of it is currently zoned residential. Consultant must work with the city to insure that zoning districts are created on NSI which are agreeable to the city while providing as much flexibility as possible to the Port so that prospective users are not unnecessarily limited by zoning laws. This includes working with both the Planning and Zoning commission and the City Council in Ingleside.

**Task 4:** Manage the daily activities of the property management oversight team which includes supervision of the facilities director and the facilities administrator.

**Task 5:** Work with prospective purchasers or tenants to provide all relevant information on improvements including building drawings, environmental and engineering reports, etc.

**Task 6:** Take potential users on tours of NSI facilities as directed by POCCA. This allows consultant to gain "first hand" knowledge of prospects' intents and to ask pertinent questions of prospects' financial viability and intended uses of the premises in order to better advise POCCA on whether they "fit" with other prospective purchasers or tenants. Consultant will advise Mr. T. Moore on all offers to either purchase or lease and will professionally prepare all real estate documents whether for sale or lease concerning redevelopment of NSI.

**Task 7:** Consultant will report directly to Mr. T. Moore on a daily basis and will provide monthly logs of consultant's daily activities concerning NSI efforts on behalf of the Port. Consultant will coordinate with presentations of NSI assets and ongoing redevelopment progress to area counties, cities, economic development groups and the Port.

**Deliverables:** All deliverables will be fully completed during the term of this agreement.

**Deliverable 1:** Provide documentation on all IDIQ requests including whether each is recommended by consultant for review/ approval by Port Director of Engineering before any action is taken.

**Deliverable 2:** Provide PCCA with all contractor correspondence and will provide review and approval before any invoices are forwarded to PCCA for payment.

**Deliverable 3:** City of Ingleside approval of zoning districts inside NSI.

**Deliverable 4:** Written recommendations to the Port advising whether or not in consultant's opinion and any leases/ sales transactions should or should not be accepted and whether or not development goals are being met.

**Deliverable 5:** Professionally prepare documents, permit applications, environmental certificates, and legal notifications applicable to real estate transactions.

**Deliverable 6:** Submission of daily logs will be delivered monthly.

**Deliverable 7:** Will coordinate all outside subcontractors through Mr. T. Moore

234805  
148.025371

Attachment A

2

and will oversee any tenant build-out if leases are entered into with PCCA, including recommendations on tenant finish out.

234805  
148.025371

Attachment A  
3

**ATTACHMENT B  
FEE SCHEDULE**

The Consultant will perform Tasks (1 through 7) for a total sum amount of \$49,200, all inclusive of labor, indicated in the Scope of Services and including any Professional Associates. In addition, the Consultant will be reimbursed for all direct expenses, such as travel (airfare, car rental, hotel, per diem) long distance telephone, printing, fax services, and courier services, which will be reimbursed at cost.

The Consultant shall submit monthly invoices for its services, which shall include the fees earned during that period which will equal 1/4 of the lump sum amount and will also include, separately itemized, all applicable direct expenses incurred which are to be previously approved in writing by the Authority.

***AGENDA ITEM NO. 12***

***NO ATTACHMENT***

***AGENDA ITEM NO. 13***

***NO ATTACHMENT***



Included in the Option Agreement was a provision for the sale of 10 acres of Martin Operating property to the Port as shown on the attached drawing; the purchase price for this property is \$200,000. The attached sales contract provides for any required remediation of the property to State of Texas Industrial Standards and removal of all surface structures by Martin Operating.

Staff recommends approval of the Lease Agreement and Sales Contract as drafted. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

Attachment

**PORT OF CORPUS CHRISTI AUTHORITY  
LEASE SUMMARY**

Lessee: Martin Operating Partnership L.P.  
4200 Stone Road  
Kilgore, Texas 75662

Leased Premises: As depicted on the attached drawing.

Use: For use as a tank farm and truck or rail rack terminal facility. In addition to this lease agreement, the Authority, by separate agreement, will also provide Lessee a pipeline easement to Authority's Oil Docks 1 and 2. The pipeline easement will also provide for flare/incinerator sites to be located between Oil Docks 1 and 2. Further, Authority will grant such easements as may be reasonably necessary to third-parties to allow for product pipelines into the facility. All pipeline easements will be granted on the same terms and conditions on which Authority currently grants other pipeline owners.

Term: The primary term of the agreement is five years.

Options: Five, 5-year option terms.

Start Date: 4/12/11

Annual Rent: The initial annual rental would be \$250,000 based on a land valuation of \$250,000 per acre at a 10% rate of return.

Additional Rent: None.

Adjustment of Rent: The agreement provides for annual CPI adjustments and land value reassessments at the beginning of each option term.

Remarks: None.

**LEASE AGREEMENT**

Between

**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**  
(*“Authority”*)

And

**MARTIN OPERATING PARTNERSHIP L.P.**  
(*“Lessee”*)

April 12, 2011

# LEASE AGREEMENT

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

This LEASE AGREEMENT is made this 12<sup>th</sup> day of April, 2011 (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 **MARTIN OPERATING PARTNERSHIP L.P.**, a Delaware limited partnership, whose principal address is 4200 Stone Road, Kilgore, Texas 75662, (hereinafter called "Lessee").

## ARTICLE 1 LEASE OF PREMISES

### **Section 1.01. Description of Premises and Term**

Authority, in consideration of the rents to be paid and the terms, covenants, and conditions hereinafter set forth, hereby leases to Lessee and Lessee leases from Authority for the entire term, including any extensions, stated in this Section, real property situated in Nueces County, Texas, which is described as follows:

The surface estate of that certain tract of approximately ten (10) acres of land, more or less, which tract is particularly described on Exhibit A attached hereto and incorporated herein by reference and all improvements situated thereon, (hereinafter called "Leased Premises").

TO HAVE AND TO HOLD the Leased Premises for a term of five (5) years, beginning on the 12<sup>th</sup> day of April, 2011, and (subject to earlier termination as herein provided) ending at midnight, Central Time, the 11<sup>th</sup> day of April, 2016.

In addition, Authority hereby grants to Lessee the option to extend the term of this lease agreement for five (5) additional option periods of five (5) years each, beginning on the first day after the expiration of the primary term and each option term hereof; but if, at the date the original term or any extended term expires, Lessee is in default beyond any grace period provided in this lease agreement in performing any of the terms of this lease agreement, the remaining option or options are void. The option to extend renew shall be exercised by Lessee giving to Authority notice in writing of such exercise at least sixty (60) days prior to the expiration of the primary term or any option term of this lease. Notice of an intention to exercise an option under this lease agreement must, to be effective, be sent by certified mail to Authority at the address provided in the Section in this lease agreement entitled Payments and Notices and must be postmarked no later than the latest date provided in this section for Lessee's exercising the option. Annual rent shall be determined for each option term pursuant to Section 3.02 and Section 3.03 of this lease agreement.

As additional consideration for Authority making this lease with Lessee, Lessee also agrees to sell to Authority real property situated in Nueces County, Texas, which is described as follows:

The surface estate of that certain tract of approximately ten (10) acres of land, more or less, which tract is particularly depicted in Exhibit B (the "Sale Property") attached hereto and incorporated herein by reference or another similar tract of approximately ten (10) acres ("Substitute Sale Property") which is satisfactory to Authority. The Sale Property or Substitute Sale Property must be remediated by Lessee at its sole cost to the State of Texas Industrial Standard required by the agency of the State of Texas having jurisdiction of the remediation and all surface structures removed (the "Work") as provided in the Sale Agreement. The sale price of either tract is \$25,000.00 per acre, paid in cash at closing and pursuant to additional terms and conditions agreed upon by Authority and Lessee in a written Sale Agreement ("Sale Agreement") made which must be made on the same Effective Date as this lease agreement. Lessee must complete the Work within 180 calendar days from the Effective Date of the Sale Agreement, if the Work can be completed in such time period using due diligence, or Authority may perform all of, or complete, the Work and Lessee must pay Authority the cost, plus 20% of such cost for administrative and other expenses of Authority, of such Work. If Lessee does not pay Authority such cost plus 20% within Twenty calendar days following the date Authority notifies (the "Notification") Lessee the Work has been completed and provides Lessee with a summary of the Work done and the total cost of same, then this lease will terminate upon written notice to Lessee from Authority sent any time after 5:00 p.m. on the 30th day following the Notification.

### **Section 1.02. Holding Over**

If Lessee holds over beyond the primary term or any option term of this lease agreement 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.

## **ARTICLE 2 INSPECTION OF LEASED PREMISES**

**Lessee has inspected the Leased Premises, including all improvements, fixtures, equipment and personal property situated on the Leased Premises and has conducted any environmental assessment survey it desired and on the date of this lease agreement accepts the Leased Premises As Is, Where Is, 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 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 purpose.**

## ARTICLE 3 RENT

### **Section 3.01. Annual Rent**

Subject to adjustments provided for herein, Lessee agrees to pay to Authority at its offices in Corpus Christi, Texas, annual rent for the Leased Premises equal to ten percent (10%) per annum of the Equalization Value of the Leased Premises. For the purpose of fixing annual rent for the primary term of this lease, the Equalization Value of the Leased Premises is fixed at Two Hundred Fifty Thousand and NO/100 Dollars (\$250,000.00) per acre, and the total sum to be paid Authority by Lessee as rent during the primary term of this lease, subject to any adjustments of rent made pursuant to this lease agreement, is One Million Two Hundred Fifty Thousand and NO/100 Dollars (\$1,250,000.00), and may be paid in monthly installments of Twenty Thousand Eight Hundred and Thirty-Three and 33/100 Dollars (\$20,833.33). "Equalization Value" is that value per acre (or in some instances, per square foot) placed on the Leased Premises by Authority for the purpose of equalizing, to the extent practicable, the rent paid by its tenants leasing property of the Authority of the same general type and in the same general area as the Leased Premises.

The first annual or monthly installment of rent hereunder is due and payable on or before the 12<sup>th</sup> day of April, 2011. Rent for any fractional year or month at the beginning or end of the lease term will be prorated on a per-day basis. Each annual payment of rent is due and payable on or before the first day of each succeeding year thereafter; each monthly installment of rent is due and payable on or before the first day of each succeeding month thereafter. Annual or monthly payments must be paid at the offices of Authority in Corpus Christi, Nueces County, Texas. 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 fifteen percent (15%) 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 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.

Rent must be paid to Authority at its address for notice hereunder or to such other person or at such other address in Nueces County, Texas, as Authority may from time to time designate

in writing. Rent must be paid in legal tender of the United States of America without notice, demand, abatement, deduction or offset.

The Leased Premises and the Sale Property or Substitute Sale Property will be surveyed by a registered Texas land surveyor. Authority and Lessee will each pay one-half of the cost of such surveys as provided in the Sale Agreement. The initial annual rental for the Leased Premises and the Sale Property or Substitute Sale Property will be adjusted to reflect the actual acreages shown in the respective surveys.

This is a net lease. Authority shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease agreement or the financing, ownership, construction, reconstruction, maintenance, operation, or repair of the Leased Premises or the improvements thereon.

### **Section 3.02. Adjustment of Rent**

The annual rent for each option period of this lease agreement may be adjusted by Authority for changes in the Equalization Value in the following manner:

Ninety (90) days or more before the expiration of each five year period of the primary term or any option period of this lease, Authority has the right, in its sole discretion, to revalue the Leased Premises (excluding an improvements made to the Leased Premises by Lessee) for the purpose of fixing annual rent in each of the next succeeding option periods based on the fair market value of the Leased Premises, or some portion thereof, as determined by an independent appraiser designated by the Authority. If Authority revalues the Leased Premises or some portion thereof, Authority must notify Lessee in writing of the new valuation. If Lessee is not notified of the new valuation prior to ninety (90) days before expiration of the primary term or any option period of this lease, it is conclusively presumed that the Equalization Value for the next ensuing option period of this lease agreement is to be the same as the then current Equalization Value. The annual rent for each option period for which there is a change in the Equalization Value must be equal to ten per cent (10%) of the Equalization Value of the Leased Premises established by Authority, but in no event may it be less than ten per cent (10%) of the fair market value determined by such appraiser.

In the event Lessee does not agree to the increase in Equalization Value, Lessee has the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the increase in Equalization Value, to either (1) terminate this lease agreement and surrender the Leased Premises effective at Midnight, Central Time, of the last day of the current primary term or option period of this lease, or (2) agree in writing to binding arbitration to fix the Equalization Value of the Leased Premises for the ensuing option period.

In the event Lessee agrees to binding arbitration, the arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (although the parties do not have to use the services of the American Arbitration Association).

The arbitrator selected by the parties, as a part of his duties as an arbitrator will select an appraiser who is MIA certified, and has greater than ten (10) years experience appraising land such as the Leased Premises.

The appraiser selected by the arbitrator will make an appraisal of the Leased Premises, (excluding any improvements made to the Leased Premises by Lessee), using comparable property and the following criteria for the appraisal process:

Comparables used shall include all recent sales and lease information available on similarly situated properties along the channels of ports located on the Texas Gulf Coast.

The comparables used shall be the average values during the most recent year in which there are comparables sales or leases.

The fair market value of the Leased Premises shall be based on the highest and best use for the Leased Premises, regardless of the use to which the Leased Premises is being put.

The arbitrator will, within sixty (60) days after receipt of the appraisal, determine the Equalization Value for the next ensuing option term of this lease agreement. The arbitrator's decision will be final and is binding on all parties to this lease agreement.

In no event, however, will the process provided for in this Section result in a reduction of the annual rent below the annual rent paid by Lessee during the expiring primary, or any option term of this lease.

### **Section 3.03. Cost of Living Adjustment**

In addition to any adjustment to the annual rent because of an adjustment to the Equalization Value, the annual rent for the primary or any option term of this lease agreement for which rent is to be adjusted will be adjusted to reflect changes, if any, in the cost of living with such adjustment to be made annually beginning with the start of the second year of the primary term of this lease agreement, as follows:

Adjustments in the annual rent are determined by multiplying the amount of the annual rent stated in Section 3.01 by a fraction, the numerator of which is the index number of the Consumer Price Index for urban wage earners and clerical workers, U.S. City average – all items (1982-84=100), Bureau of Labor Statistics, United States Department of Labor for the last month of the last year before the adjustment and the denominator of which is the index number of the same Consumer Price Index for the first month of the first year of the lease term. If the product is greater than the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement, Lessee will pay this greater amount as the annual rent until the time of the next rental adjustment as called for in this Section. If the product is less than the amount of the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement, the annual rent will not be adjusted at that time, and Lessee will pay annual rent until the time of the next rental adjustment as called for in this

Section. In no event may any rental adjustment called for in this Section result in an annual rent less than the amount of the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement.

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 lease term, the remaining rental adjustments called for in this section will be made by using the most nearly comparable statistics published by a recognized financial authority selected by Authority.

#### **Section 3.04. Utilities and Taxes**

In addition to the annual rent described hereinabove, Lessee agrees to pay when due all charges it contracts for (a) water, gas, electricity, and other utilities, (b) garbage service, (c) security or guard services, or (d) railroad services in connection with the Leased Premises. If at Lessee's request or because of Lessee's failure to pay for services to the Leased Premises it contracted for, Authority provides any such services to the Leased Premises or pays the cost for any such services, Lessee will pay to Authority the cost of such services as additional rent upon receiving Authority's invoice therefore, payment to be made pursuant to the terms of said invoice.

Lessee will also pay as additional rent its pro rata share of any utility services provided by Authority.

During the term of this lease, Lessee must pay or cause to be paid when due all taxes, assessments, fees or charges imposed on the Leased Premises by virtue of Lessee's tenancy or upon Lessee's property on, or Lessee's interest in, the Leased Premises.

Any of said taxes, fees or charges that are payable by Lessee for the tax year in which this lease agreement commences, as well as during the year in which this lease agreement terminates, 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**

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:

For use as a tank farm and truck or rail rack terminal facility. In addition to this lease agreement, the Authority, by separate agreement, will also provide Lessee a

pipeline easement from the Leased Premises to Authority's Oil Docks 1 and 2 along a route to be agreed upon by the parties to this lease agreement. The pipeline easement will also provide for flare/incinerator sites to be located between Oil Docks 1 and 2. Further, Authority will grant such easements as may be reasonably necessary to third-parties to allow for product pipelines into the facility. All pipeline easements will be granted on the same terms and conditions on which Authority currently grants other pipeline owners.

Lessee will not:

A. Use, occupy or permit the use or occupancy of the Leased Premises for any purpose or in any manner, which is directly or indirectly:

Inconsistent with the requirements of Section 4.01 hereof;

Violative of (a) 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; (b) Authority's Tariffs or Rules and Regulations; (c) insurance requirements; or (d) other documents, instruments or agreements (written or oral) relating to the Leased Premises or to which the Leased Premises may be bound or encumbered;

Dangerous to life or property or a public or private nuisance; or

Unreasonably disruptive to the activities of any other tenant or occupant of property adjacent to the Leased Premises;

B. Bring or permit to remain on the Leased Premises any asbestos, 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

C. Commit, or permit to be committed, any action or circumstance on or about the Leased Premises which, directly or indirectly, would or might 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, or those of other lessees of Authority's property adjacent to the Leased Premises.

#### **Section 4.02. Environmental Representations, Restrictions and Environmental Indemnity**

Lessee hereby represents and warrants to Authority:

That Lessee's construction, occupancy, operation or use of the Leased Premises will not violate any applicable 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 and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Laws");

That, without limitation of Section 4.01A above, in its use of the Leased Premises Lessee will not violate any Applicable Laws 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; Authority's Tariffs, Rules and Regulations and the Port of Corpus Christi Authority's Design and Construction Guidelines set forth in Authority's Real Estate Manual.

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.

Lessee understands and agrees that the Leased Premises are being leased in an "As Is, Where Is" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "As-Is, Where Is" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and any adjacent channel or bay water and sediment, and that information received

from Authority regarding such matters may not be complete or accurate and should not be accepted as such.

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 for each of the said environmental contaminants.

In addition, upon receipt from any agency or department of the state of Texas or the federal government, Lessee will immediately furnish PCCA 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:

A. A general description of the conduct that resulted in the citation, notice of violation, enforcement action or penalty; and

B. 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.

Further, 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.**

Also, 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.

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.

Lessee will cooperate with the Authority's Tenant Audit Program (the "Program"). 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. 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.

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 which result from Lessee's activities upon the

Lease Premises during its 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.

All of the foregoing representations and warranties made by Lessee are continuing and must be true and correct for the entire term of this lease, including any extensions hereof, and all of such representations and warranties will survive expiration or termination of this lease agreement.

#### **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**

After construction of the improvements necessary for the Lessee to operate the facility for the purposes recited herein, 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.

The covenants of this Section 4.05 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.

#### **Section 4.05. Throughput**

Except for the first Lease Year (as hereinafter defined), Lessee guarantees that it, or its affiliates, shall during the term of this lease, and any holdover period, move over Authority's Oil Docks or pay Authority's then current tariff rates for each such movement, a minimum of 6 turns of volume of tanks ("Cargo" measured in barrels) to be constructed on the Leased Premises per year ("Minimum Guaranteed Throughput"). Shipments from year to year shall not be cumulative and throughput volume for any single lease year shall not carry over into any succeeding lease year for the purpose of calculating the Minimum Guaranteed Throughput.

Lessee agrees to pay to the Authority as additional rent for each year this lease agreement is in effect ("Lease Year") an amount equal to the total amount of Authority's then current tariff rates for each movement applied to the Minimum Guaranteed Throughput multiplied by the number of barrels by which the Minimum Guaranteed Throughput for such year exceeds the actual number of barrels of Cargo actually moved over Authority's Docks designated in this Section 4.05 during such Lease Year. The current tariff rates for any Lease Year are the

Authority's rates per barrel for Cargo of the type or types to me moved that are in effect on the first day of such Lease Year. The additional rent payable pursuant to this Section 4.05 is referred to herein as "Throughput Rent."

An "affiliate," as herein used, is a corporation, the controlling interest of which is owned by the same persons or corporations owning controlling interest in the holder of this lease.

Lessee shall keep and maintain a complete and accurate set of books and records showing all Cargo shipped over Authority's Dock(s) designated in this Section 4.05 in order that Authority may ascertain therefrom any amounts due to Authority from Lessee as Throughput Rent. Such books and records shall be subject to inspection by Authority, its agents and attorneys at any reasonable time. Promptly after the end of each Lease Year a computation shall be made as to the amount of Throughput Rent payable by Lessee to Authority for such Lease Year, or part thereof, and Lessee shall pay to Authority the Throughput Rent due for such Lease Year, if any, on or before the sixtieth day after the end of such Lease Year ("Due Date"). If Lessee has been unable to determine with certainty the amount of Throughput Rent payable with respect to any Lease Year prior to the Due Date for such payment, then Lessee shall pay to the Authority on or before such Due Date an amount equal to Lessee's good faith estimate of what the Throughput Rent for such Lease Year will be. If the actual Throughput Rent for any Lease Year is different from the estimated Throughput Rent paid for such Lease Year, Lessee will notify the Authority of such discrepancy as soon as it is known and either Lessee will pay any deficiency to the Authority, or the Authority will refund any overpayment to Lessee, within thirty days after the date on which Lessee notifies the Authority of such discrepancy.

During any holdover period, Throughput Rent will be reported and paid monthly by Lessee on or before the 10th day of the month following each holdover month.

The covenants of this Section 4.05 are material to this lease, and should Lessee fail to satisfy such covenants, Authority may terminate this lease agreement.

## **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 railroad track or proposed railroad track, disclosed prior to execution of this lease agreement, on or adjacent to the Leased Premises.

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 Antiquities

Committee, 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 reasonable 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 Antiquities Committee, as set out in the Committee's rules. Lessee, its contractors and employees, shall have no 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 and any extensions of it, 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 and so as not to cause depreciation in the value of the Leased Premises.

If Lessee fails to perform its obligation to repair, replace, or maintain, as set forth above, within a reasonable time after 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 notice to Lessee of the performance and cost of any maintenance, repairs, or replacements under this section, Lessee must immediately reimburse Authority for the costs incurred by Authority pursuant to this Section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Lessee to Authority.

At the expiration of the lease term or any renewals or extensions thereof, 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 for any proposed buildings, drainage or improvements of any kind on the Leased Premises, or any alterations or additions to existing buildings or improvements (the "Plans"), and they must be approved in writing by, the Director of Engineering Services of Authority prior to the commencement of work on the same. 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 including, but not limited to, any area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, and existing channel depth elevations must be included with the plans submitted. The site plan must clearly show the bottom of cut line and top of slope line of any planned dredging. If any dredging is planned by Lessee, its agents, servants, contractors or employees that will, in Authority's judgment, based upon customary dredging operations, result in removal of a substantial quantity of earth or material from, or damage to, adjacent real property, Lessee must obtain the written permission of the adjacent property owner to carry out the work described for the project and submit it to the Authority with the formal plans.

Slips at any dock located on the Leased Premises must be maintained by Lessee at a sufficient depth to prevent vessels berthed at the dock from striking bottom due to lowering of the water level from passing vessels or seasonal low tides.

Copies of all permits for work in navigable waters issued to Lessee by the Department of Army or any other federal, state or other governmental agency shall be filed with Authority.

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, specifications or other matters relating to the Leased Premises.**

Authority shall approve or reject the Plans within thirty (30) days of their submission by the Lessee, with approval of such not to be unreasonably withheld.

#### **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. 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, to serve the Leased Premises. If requested by Authority or the railroad, Lessee will enter into a joint maintenance agreement with the railroad and bear Lessee's pro rata share of the cost of maintaining any railroad spur on the Leased Premises.

#### **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**

At the expiration or earlier termination of this lease, all alterations, modifications or improvements upon the Leased Premises made by Lessee, 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, 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 end of the lease term. 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 one hundred eighty (180) days after the date of

expiration or termination of this lease agreement. Trade fixtures, furnishings and equipment, except for those referred to above, which are installed by Lessee, at its expense, may be removed by Lessee 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. Any trade fixtures not removed by Lessee when this lease agreement terminates are considered abandoned by Lessee and will automatically become Authority's property. If any trade fixture installed by Lessee is abandoned when this lease agreement terminates, Lessee must pay Authority any reasonable 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. Lessee must remove all its signs when this lease agreement 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.

**ARTICLE 6  
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 for the laying of, pipelines for oil, petroleum, petroleum products, fiber optics and any other products over, under and upon the Leased Premises; 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, and Authority has the right to grant easements or rights of way reserved to Authority in this Article to other parties.

**ARTICLE 7  
SUBLETTING OR TRANSFER**

**Section 7.01. Sublease or Transfer**

Lessee may not assign or sublet 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 agreement by operation of law or otherwise without the prior written consent of Authority. 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, less any costs of collection, attorneys' fees or other costs incurred by Authority, to the rent provided for in this lease agreement. No assignment, subletting, occupancy or collection waives the obligations of Lessee under this lease agreement upon acceptance of same by Authority. Authority may assign or transfer any of its interests under this lease agreement. Furthermore, Lessee shall not, without Authority's express written consent, 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, the 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; 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 more than 10,000,000 Dollars. 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**

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 acceptable to Authority in which:

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;

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;

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;

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;

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

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 \$500.00 to cover Authority's administrative and legal costs for each amendment, assignment, sublease, and any estoppel certificate requested from Authority by Lessee or any sublessee.

## **ARTICLE 8 DEFAULT**

### **Section 8.01. Rights and Remedies of Authority**

If for ten (10) calendar days after receipt by mail or otherwise to Lessee by Authority of written notice of a breach or default by Lessee under any provision of this lease agreement, the Lessee does not or shall neglect or fail to comply with or remedy such breach or default, or if the said breach or default complained of shall be of such a nature that the same cannot be completely remedied or cured within such ten (10) day period, then such breach or default shall not be an enforceable breach or default against Lessee if Lessee shall have commenced curing such breach or default within such ten (10) day period, and shall with reasonable diligence and in good faith, proceed to remedy the default complained of; or if any proceedings concerning Lessee or the Leased Premises be had in bankruptcy, reorganization, arrangement or receivership, or if any assignment shall be attempted to be made of this lease agreement for the benefit of creditors; or if Lessee abandons or vacates a substantial portion of the Leased Premises for fourteen (14) consecutive days; then in any of said cases or in any similar case which, in the sole judgment of Authority, evidences a serious financial insecurity of Lessee, Authority shall have the rights and remedies that may be provided at law or in equity and the following options:

A. Without terminating this lease agreement, Authority may terminate Lessee's right of possession of the Leased Premises under this lease agreement by giving Lessee three (3)

calendar days notice of termination of Lessee's right of possession and Lessee's right of possession shall thereupon cease and come to an end and Authority may reenter and take possession of the Leased Premises; provided, however, Authority shall not be required to give such notice prior to the filing of an action of forcible detainer or at common law upon default by Lessee in the payment of rent. Upon entering and taking possession of the Leased Premises, Authority may:

1. Relet for the account of, or as agent for, Lessee the Leased Premises or any part thereof, to a tenant acceptable to Authority, without terminating this lease agreement or working a forfeiture of the rent to be paid, and after receiving the rent therefrom apply the same, first to the payment of all expense the Authority may be put to in recovering possession of the Leased Premises and in reletting same, including but not limited to the costs of renovating, altering and repairing for a new tenant and attorneys' and brokers' fees, and then to the payment of the rent and additional rent payable under this lease agreement and to the fulfillment of Lessee's covenants hereunder. Lessee shall be entitled to any balance remaining after subtracting such costs and debts. Authority may at any time after reletting terminate this lease agreement for the breach or default on account of which it reentered and relet; or

2. Accelerate the future rent and additional rent due under this lease agreement and seek recovery of such rent and additional rent and any other damages provided for in this lease agreement, at law or in equity. Authority is entitled to recover future rent and additional rent from Lessee based upon the present value of the rent and additional rent discounted to present value at the rate of 3% per annum for the remainder of the term of this lease agreement reduced by the fair market rental value of the Leased Premises during that period.

B. Terminate this lease agreement.

C. Lessee pledges with Authority all of its rents and profits from the Leased Premises in addition to the other security for the performance of the lease; and in connection with such pledging of the rents, the Lessee covenants and agrees with Authority that if Authority, upon default of Lessee, elects to file a suit to enforce this lease agreement and protect Authority's rights thereunder, Authority may apply to any court having jurisdiction, for the appointment of a Receiver of all and singular the demised premises, the improvements and buildings located thereon, and the personal property located therein, and thereupon it is expressly covenanted and agreed that the court shall without notice forthwith appoint a Receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to Authority, and without reference to the adequacy or inadequacy of a remedy at law, the value of the property that is subject to Landlord's lien, or to the solvency or insolvency of Lessee; and without reference to the commission of waste.

### **Section 8.02. No Waiver**

Any assent, expressed or implied, by the Authority or Lessee to any breach of any agreement, covenant or obligation herein contained 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 8.03. Consequential Damages**

Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless and until Authority shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by Lessee to Authority, properly specifying wherein Authority has failed to perform any such obligation.

**Notwithstanding anything in this lease agreement to the contrary, neither party shall in no event be charged with or liable for any consequential damages suffered by the other party as a result of a breach of this lease agreement or failure to perform any obligations under this lease agreement.**

**ARTICLE 9  
LIEN AND SECURITY INTEREST**

In consideration for the mutual benefits arising under this lease agreement, and as security for Lessee's performance of all its obligations under this lease agreement, Lessee hereby grants to Authority a lien and security interest in and on all property of Lessee now or hereafter placed in or upon the Leased Premises, and such property shall be and remain subject to such lien and security interest of Authority for payment of all rent and other sums agreed to be paid by Lessee herein. The provisions of this section shall constitute a security agreement under the Texas Uniform Commercial Code so that Authority has and may enforce a security interest on all property of Lessee now or hereafter placed in or on the Leased Premises, including but not limited to all fixtures, machinery, equipment, furnishings and other articles of personal property now or hereafter placed in or upon the Leased Premises by Lessee. An event of default under this lease agreement shall be default under the security agreement. Authority may at its election at any time file a copy of this lease agreement as a financing statement. Authority, as secured party, is entitled to all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code, which rights and remedies shall be in addition to and cumulative to the Authority's liens and rights provided by law or by the other terms and provisions of this lease. Promptly upon request, and without further consideration, Lessee agrees to execute as debtor such additional financing statement or statements as Authority may now or hereafter reasonably request in order that Authority's security interests may be protected pursuant to the Texas Uniform Commercial Code, which financing statement Authority may at its election file in the appropriate records.

**ARTICLE 10  
SUBORDINATION**

**(DELETED IN ITS ENTIRITY)**

**ARTICLE 11  
INDEMNITY/WAIVER**

**Section 11.01. Indemnity and Waiver**

**A. As used in this Section 11.01, each of the following terms shall have the meanings set forth in this Section 11.01A:**

**(1) “Beneficiary” means the intended recipient of the benefits of another party’s Indemnity, Waiver or obligation to Defend.**

**(2) “Claims” means all claims, damages (including actual, consequential, and punitive), losses, fines, penalties, liens, causes of action, suits, judgments, settlements, and expenses [including court costs, attorney’s fees (including attorney’s fees in defending and/or settling a Claim and attorney’s fees to collect on this Indemnity), costs of investigation, and expert witnesses] of any nature, kind or description by, through, or of any person or entity.**

**(3) “Defend” means to oppose on behalf of another party a Claim in litigation, arbitration, mediation or other alternative dispute resolution proceeding and to pay all costs associated with the preparation or prosecution of such Defense.**

**(4) “Indemnify” means to protect and hold harmless a party from and against a potential Claim and/or to compensate a party for a Claim actually incurred.**

**(5) “Indemnified Persons” means the Authority, its Port Commissioners, directors, managers, employees and agents.**

**(6) “Lessee Parties” means the Lessee, its agents, contractors, employees, owners, invitees, or licensees.**

**(7) “Waive” means to knowingly and voluntarily relinquish a right and/or to release another party from liability.**

**B. Subject to the terms of this Section 11.01, Lessee shall Defend and Indemnify the Indemnified Persons from and against all Claims resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the following matters (these Claims being referred to herein as the “Indemnified Claims”):**

- (1) the conduct of Lessee’s business on the Leased Premises;**
- (2) Lessee’s breach of this lease agreement;**

(3) any property loss or damage occurring in, on, or about the Leased Premises or relating to the condition, use or occupancy of the Leased Premises;

(4) any bodily or personal injury, sickness, disease, and/or death (including the bodily or personal injury and/or death of any employee of an Indemnified Person or a Lessee Party) occurring in, on, or about the Leased Premises or relating to the condition, use of occupancy of the Leased Premises; or

(5) any act, omission, willful misconduct, strict liability, breach of warranty, express or implied, or violation of any laws, ordinances, rules, regulations, or codes, now or hereafter existing, of or by any Lessee Party, including the sole, joint, concurrent, or comparative negligence of any Lessee Party in connection with or pertaining to this lease agreement.

C. The Indemnities, Waivers and obligation to Defend in this Section 11.01 shall be enforced to the fullest extent permitted by applicable law for the benefit of the applicable Beneficiary thereof, regardless of any extraordinary shifting of risks, and even if the applicable Claim is caused by the joint, concurrent, or comparative negligence of such Beneficiary, and regardless of whether liability without fault or strict liability is imposed upon or alleged against such Beneficiary; provided, however, that an Indemnity will not be enforced to the extent that a court of competent jurisdiction holds in a final judgment that the applicable Claim against a Beneficiary was caused by the willful misconduct or sole negligence of such Beneficiary.

D. Notwithstanding anything to the contrary contained in this Section 11.01, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence, causation, responsibility or fault of the Indemnified Persons and the Lessee Parties, then the Lessee's obligation to the Indemnified Persons shall only extend to the percentage of the total responsibility of the Lessee Parties in contributing to such Indemnified Claim.

E. In claims against any Indemnified Person 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. If an action for damages is brought by an injured employee of Lessee, a legal beneficiary, or an insurance carrier against an Indemnified Person liable 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 Indemnified Person or a settlement by the Indemnified Person, Lessee expressly agrees to reimburse and hold harmless the Indemnified Person for the damages based on such judgment or settlement as provided in this Section 11.01.

F. Except as otherwise expressly limited in this Section 11.01, it is the intent of the parties to this lease agreement that all indemnity obligations and liabilities contracted

for in this lease agreement be without monetary limit and without regard to the cause or causes thereof (including pre-existing conditions on Authority's Property or as the result of an indemnification agreement with a third party), and will not be limited by damages paid under the Workers' Compensation Act. The indemnity contained in this Section 11.01 applies, without limitation, to any violation of any law, rules or regulations referred to in Section 4.02 in effect during the term of this lease agreement, and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the term of this lease agreement, regardless of whether the act, omission, event or circumstance constituted a violation of any law, rules or regulations referred to in Section 4.02 at the time of its existence or occurrence.

G. If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this Section 11.01, the Indemnified Person will be represented by its general counsel, or another attorney selected by the Indemnified Person and approved by Lessee, which approval will not be unreasonably withheld.

H. If Lessee should fail or refuse, after written notice to Lessee that an Indemnified Person intends to make a settlement of an Indemnified Claim, to participate in the settlement of such Indemnified Claim, then the Indemnified Person may settle with the claimant without prejudice to the Indemnified Person's indemnity rights set forth herein, and a settlement after such notice to Lessee will constitute a settlement of the proportionate fault, including but not limited to negligence, of both Lessee and the Indemnified Person, which settlement may later be apportioned between Indemnified Person and Lessee.

I. Lessee agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage.

J. To the fullest extent provided by this Section 11.01, Lessee hereby Waives all Claims against the Indemnified Persons resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the Indemnified Claims.

## ARTICLE 12 INSURANCE

### Section 12.01. Insurance

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees at all times this lease agreement is in effect to carry and maintain at its sole expense policies of insurance ("the Policies") of the types and in the minimum amounts as follows:

A. "All Risks" of Direct Physical Loss, including Flood, on buildings, improvements and betterments situated on the Leased Premises in an amount sufficient to cover 100% of the Insurable Value of the said buildings, improvements and betterments; and in builder's risk

completed value form during substantial construction of improvements (including malicious mischief and vandalism); in amounts sufficient to provide coverage for 100% of the Insurable Value of such improvements. Lessee is responsible for insurance for its personal property on the Leased Premises. "Insurable Value" means replacement cost value.

B. For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and employer's liability insurance with limits of at least \$500,000.00 each employee accident and disease, or such similar insurance which is in accordance with state and federal law applicable to said employees.

C. Commercial General Liability (CGL) coverage, or self insured retention, and endorsed for coverage for sudden and accidental liability for pollution including clean-up on a time element basis, with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000 general aggregate at the Leased Premises,

D. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000 (Combined Single Limit.)

E. Umbrella liability coverage limits of not less than \$5,000,000.00 over and above the underlying primary coverage limits stated in subparagraph B, C and D in this Section.

The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon request by Authority to an amount, which is commercially reasonable at the time.

Authority shall be furnished, to the attention of Authority's Risk Manager, prior to Lessee taking possession or occupancy of the Leased Premises, as proof of the insurance required of Lessee 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 conform to Accord and regulatory standards, including but not limited to Accord 25(2010/05). 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 canceled or reduced in coverage or limits without thirty (30) days' prior written notice to Authority, Attention: Risk Manager, when permitted by such policy's underwriter; provided, however, if such policy's underwriter will not provide the said notice, then Lessee will provide the thirty (30 ) day notice, and (c) provide that notwithstanding any language in any policy of insurance held by Authority ("Authority Insurance") to the effect that the Authority Insurance is primary, the policy or policies held by Lessee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies.

In addition the Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm or

organization shall automatically be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract." Lessee shall deliver to Authority certificates of renewal prior to the expiration date of each of the Policies and copies of new policies as soon as practicable. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to Authority if either exceeds \$1,500,000.00; and, in such event, Authority may decline to approve this lease agreement without any liability to Lessee. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A-: VI. 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 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 claims against it, or for loss of, or damage to, any of its property located within or upon, or constituting a part of, the Leased Premises, covered by applicable insurance policies, to the extent that such claim, loss or damage is covered or recoverable under said insurance policies. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this lease agreement with respect to any loss of or damage to property of the parties hereto. Lessee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this lease agreement 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; and Lessee will provide to Authority a copy of said endorsement or endorsements or evidence that such endorsement is not necessary to prevent the invalidation of the insurance coverage by reason of such waiver.**

## **ARTICLE 13 PROPERTY LOSS**

### **Section 13.01. Obligation to Restore**

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 Authority's good faith judgment reasonably exercised, it would be uneconomic to cause the same

to be restored (and Authority shall give written notice of such determination to Lessee within ninety (90) days after the date 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.

**Section 13.02. Damage Near End of Term**

If the Leased Premises are damaged to the extent of fifty per cent (50%) or destroyed in whole or in part during the last twenty-four (24) months of the lease 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 or Lessee will rebuild as provided herein.

If the Port of Corpus Christi or its ship channel are damaged or destroyed in whole or in part to the extent that it is not economically or physically feasible to re-open the same, in Authority's sole judgment, then Authority shall have the option to terminate this lease agreement.

The party electing to terminate this lease agreement shall give notice to the other party of such election within ninety (90) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and 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 material 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, and the award for the taking of the Leased Premises and the improvements located thereon shall belong to the Authority and/or the Lessee as their interest may appear, except the Lessee may make a separate claim for any business damages to which it is entitled under law.

**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 the event of a partial taking of the Leased Premises, Authority is entitled to receive and retain the award for the portion of the Leased Premises taken. In addition, upon a partial taking, the annual 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 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. 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 of part or all of the Leased Premises or a lessee in an oil, gas or mineral lease granted by any mineral owner of all or part of the Leased Premises, (c) all matters of record in Nueces County, Texas, and (d) any unrecorded easements or licenses executed by Authority to the extent the foregoing are validly existing and applicable to the Leased Premises. 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 MEDIATION**

#### **Section 16.01. 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) 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.

## **ARTICLE 17 GENERAL PROVISIONS**

### **Section 17.01. Compliance**

Lessee must comply with all federal, state and local laws, rules or regulations, including Authority's Tariff 100-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**

Upon reasonable notice, 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, for purposes of maintaining, repairing or altering the premises, or for the purposes of showing the Leased Premises to prospective lessees, purchasers, mortgagees or beneficiaries under deeds of trust.

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. 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**

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**

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. All payments, notices, demands or requests from Authority to Lessee shall be given to Lessee, Martin Operating Partnership L.P., at 4200 Stone Road, Kilgore, Texas 75662, or at such other address as Lessee shall request in writing. 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 defaults by Authority and provides any other information reasonably requested.

**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 agreement must be construed and its performance enforced under Texas law. 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.

### **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 personally warrants and represents unto Authority that (a) (if applicable) Lessee is a duly organized and existing legal entity, in good standing in the state of Texas, (b) Lessee has full right and authority to execute, deliver and perform this lease agreement, (c) the person executing this lease agreement on behalf of Lessee was authorized to do so, and (d) upon request of Authority, such person will deliver to Authority satisfactory evidence of his or her authority to execute this lease agreement on behalf of Lessee.

### **Section 18.11. Recording**

Neither this lease agreement (including any exhibit hereto) nor any memorandum shall be recorded without the prior written consent of Authority.

### **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 and delivering written notice of such *force majeure* to the other party within five (5) calendar days of the event causing the *force majeure*, and 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.

**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. There are no written or oral representations or understandings that are not fully expressed in this lease 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.

**IN TESTIMONY WHEREOF**, this lease agreement is executed in duplicate originals, either of which shall be deemed to be an original, at Corpus Christi, Texas, on the Effective Date first above mentioned.

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

By: \_\_\_\_\_  
John P. LaRue  
Executive Director  
  
"Authority"

**MARTIN OPERATING PARTNERSHIP L.P.**  
**By: Martin Operating GP LLC, its general partner**  
**By: Martin Midstream Partners L.P., its sole member**  
**By: Martin Midstream GP LLC, its general partner**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
"Lessee"

STATE OF TEXAS       §  
                                  §  
COUNTY OF NUECES   §

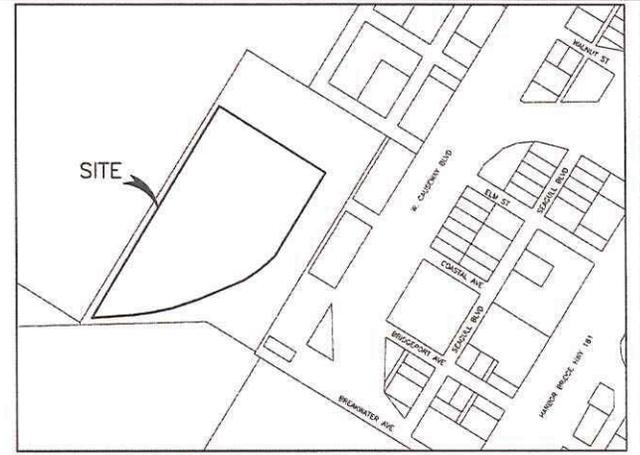
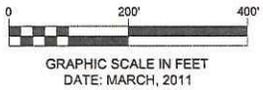
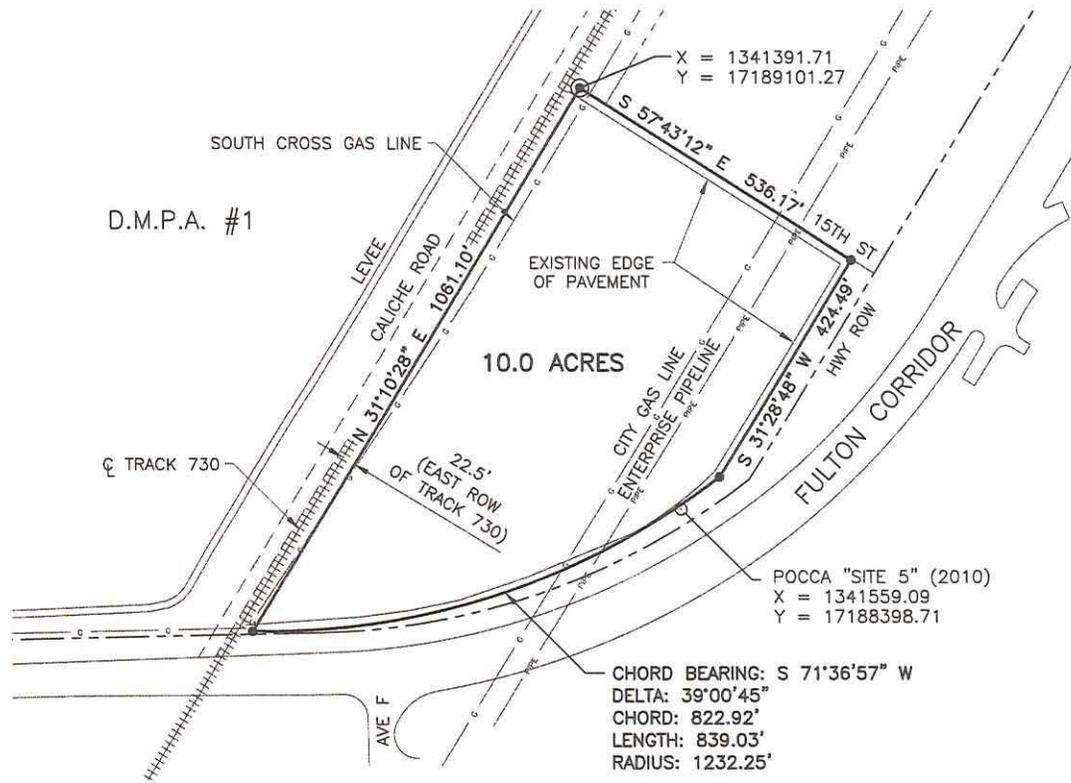
This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by JOHN P. LARUE, Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Authority.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF \_\_\_\_\_ §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ of **MARTIN OPERATING PARTNERSHIP L.P.**, a Delaware Limited Partnership, on behalf of said Limited Partnership.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_



**LOCATION MAP**  
SCALE=1"=500'

**NOTES:**

1. NO EASEMENT RESEARCH WAS PERFORMED BY LNV INC. ALL UTILITIES, PIPELINES, ETC. WERE PROVIDED BY THE PORT OF CORPUS CHRISTI ENGINEERING DEPARTMENT.
2. THIS TRACT OF LAND IS NOT RECORDED AND IS STRICTLY FOR USE IN DETERMINING AREA.
3. THIS SURVEY IS BASED ON THE TEXAS STATE PLANE ZONE 4205, NAD 83.

STATE OF TEXAS  
COUNTY OF NUECES

I, ROBERT M. VIERA, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS HEREBY CERTIFY THAT THE FOREGOING TRACT OF LAND CONTAINS 10.0 ACRES OF LAND.

THIS THE 29<sup>th</sup> DAY OF MARCH, 2011.

*Robert M. Viera*  
ROBERT M. VIERA  
STATE OF TEXAS LICENSE NO. 6178



engineers | architects | contractors

951 NAVIGATION, SUITE 300  
CORPUS CHRISTI, TEXAS 78408  
TBPE FIRM NO. F-388

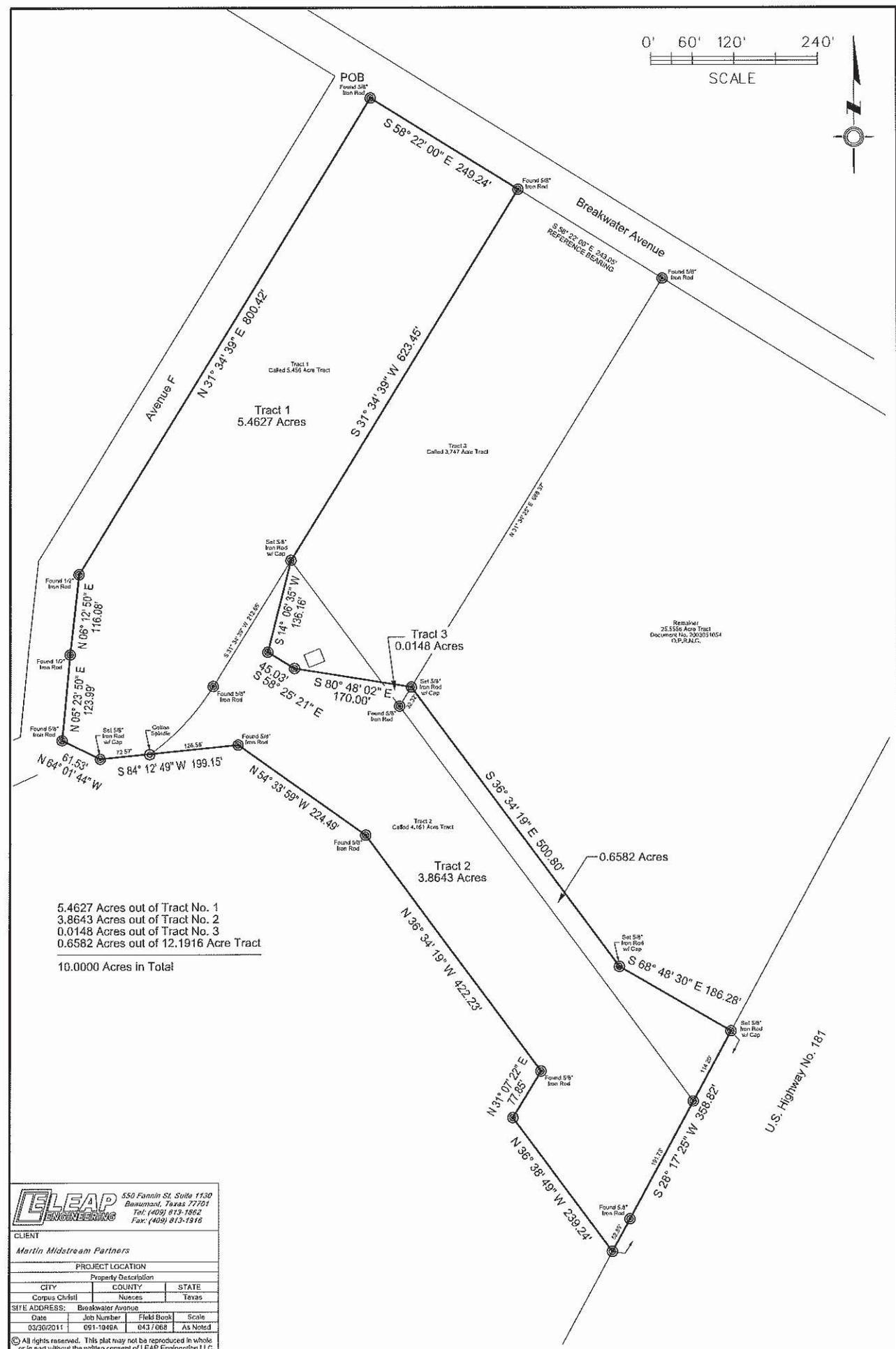
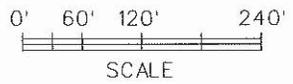
PH. (361) 883-1884  
FAX (361) 883-1888  
WWW.LNVINC.COM

A BOUNDARY SURVEY OF

**10.0 ACRE TRACT OF LAND**



PORT CORPUS CHRISTI



5.4627 Acres out of Tract No. 1  
 3.8643 Acres out of Tract No. 2  
 0.0148 Acres out of Tract No. 3  
 0.6582 Acres out of 12.1916 Acre Tract  
 10.0000 Acres in Total

**LEAP ENGINEERING** 550 Fannin St., Suite 1130  
 Beaumont, Texas 77701  
 Tel: (409) 813-1862  
 Fax: (409) 813-1818

CLIENT  
 Martin Midstream Partners

PROJECT LOCATION  
 Property Description

CITY	COUNTY	STATE
Corpus Christi	Nueces	Texas

SITE ADDRESS: Breakwater Avenue

Date	Job Number	Field Book	Scale
03/20/2011	091-1046A	0437068	As Noted

© All rights reserved. This plat may not be reproduced in whole or in part without the written consent of LEAP Engineering LLC.

## Real Estate Sales Contract

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of this Contract.

**Seller:** Martin Operating Partnership, L. P., a Delaware limited partnership.

Address: 4200 Stone Road  
Kilgore, Texas 75662

Phone: 903-983-6256

Fax: 903-988-3856

E-mail: matt.yost@martinmlp.com

**Seller's Attorney:** John Ben Blackburn

Address: 4200 B Stone Road  
Kilgore, Texas 75662

Phone: 903-983-5196

Fax: 903-988-7915

E-mail: johnben.blackburn@martinmlp.com

**Seller's Broker:** None

**Buyer:** Port of Corpus Christi Authority of Nueces County, Texas, a port authority and political subdivision of the state of Texas.

Address: 222 Power Street  
Corpus Christi, Texas 78401

Phone: 361-882-5633

Fax: 361-882-7110

**Buyer's Attorney:** Mike Mahaffey

Address: \_\_\_\_\_

Phone: 830-620-1515 ext. 13

Fax: 830-620-5334

E-mail: \_\_\_\_\_

**Buyer's Broker:** None

**Property:** The land commonly known as ten acres, more or less, and more fully described in Exhibit A ("Land").

**Title Company:** San Jacinto Title Services of Texas

Address: 802 N. Carancahua, Suite 1500  
Corpus Christi, Texas 78401

Phone: 361-884-7582

Fax: 361-882-2702

**Purchase Price:**

Cash portion: \$250,000.00

Total purchase  
price: \$250,000.00

**County for  
Performance:** Nueces

**A. Deadlines and Other Dates**

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Delivery of Title Commitment: Thirty (30) days after the Effective Date
2. Delivery of Survey: Sixty (60) days after the Effective Date
3. Delivery of legible copies of instruments referenced in the Title Commitment and

Survey: Ten (10) days after the Delivery of the Title Commitment.

4. Delivery of Title Objections: Ten (10) days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them

5. Delivery of Seller's records as specified in Exhibit C: Fifteen (15) days after the Effective Date

6. End of Inspection Period: Thirty (30) days after the Effective Date

7. Closing Date: One hundred fifty (150) days after the end of the Inspection Period

8. Closing Time: 10:00 a.m.

**B. Closing Documents**

1. At closing, Seller will deliver the following items:

Special Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in Exhibit D

2. At closing, Buyer will deliver the following items:

All of the Purchase Price, which may be delivered by wire transfer to the bank account of the Title Company used to escrow funds for transactions of this nature.

Evidence of Buyer's authority to close this transaction

**C. Exhibits**

The following are attached to and are a part of this contract:

Exhibit A--Description of the Land

Exhibit B--Representations; Environmental Matters

Exhibit C--Seller's Records

Exhibit D--Notices, Statements, and Certificates

**D. Purchase and Sale of Property**

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

**E. Title and Survey**

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, or directly by Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, or directly by Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to Buyer to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

4. *Delivery of Title Commitment, Survey, and Legible Copies.* Seller must deliver the Title Commitment to Buyer by the deadline stated in section A.1.; the Survey by the deadline stated in section A.2.; and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.3.

5. *Title Objections.* Buyer has until the deadline stated in section A.4. ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has ten (10) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure

Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

6. Buyer understands that there are restrictions contained in the deed whereby Seller acquired the Property restricting Seller's use of the Property and Seller makes no representations or warranties to Buyer concerning Buyer's ability to sue the Property post-Closing in any manner in violation of such restrictions. Buyer should undertake an evaluation of the potential impact such restrictions will have on Buyer's intended use of the Property, if any.

### **G. Inspection Period**

1. *Review of Seller's Records.* Seller will deliver to Buyer copies of Seller's records specified in Exhibit C, or otherwise make those records available for Buyer's review, by the deadline stated in section A.6.

2. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it at Buyer's cost, subject to the following:

- a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, with coverages and in amounts that are substantially the same as those maintained by Seller or with lesser coverages and in such lesser amounts as are reasonably satisfactory to Seller.
- b. Buyer may not interfere in any material manner with existing operations or occupants of the Property.
- c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests.
- d. If the Property is physically altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs.
- e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days after their preparation or receipt.
- f. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. *Environmental Assessment.* Buyer has the right to conduct environmental assessments of the Property. Seller will provide, or will designate a person with knowledge of the use and condition of the Property to provide, information requested by Buyer or Buyer's agent or representative regarding the use and condition of the Property. Seller will cooperate with Buyer in obtaining and providing to Buyer or its agent or representative information regarding the Property.

4. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. If Buyer does not notify Seller of Buyer's termination of the contract before the end of the Inspection Period, Buyer waives the right to terminate this contract pursuant to this provision.

5. *Buyer's Indemnity and Release of Seller*

a. *Indemnity.* To the extent permitted by law, Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except those arising out of the acts or omissions of Seller and those for repair or remediation of existing conditions discovered by Buyer's inspection. The obligations of Buyer under this provision will survive termination of this contract and closing.

b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

## **H. Representations**

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date. Seller will promptly notify Buyer if Seller becomes aware that any of the representations are not true and correct.

## **I. Condition of the Property until Closing; Cooperation; No Recording of Contract**

1. *Removal of Surface Structures and Remediation of Property.* Within ninety (90) days after the Effective Date Seller must conduct a complete assessment of the Property to determine the presence of any environmental contamination situated on the Property and the extent and source of same and remediate the Property to the State of Texas Commercial Industrial Standard of the agency of the State of Texas having jurisdiction of the remediation, remove all surface structures and clean and level the Property (collectively the "Work") to the satisfaction of Buyer and based upon written reports furnished by Seller to Buyer of all assessments, including all results of testing, of the Property, Seller must also, upon completion of the Work obtain a Closing Letter or a written No Further Action Required from the agency of the State of Texas having jurisdiction of the Work. Until closing, Seller will comply with all contracts, laws, and governmental regulations affecting the

Property. Until twenty (20) days after the Effective Date, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the new information before the end of the Inspection Period. If Seller's notice is given within three days before the end of the Inspection Period, the Inspection Period will be extended for three days. After the end of the Inspection Period, Seller may not enter into, amend or terminate any contract that affects the Property without first obtaining Buyer's written consent or materially breach any other provision of this Section I.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen (15) days before closing). The casualty damage will be deemed to materially affect Buyer's intended use if the estimated amount of the damage exceeds 50% percent of the Purchase Price. If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage.

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). The condemnation will be deemed to materially affect Buyer's intended use if \_\_\_\_\_. If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken, and (d) no change in the Purchase Price will be made.

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that involves or directly affects the Property.

5. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer

the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

6. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

## **J. Termination**

*Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all of Seller's records in Buyer's possession or control. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract or that expressly survive termination of this contract.

## **K. Closing**

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents; Title Company Documents.* The parties will execute and deliver the Closing Documents and any documents required by Title Company.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Delivery of Copies.* Seller will deliver to Buyer the copies of Seller's Records.
- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any liens and security interests created at closing to secure financing for the Purchase Price.

2. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare the deed; the costs to obtain, deliver, and record releases of any liens required to be released in connection with the sale, the costs to record documents to cure Title Objections agreed to be cured by Seller and to resolve matters shown in Schedule C of the Title Commitment; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; one-half (1/2) of the cost to obtain the Survey, and the cost of certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in section A.3. and Seller's records; any other costs expressly required to be paid by Seller in this contract; and Seller's expenses and attorney's fees.
- b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by Title Company and one-half (1/2) of the cost to obtain the Survey; the costs to obtain, deliver, and record all documents other than those to be obtained or recorded at Seller's expense; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; any other costs expressly required to be paid by Buyer in this contract; and Buyer's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at closing as a credit to the Purchase Price. Buyer assumes the obligation to pay, and shall pay in full, such taxes before delinquency. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days after the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes (including any penalties, interest, and attorney's fees) due as of closing will be paid at closing. If the Property has been the subject of special valuation and reduced tax assessments pursuant to the provisions of chapter 23, subchapter D, of the Texas Tax Code or under any other provision of law with respect to any period before the closing, and if additional taxes, penalties, or interest are assessed pursuant to Code section 23.55 or under the other provision of law, the following will apply:
- (1) If Seller changes the use of the Property before closing, resulting in the assessment of additional taxes for periods before closing, Seller

will pay the additional taxes.

(2) At closing, the parties will determine the amount of deferred taxes payable if the sale of the Property as herein contemplated were deemed as of the Closing Date to constitute a change in the use of the Property that would result in the "roll-back" or recapture of deferred taxes for the current year and all preceding tax years for which the "roll-back" or recapture could be imposed ("Potential Roll-Back Amount"). Seller will pay at closing an amount equal to the Potential Roll-Back Amount to all applicable taxing jurisdictions.

d. Intentionally omitted.

e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety (90) days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen (15) days of receipt of notice of the errors.

f. *Brokers' Commissions.* To the extent permitted by law, Buyer and Seller each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or commission because of this transaction or this contract, whether the claimant is disclosed to the indemnitee or not. At closing, each party will provide the other party with a release of broker's or appraiser's liens from all brokers or appraisers for which each party was responsible.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

#### **L. Default and Remedies**

1. *Seller's Default; Remedies before Closing.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations are not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy before closing:

a. *Termination.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer

terminates this contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date ("Buyer's Expenses") within ten (10) days of Seller's receipt of an invoice from Buyer stating the amount of Buyer's Expenses accompanied by reasonable evidence of Buyer's Expenses.

- b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Seller's Default; Remedies after Closing.* If Seller's representations are not true and correct at closing for reasons reasonably within Seller's control and Buyer does not become aware of the untruth or incorrectness until after closing, Buyer will have all the rights and remedies available at law or in equity. If Seller fails to perform any of its obligations under this contract that survive closing, Buyer will have all rights and remedies available at law or in equity unless otherwise provided by the Closing Documents.

3. *Buyer's Default; Remedies before Closing.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may (i) terminate this contract by giving notice to Buyer on or before closing or (ii) enforce specific performance of Buyer's obligations under this contract. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for Seller's actual out of pocket expenses incurred after the Effective Date to perform its obligations under this contract ("Seller's Expenses") within ten (10) days after Buyer's receipt of an invoice from Seller stating the amount of Seller's Expenses accompanied by reasonable evidence of Seller's Expenses.

4. *Buyer's Default; Remedies after Closing.* If Buyer fails to perform any of its obligations under this contract that survive closing, Seller will have all rights and remedies available at law or in equity unless otherwise provided by the Closing Documents.

5. *Attorney's Fees.* If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

## **M. Miscellaneous Provisions**

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract.

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. Notice may not be given by e-mail. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer that are not expressly set forth in those documents.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Prohibition of Assignment.* Buyer may not assign this contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Survival.* The provisions of this contract that expressly survive termination or closing and other obligations of this contract that cannot be performed before termination of this contract or before closing survive termination of this contract or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue.* This contract is to be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County for Performance.

7. *Waiver of Default.* Default is not waived if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* If a provision in this contract is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this contract, and this contract is to be construed as if the unenforceable provision is not a part of the contract.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it does not apply in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partners, joint venturers, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together constitute this contract. Copies of signatures to this contract are effective as original signatures.

13. *Confidentiality.* This contract, this transaction, and all information learned in the course of this transaction shall be kept confidential, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

14. *Binding Effect.* This contract binds, benefits and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

15. *Waiver of Jury Trial.* Buyer and Seller, each after consultation with an attorney of its own selection (which counsel was not directly or indirectly identified, suggested, or selected by the other party), both voluntarily waive a trial by jury of any issue arising in an action or proceeding between the parties or their successors, under or connected with this contract or its provisions. Buyer and Seller acknowledge to each other that Buyer and Seller are not in significantly disparate bargaining positions.

**MARTIN OPERATING PARTNERSHIP L.P.**

**By: Martin Operating GP LLC, its general partner**

**By: Martin Midstream Partners L.P., its sole member**

**By: Martin Midstream GP LLC, its general partner**

By: \_\_\_\_\_

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

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

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

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

By: \_\_\_\_\_

John P. LaRue, Executive Director

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

Title Company acknowledges receipt of a copy of this contract executed by both Buyer and Seller.

San Jacinto Title Services of Texas

By: \_\_\_\_\_

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

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

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

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**Exhibit A**

**Description of the Land**

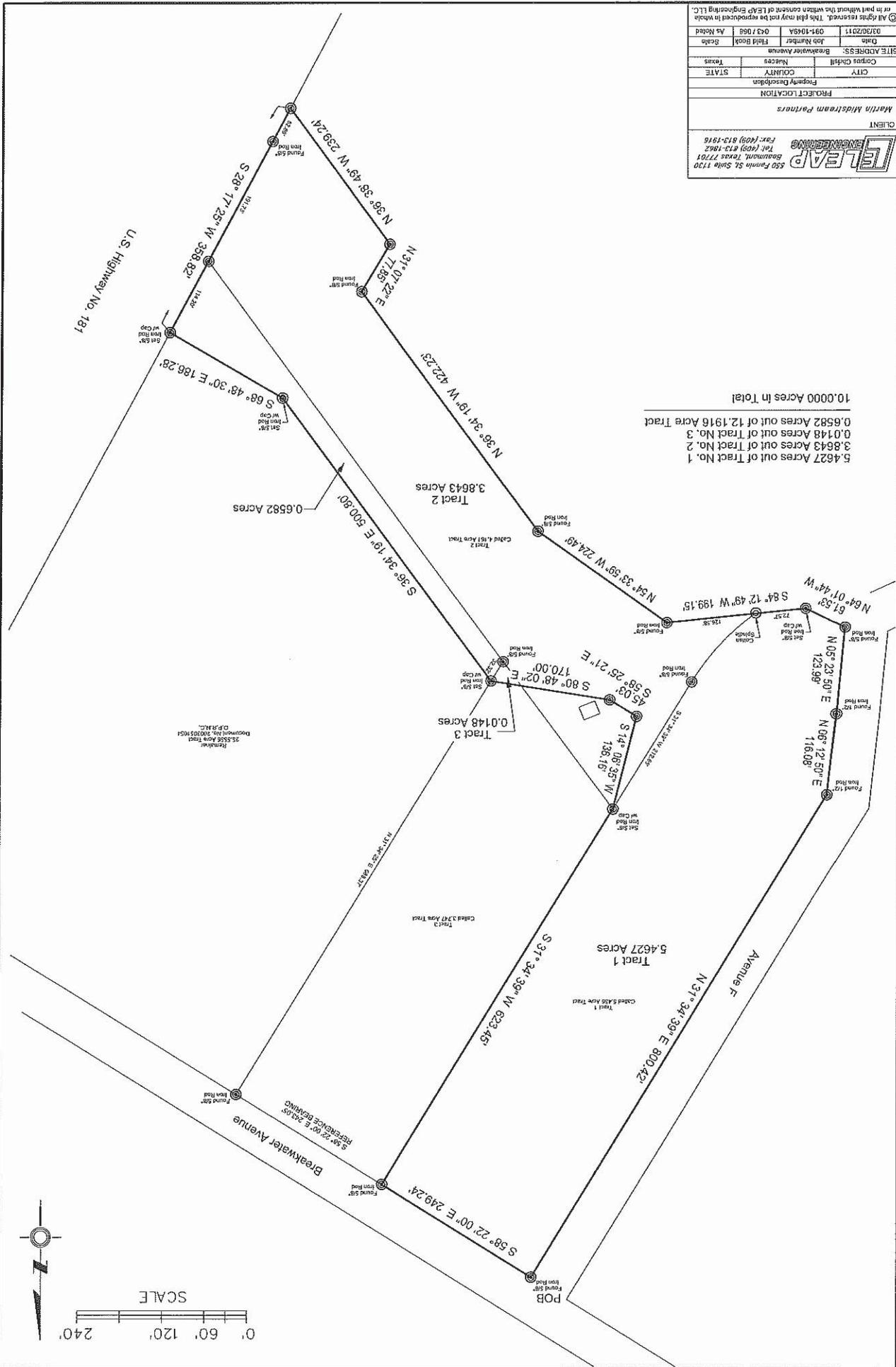
See description as follows:

DRAFT

CLIENT  
**Martin Midstream Partners**  
 PROJECT LOCATION  
 Property Description  
 COUNTY  
 STATE  
 CITY  
 ADDRESS: Breakwater Avenue  
 DATE: 03/20/2011  
 JOB NUMBER: 043188  
 AS NOTED  
 SCALE: Third Book  
 © All rights reserved. This plan may be reproduced in whole or in part without the written consent of LEAP Engineering LLC.

**LEAP ENGINEERING**  
 550 Fennell St, Suite 1120  
 Beaumont, Texas 77701  
 Tel: (409) 873-1882  
 Fax: (409) 873-1916

10.0000 Acres in Total  
 5.4627 Acres out of Tract No. 1  
 3.8643 Acres out of Tract No. 2  
 0.0148 Acres out of Tract No. 3  
 0.6582 Acres out of 12.1918 Acre Tract





March 31, 2011

Surveyor's Field Note Description: 10.000 Acre Tract

BEING a 10.000 acre tract of land out of and a part of that certain 25.5556 acre tract of land, more fully described and recorded in Document No. 2003051054 of the Official Public Records of Nueces County, Texas. Said tract consisting of all of that certain 5.4627 acre tract described as Tract 1, 3.8643 acres out of that certain 4.161 acre tract described as Tract 2, 0.0148 acre out of that certain called 3.747 acre tract described as Tract 3 and 0.6582 acre tract out of the remainder of said 25.5556 acre tract as described in document provided by client.

BEGINNING at a 5/8-inch iron rod found for the common Northwesterly corner of said 25.5556 acre tract and said Tract 1, same being the intersection of the Southerly right-of-way line of Breakwater Avenue and the Easterly right-of-way of Avenue F;

THENCE South 58 deg. 22 min. 00 sec. East along and with the common Northerly line of said 25.5556 acre tract and said Tract 1, same being the Southerly right-of-way line of said Breakwater Avenue, a distance of 249.24 feet to a 5/8-inch iron rod found for the Northeasterly corner of said Tract 1, same being the Northwesterly corner of said Tract 3, from which a 5/8-inch iron rod found for the Northeasterly corner of said Tract 3 bears South 58 deg. 22 min. 00 sec. East ( REFERENCE BEARING ) a distance of 243.05 feet;

THENCE South 31 deg. 34 min. 39 sec. West along and with the Easterly line of said Tract 1, same being the Westerly line of said Tract 3, at a distance of 623.45 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for corner of the herein described 10.000 acre tract, same being the Southwesterly corner of said Tract 3; from which a 5/8-inch iron rod found for a common angle corner of said Tract 1 and said Tract 2 bears South 31 deg. 34 min. 39 sec. West a distance of 212.65 feet;

THENCE South 14 deg. 06 min. 35 sec. West along and with the Easterly line of the herein described 10.000 acre tract a distance of 136.16 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for angle corner;

THENCE South 58 deg. 25 min. 21 sec. East along and with the Northerly line of the herein described 10.000 acre tract a distance of 45.03 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for angle corner;

THENCE South 80 deg. 48 min 02 sec. East along and with the Northerly line of the herein described 10.000 acre tract a distance of 170.00 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for angle corner of the herein described 10.000 acre tract in the Easterly line of said Tract 3, from which a 5/8-inch iron rod found for the said Northeasterly corner of said Tract 3, same being in the Southerly right-of-way line of Breakwater Avenue bears North 31 deg. 34 min. 25 sec. East a distance of 688.37 feet and a 5/8-inch iron rod found for the Southeasterly corner of said Tract 3 bears South 31 deg. 34 min. 25 sec. West a distance of 32.32 feet;

THENCE South 36 deg. 34 min. 19 sec. East along and with the Northerly line of the herein described 10.000 acre tract a distance of 500.80 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for angle corner;



THENCE South 68 deg. 48 min. 30 sec. East along and with the Northerly line of the herein described 10.000 acre tract a distance of 186.28 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for the Northeasterly corner of the herein described 10.000 acre tract, same being in the Easterly line of said 25.5556 acre tract, same being in the Westerly right-of-way line of U.S. Highway No. 181;

THENCE South 28 deg. 17 min. 25 sec. West along and with the Easterly line of said 25.5556 acre tract, same being the Westerly right-of-way line of said 25.5556 acre tract, at a distance of 142.90 feet passing a 5/8-inch iron rod found for the Northeasterly corner of said Tract 2 and continuing on, in all, a total distance of 358.82 feet to a point for corner for the common Southeasterly corner of said Tract 1 and said Tract 2;

THENCE in a Northwesterly direction along and with the Southerly line of said Tract 2 the following courses and distances:

North 36 deg. 38 min. 49 sec. West a distance of 239.24 feet to a point for corner;  
North 31 deg. 07 min. 22 sec. East a distance of 77.85 feet to a 5/8-inch iron rod found for corner;  
North 36 deg. 34 min. 19 sec. West a distance of 422.23 feet to a 5/8-inch iron rod found for corner;  
North 54 deg. 33 min. 59 sec. West a distance of 224.49 feet to a 5/8-inch iron rod found for corner;

THENCE South 84 deg. 12 min. 49 sec. West along and with the Southerly line of said Tract 2 and Tract 1, at a distance of 126.58 feet passing a cotton spindle found for the Southwesterly corner of said Tract 2 and the Southeasterly corner of said Tract 1 and continuing on, in all, a total distance of 199.15 feet to a 5/8-inch iron rod with cap stamped "LEAP ENG" set for angle corner;

THENCE North 64 deg. 01 min. 44 sec. West along and with the Southerly line of said Tract 1 a distance of 61.53 feet to a 5/8-inch iron rod found for angle corner, same being in the Easterly right-of-way line of said Avenue F;

THENCE in a Northeasterly direction along and with the Westerly line of said Tract 1, same being the Easterly right-of-way line of said Avenue F, the following courses and distances:

North 05 deg. 23 min. 50 sec. East a distance of 123.99 feet to a 1/2-inch iron rod found for corner;  
North 06 deg. 12 min. 50 sec. East a distance of 116.08 feet to a 1/2-inch iron rod found for corner;  
North 31 deg. 34 min. 39 sec. East a distance of 800.42 feet to the PLACE OF BEGINNING containing 10.000 acres of land, more or less.

---

Jeremy D. Russell  
Registered Professional Land Surveyor No. 5808

## Exhibit B

### Representations; Environmental Matters

#### A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a limited partnership duly organized, validly existing, and in good standing under the laws of the state of Delaware with authority to perform its obligations under this contract. This contract is binding on Seller. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.
2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.
3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.
4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to use the Property in the manner in which it is currently being used will not be renewed on expiration or that any material condition will be imposed to use or renew the same.
5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to condemnation or the presence of hazardous materials affecting the Property.
6. *No Other Obligation to Sell the Property or Restriction against Sale.* Except for granting a security interest in the Property, Seller has not obligated itself to sell all or any portion of the Property to any person other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.
7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions or liens to which Buyer has given its consent in writing, and, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent in writing.

8. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

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## **Exhibit C**

### **Seller's Records**

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.5.:

#### **Land**

soil reports

environmental reports and other information regarding the environmental condition of the Property

engineering reports

prior surveys

#### **Leases**

Leases

#### **Licenses, Agreements, and Encumbrances**

all licenses, agreements, and encumbrances (including all amendments and exhibits) affecting title to or use of the Property that have not been recorded in the real property records of the county or counties in which the Property is located

## Exhibit D

### Notices, Statements, and Certificates

The notices, statements, and certificates (arranged by their application to particular transactions) that are listed below are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

#### A. All Real Property Transaction Notices

1. *Storage Tanks Disclosure Provider.* Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code
2. *Notice to Purchaser Regarding Restrictive Covenants.* Notice of deed restrictions, described in section 212.155 of the Texas Local Government Code.
3. *Notice to Purchaser Regarding Coastal Area Property.* Notice regarding real property located adjacent to tidally influenced, submerged lands of Texas, described in section 33.135 of the Texas Natural Resources Code.
4. *Utility District Notice.* Notice concerning the bonded indebtedness of, or rates to be charged by, a utility or other special district, described in section 49.452 of the Texas Water Code, with the form of notice to be used being dependent on whether the property (1) is located in whole or in part within the extraterritorial jurisdiction of one or more home-rule municipalities but is not located within the corporate boundaries of a municipality, (2) is located in whole or in part within the corporate boundaries of a municipality, or (3) is not located in whole or in part within the corporate boundaries of a municipality or the extraterritorial jurisdiction of one or more home-rule municipalities.
5. *Notice to Purchaser of Property Located in Certain Annexed Water Districts.* Notice required by section 54.016(h)(4)(A) of the Texas Water Code when property being sold is in a water or sanitary sewer district that entered a contract with a city with a population of 1.18 million or less under which the city is permitted to set rates in the district after annexation that are different from rates charged other residents of the city.

April 12, 2011

The Honorable Mike Carrell  
The Honorable Richard M. Borchard  
The Honorable Judy Hawley  
The Honorable Robert J. Gonzalez, Sr.  
The Honorable Francis I. Gandy, Jr.  
The Honorable Robert Kostelnik  
The Honorable Mike Scott  
Port Commissioners  
Port of Corpus Christi Authority

**Subject: *AGENDA ITEM NO. 16***  
**Amendment to a Lease Agreement dated June 11, 2010, with Durlame, LLC**  
**or the Sale of Property Located Along Port Avenue**

Dear Commissioners:

On June 11, 2010, the Port leased two tracts of land fronting on Port Avenue near Whataburger Field (see attached map) to the Adame Group, LLC, for a term of 99 years, beginning June 11, 2010, and expiring June 10, 2109 (the "Lease"). On July 26, 2010, the Port consented to the assignment of the Lessee from Adame Group, LLC, to Durlame, LLC ("Durlame").

As a part of the original sale of the Whataburger Field property to the City in 2003, the Port granted the City a private easement on a sixty foot wide strip of land (the "Private Easement") that runs along the eastern side of Whataburger Field. The purpose of the Private Easement was to provide utility service to and vehicular and pedestrian access to Whataburger Field. The Port retained the right to use the Private Easement to allow the future construction of a roadway and utilities that would benefit any future development in and around the Ortiz Center such as a hotel or office building. The Private Easement has not been utilized for any of these purposes.

Durlame has asked the Port to amend the Lease and to acknowledge the termination of the Private Easement so that their proposed commercial development can be directly tied to Whataburger Field. We have worked out a new property description of the Lease that is acceptable to Durlame and the Port, and which will free up a 60-foot wide strip of land on the east side of the Durlame leasehold that will accommodate roadway and utility services necessary for any future development in and around the Ortiz Center. This will require an amendment of the lease to shift the location of Durlame's leased property, and the execution of documentation acknowledging the termination of the Private Easement. Towards this end, staff prepared the attached Amendment of Lease. By separate action, staff is working with the City, Durlame, and the Hooks (a/k/a Corpus Christi Baseball Club, LP) to formally document and acknowledge the termination of the Private Easement. Durlame's willingness to proceed with the Lease Amendment is contingent on the termination of the Private Easement by all entities having an interest therein; accordingly the execution of the Lease Amendment will be subject to the formal termination of the Private Easement.

Staff recommends approval of attached Amendment of Lease as drafted and that the Executive Director be authorized to sign any documents related to the termination of the Private Easement.

Staff also recommends the Port Commission declare the Durlame leased premises surplus property and authorize staff to conduct a surplus property sale of the property subject to the lease. The surplus property sale will be subject to the execution of the Lease Amendment by PCCA and Durlame. The sale of this property will allow this property to be placed on the tax rolls and be free of any encumbrances caused by the Port owning this property. This item is included on the agenda of the April 12 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue  
Executive Director

Attachment



**RESOLUTION AMENDING COTTON YARD LEASE AND  
DECLARING LEASED PREMISES TO BE SURPLUS LAND**

**WHEREAS**, the Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”), as lessor, and Adame Group, LLC, as lessee, entered into a ground lease agreement dated June 11, 2010 (“Ground Lease”) for 5.1 acres of land in Corpus Christi, Texas, in the vicinity of Whataburger Field; and

WHEREAS, the leased premises under the Ground Lease includes a 2.5-acre tract of land (“Parcel A”) and a 2.6-acre tract of land (“Parcel B”), both of which are depicted on the map attached hereto as Exhibit A; and

Whereas, on July 26, 2010, Adame Group, LLC, assigned its interest in the Ground Lease to Durlame, LLC (“Durlame”);

**WHEREAS**, as part of PCCA’s original sale of the Whataburger Field property to the City of Corpus Christi in 2003, PCCA granted the City a private easement on a sixty-foot-wide strip of land (the “Private Easement”) that runs along the eastern side of Whataburger Field and the western side of Parcel A, and the Private Easement is depicted on the map attached hereto as Exhibit A; and

**WHEREAS**, Durlame has requested that the description of Parcel A in the Ground Lease be amended to include that part of the Private Easement between Whataburger Field and Parcel A and to exclude a corresponding sixty-foot-wide strip of land along the eastern side of Parcel A, such that the boundaries of Parcel A would be as depicted in the map attached hereto as Exhibit B (the “Lease Amendment”); and

**WHEREAS**, Durlame has also asked PCCA to acknowledge termination of the Private Easement and to formally release any claim it may have in and to the Private Easement in conjunction with the Lease Amendment; and

**WHEREAS**, PCCA staff has recommended that the Port Commission declare Parcel A, as amended by the Lease Amendment, and Parcel B to be surplus land which is not needed for use by PCCA in connection with the development of a navigation project, and offer to sell Parcel A, as amended, and Parcel B by sealed bids;

**NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION THAT**

Section 1. The Lease Amendment, in substantially the form presented to this meeting, is hereby approved for the purpose of amending the description of Parcel A as set forth in the Lease Amendment and this Resolution, and the Executive Director of PCCA is hereby authorized and directed, for and on behalf of PCCA, to sign and otherwise execute the Lease Amendment with such changes therein as shall be approved by the Executive Director, his execution thereof to constitute conclusive evidence of such approval.

Section 2. The Acknowledgment of Easement Termination, in substantially the form presented to this meeting, is hereby approved for the purpose of acknowledging the termination of the Private Easement and formally releasing any claim PCCA may have in and to the Private Easement, and the Executive Director of PCCA is hereby authorized and directed, for and on behalf of PCCA, to sign and otherwise execute the Acknowledgment of Easement Termination with such changes therein as shall be approved by the Executive Director, his execution thereof to constitute conclusive evidence of such approval.

Section 3. Parcel A, as amended by the Lease Amendment, and Parcel B (collectively referred to herein as the “Surplus Land”), are hereby declared to be surplus land which is not needed for use by PCCA in connection with the development of a navigation project, and it is the opinion of this Port Commission that it is desirable or advantageous to the interests of PCCA to offer to sell the Surplus Land by sealed bids upon the terms and conditions stated in this Resolution.

Section 4. PCCA staff is hereby authorized to prepare bid specifications for sealed bids for the purchase of the Surplus Land, including, but not limited to, the following terms and conditions, all of which must be complied with or the bid may be rejected:

1. The Port Commission reserves the right to reject any or all bids and to waive any formalities in the bidding.
2. Each bid submitted for the Surplus Land must be accompanied by a certified or cashier’s check in an amount equal to the bidder’s bid for the property, and this check shall guarantee that the bidder will perform the terms of his bid if it is accepted by the Port Commission.
3. The deed for the Surplus Land will contain a reservation of all oil, gas, and other minerals in and under and that may be produced from the Surplus Land, but PCCA will waive any rights it may have to use the surface of the Surplus Land for purposes of exploring for these minerals.
4. The Surplus Land will be sold subject to any and all leases (including the Ground Lease), restrictive covenants, easements, agreements, encumbrances, and mineral interests, if any, held or owned by others, relating to the Surplus Land, but only to the extent they are still in effect.
5. PCCA will assign its interest in any leases on the Surplus Land to the purchaser of the property, and the purchaser must assume all of PCCA’s obligations under these leases.
6. The Surplus Land must be accepted by the successful bidder **“as is, where is and with all faults,”** based upon the bidder’s own investigations and not in reliance upon any statements or records furnished to the bidder by the PCCA or prior owners of the Surplus Land.

Section 5. PCCA staff is hereby authorized to request sealed bids for the purchase of the Surplus Land in accordance with the foregoing bid specifications.

Section 6. Notwithstanding anything to contrary contained in this Resolution, (i) the Commission's approval of the Lease Amendment is subject to the approval and execution of the Acknowledgment of Easement Termination by all parties thereto; (ii) the Commission's approval of the Acknowledgment of Easement Termination is subject to the approval and execution of the Acknowledgment by all parties thereto; (iii) the Commission's declaration that Parcel A, as amended by the Lease Amendment, and Parcel B are surplus land is subject to the approval and execution of the Lease Amendment by all parties thereto; and (iv) the Commission's authorization to request sealed bids for the purchase of the Surplus Land is subject to the approval and execution of the Lease Amendment by all parties thereto.

**END**

**AMENDMENT OF LEASE**

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF NUECES       §**

**KNOW ALL MEN BY THESE PRESENTS**

**WHEREAS**, by a Ground Lease ("Lease") dated June 11, 2010, the Port of Corpus Christi Authority of Nueces County, Texas ("Authority"), leased for a term of ninety-nine (99) years, two tracts of land in Nueces Council, Texas described in the Lease as Parcel A and Parcel B, to Adame Group, L.L.C. Parcel A and Parcel B more completely described in the Lease; and

**WHEREAS**, by instrument ("Assignment of Ground Lease") dated July 26, 2010, Adame Group, L.L.C., assigned all of its right, title, and interest in and to the Lease to Durlame, LLC, ("Lessee"). And Durlame, LLC, agreed unconditionally to assume the due and prompt performance of all of the obligations of the Lease and the obligations of Adame Group, L.L.C., under the terms of the Lease; and

**WHEREAS**, both parties wish to amend the Lease to revise the metes and bounds description of Parcel A of the Leased Premises to (i) include the sixty foot (60') wide strip of land lying between land owned by the City of Corpus Christi (i.e. Whataburger Field) and Parcel A, and (ii) to delete a 60' wide strip of land along the eastern boundary of Parcel A; said 60' strip being more particularly described in Exhibit "B" hereto. (the "Sixty Foot Strip"); and

**NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION**, the sufficiency and receipt of which is acknowledged by both parties hereto, and in further consideration of the mutual covenants and obligations contained herein, Authority and Lessee do hereby agree as follows:

C. The Lease is hereby amended as follows:

1. The metes and bounds description of Parcel A of the Ground Lease is hereby amended and replaced in its entirety with the description set forth in Exhibit "A" hereto.

2. The following paragraph is added to the Ground Lease: Lessee is hereby granted a non-exclusive license (the "License") to use the Sixty Foot Strip for the following purposes: (1) ingress and egress between Parcel A and the Parcel A Parking Area described in the Lease and (2) for parking purposes. The License to use the Sixty Foot Strip will terminate in its entirety in the event Lessee's right to use the Parcel A Parking Area (a/k/a Parcel A-1) is terminated under the terms of the Multiple Use Agreement. Lessee's right to use the Sixty Foot Strip for parking purposes will terminate at such time as Lessor notifies Lessee in writing that Lessee intends to use the Sixty Foot Strip for roadway or utility purposes.

B. This agreement shall be binding on the successors and assigns of the parties hereto.

C. All other terms and conditions of the Lease not hereby changed or modified, shall remain the same as written in the Lease.

Executed in duplicate originals effective the \_\_\_\_ day of \_\_\_\_\_, 2011.

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

By: \_\_\_\_\_  
John P. LaRue

**ITS EXECUTIVE DIRECTOR**  
“Authority”

**DURLAME, LLC**

By: \_\_\_\_\_  
William Durrill

Title: \_\_\_\_\_  
“Lessee”

**STATE OF TEXAS**           §  
  §  
**COUNTY OF NUECES**       §

This instrument was acknowledged before me on the 12<sup>th</sup> day of April, 2011 by JOHN P. LARUE, as Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of the Port.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

(seal)

**STATE OF TEXAS**           §  
  §  
**COUNTY OF NUECES**       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by William Durrill, \_\_\_\_\_ of Durlame, LLC, on behalf of said company.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

(seal)

**EXHIBIT "A"**

**EXHIBIT "B"**

## ACKNOWLEDGMENT OF EASEMENT TERMINATION

### Acknowledgment

**WHEREAS**, The City of Corpus Christi (the “City”) and the Port of Corpus Christi Authority of Nueces County, Texas (the “Authority”) entered into that certain Dedication Agreement dated January 24, 2004, recorded under document number 2004007487 of the Official Records of Nueces County, Texas (the “Dedication Agreement”). Under the terms of the Dedication Agreement the Authority granted a private access and utility easement sixty feet (60’) in width comprising .9452 acres of land for the sole purpose of providing utility services to the stadium site now known as “Whataburger Field” and for free and uninterrupted pedestrian and vehicular ingress to, and egress from, the stadium site and to and from Port Avenue (the “Private Easement”).

**WHEREAS**, the Dedication Agreement expressly provides that the Private Easement is not dedicated to public use, but was granted as a private easement appurtenant to, and for the benefit of the Stadium Site and for the exclusive use of the Authority and the purchasers and owners of Lot 2 (a/k/a the Stadium site) and Lot 3 shown on the Platting Map described in the Dedication Agreement;

**WHEREAS**, the Private Easement was ratified and modified by the terms and conditions of that certain Special Warranty Deed dated May 8, 2004, from the Authority to the City and recorded under Document number 2004021939 of the Official Public Records of Nueces County, Texas. (the “Private Easement Ratification”).

**WHEREAS**, the Private Easement Ratification defines the term “Holder” as those persons owning “any interest in the Dominant Estate Property” (also described in the Dedication Agreement as Lot 2);

**WHEREAS**, The City as the owner of the Dominant Estate Property and Corpus Christi Baseball Club, LP (the “Hooks”) as the Lessee of the Dominant Estate Property and the Authority as the owner of a reversionary interest in the Dominant Estate Property comprise all of the Holders of the Dominant Estate Property;

**WHEREAS**, the Authority is the owner of Lot 3 described in the Dedication Agreement and Durlame, LLC (“Durlame”) is a Lessee of a portion of said Lot 3

**WHEREAS**, the Private Easement Ratification provides that the Private Easement will last only:

for so long as the Dominant Estate Property (i.e. “Whataburger Field”) is used and maintained as a baseball stadium and Holder uses the Easement for the Easement Purposes . . .

**WHEREAS**, the City, the Authority, and the Hooks as Holders of an interest in the Dominant Estate Property and the Authority as the owner Lot 3 and Durlame as the Lessee of a portion of Lot 3 (collectively the “Private Easement Interest Holders”) all acknowledge and agree that no Holder or interest owner in Lot 3 has never used the Private Easement for the Easement Purposes;

**NOW THEREFORE PREMISES CONSIDERED**, the Private Easement Interest Holders hereby agree that the Private Easement has terminated by its own terms as the result of the complete non-use by a Holder and the complete non-use by the interest owners of Lot 3. Therefore all of the undersigned Private Easement Interest Holders hereby forever relinquish and release any claim they may have in and to the Private Easement.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_ 2011, but effective upon the date the last the last signature hereto.

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

Date: \_\_\_\_\_, 2011.

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

**CORPUS CHRISTI BASEBALL CLUB, LP**

Date: \_\_\_\_\_, 2011.

By: \_\_\_\_\_  
Michael Wood, Vice President

**DURLAME, LLC**

Date: \_\_\_\_\_, 2011.

By: \_\_\_\_\_  
William R. Durrill, Manager

**CITY OF CORPUS CHRISTI**

Date: \_\_\_\_\_, 2011.

By: \_\_\_\_\_  
Margie C. Rose, City Manager

**Attest:**

By: \_\_\_\_\_  
Armando Chapa,  
City Secretary

**Legal Form Approved:**

By: \_\_\_\_\_  
Print Name: Deborah Walther Brown  
Title: City Attorney

Date: \_\_\_\_\_, 2011.

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by John P. LaRue, Executive Director, on behalf of the Port of Corpus Christi Authority of Nueces County, Texas.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by Margie C. Rose, City Manager, on behalf of the City of Corpus Christi, Texas.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by William R. Durrill, Manager, on behalf of Durlame, LLC.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF NUECES       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by Michael Wood, Vice President, on behalf of Round Rock Baseball, Inc.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

***AGENDA ITEM NO. 17***

***NO ATTACHMENT***

***AGENDA ITEM NO. 18***

***NO ATTACHMENT***



**PORT OF CORPUS CHRISTI AUTHORITY  
LEASE OPTION SUMMARY**

**Optionee:** Millennium Bulk Logistics, Inc.  
170 S. Main Street, Suite 700  
Salt Lake City, Utah 84101

*Leased Premises:* As depicted on the attached drawing.

*Use:* Construction of a coal export pad at the PCCA Bulk Terminal.

*Option Term:* Three months.

*Options:* Three months.

*Start Date:* 4/12/11.

*Option Fee:* The monthly fee for the first three-month option term is \$7,552.08 based on 50% of a \$125,000 per acre land value at a 10% rate of return. The monthly fee for the second three-month option term is \$11,328.13 based on 75% of a \$125,000 per acre land value at a 10% rate of return.

*Remarks:* The option periods will allow Millennium to begin their permitting process as well as develop a more detailed business plan.

## LEASE OPTION AGREEMENT

This Lease Option Agreement (the "Agreement") is made effective as of the 12<sup>th</sup> day of April, 2011 (the "Effective Date"), at Corpus Christi, Nueces County, Texas, between **Port of Corpus Christi Authority of Nueces County, Texas**, a political subdivision of the State of Texas, (the "Authority"), and **Millennium Bulk Logistics, Inc.**, a Delaware corporation whose principal address is 170 S. Main Street, Suite 700, Salt Lake City, Utah 84101 ("Optionee").

**WHEREAS**, the Authority owns the real property located in Nueces County, Texas, described in **Exhibit A** attached to and incorporated by reference into this Agreement (the "Option Property"); and

**WHEREAS**, the Option Property contains approximately 14.50 acres of land; and

**WHEREAS**, the Authority wishes to grant Optionee an option to lease and Optionee wishes to acquire the right and option to lease the Option Property, subject to the terms of this Agreement;

**NOW THEREFORE**, for and in consideration of the agreements set forth herein, the Authority and Optionee (collectively, the "Parties" and individually, a "Party") hereby agree as follows:

1. Grant of Option. For the consideration expressed in paragraph 4, the Authority grants to Optionee the right and option during the Term (as defined in paragraph 3) of this Agreement to lease the Option Property, subject to the terms and conditions of this Agreement.

2. Exercise of Option. Optionee may exercise this option by delivering the following items to Authority prior to 5:00 p.m. Central Time on the Termination Date (as defined in paragraph 3): (i) a written notice signed by Optionee exercising its right to lease the Option Property pursuant to this Agreement, (ii) two original copies of the Final Agreement (as defined in paragraph 9) signed by Optionee; and (iii) a cashier's check payable to the order of Authority in an amount equal to the first month's rent under the Final Agreement. Notwithstanding anything to the contrary contained in this Agreement, Optionee may not exercise its option under this Agreement at a time when it is delinquent in making any of the payments due under this Agreement.

3. Primary Term. The three month "Primary Term" of this Agreement begins on the Effective Date and ends at 5:00 p.m. Central Time on the Termination Date. For purposes of this Agreement, "Termination Date" means the first of the following to occur: (i) July 11, 2011, (ii) the date Optionee terminates this Agreement as provided in this paragraph 3, (iii) the date on which this Agreement terminates automatically pursuant to paragraph 4, or (iv) the date on which this Agreement terminates pursuant to paragraph 9. Optionee may terminate this Agreement by delivering a written termination notice to the Authority any time after the Effective Date; provided, however, that Optionee's termination of the Agreement pursuant to this

paragraph 3 shall not entitle Optionee to a refund of any amounts paid to the Authority prior to the date of such termination.

In addition, Authority hereby grants to Optionee the option to extend the term of this Agreement for one (1) additional option period of three (3) months, beginning on the first day after the expiration of the primary term hereof; but if, at the date the original term expires, Optionee is in default beyond any grace period provided in this Agreement, this option is void. The option to extend shall be exercised by Lessee giving to Authority notice in writing of such exercise at least thirty (30) days prior to the expiration of the primary term of this Agreement. Notice of an intention to exercise an option must, to be effective, be sent as provided in paragraph 13 and postmarked no later than the latest date provided in this paragraph for Lessee's exercising the option.

4. Consideration. This option is granted in consideration of Optionee paying the Authority Seven Thousand Five Hundred Fifty-Two and 04/100 Dollars (7,552.04) on the effective date (which is the product of 520.83 times the approximate number of acres of the Option Property) and a like amount of the 12<sup>th</sup> day of each month thereafter during the Primary Term of this Agreement and Eleven Thousand Three Hundred Twenty-Eight and 13/100 Dollars (\$11,328.13) on the first day after the expiration of the primary term hereof (which is the product of \$781.25 times the approximate number of acres of the Option Property) and a like amount on the 12<sup>th</sup> day of each month during the Option Term of this Agreement. Failure to pay any amount on or before the date it is due will result in the automatic termination of this Agreement on such due date without notice. Optionee will not be required to make any additional payments pursuant to this paragraph 4 after this Agreement terminates.

5. Retaining Consideration. The Authority will retain all sums paid by Optionee to the Authority pursuant to paragraph 4 as consideration for granting this option whether or not Optionee exercises its option hereunder and whether or not Optionee terminates this Agreement in accordance with its right to do so in paragraph 3. Furthermore, if the Optionee does exercise its option hereunder, the option payments made to the Authority pursuant to this Agreement shall not be credited against any rent payable under the Final Agreement.

6. Assignment. Optionee may assign its rights under this Agreement to (i) any of Optionee's Affiliates (as defined below), or (ii) any other person the Authority approves in advance in writing. For purposes of this Agreement, "Affiliate" shall mean, with respect to any person or entity, at the time such determination is being made, any person or entity controlling, controlled by or under common control with such first person or entity, in each case, whether directly or indirectly, and "control", and any derivation thereof, for the purposes of this Agreement, means (i) the ownership of greater than 20% of the voting securities of a person or entity, or (ii) the control, directly or indirectly, of the power to direct the management and policies of a person or entity (whether through the ownership of voting securities or otherwise). For the avoidance of doubt, Authority understands that Optionee is planning to convert its legal form from a Delaware corporation to a Delaware limited liability company and change its name

to AE Bulk Logistics, LLC and hereby acknowledges and approves that this limited liability company successor will retain all rights of Optionee under this Agreement.

7. Access to Option Property. During the Term, upon reasonable advance notice from Optionee to the Authority and subject to the Authority's existing security requirements, the Authority shall afford Optionee and its officers, employees, agents and contractors full access, during regular business hours, to any part of the Option Property for purposes of determining the suitability of the Option Property for the use intended by Optionee. While on the Option Property pursuant to preceding sentence, Optionee may make soil tests and borings, but Optionee will be responsible for the remediation of any environmental contaminates brought to the surface of the Option Property during soil test borings.

8. Insurance. Optionee's affiliate, Ambre Energy North America, Inc. ("AENA"), is providing services on behalf of Optionee to perform work at the Option Property. AENA will engage other contractors or consultants to perform the work on the Option Property. Optionee agrees at all times this Agreement is in effect and when AENA, its contractors, their subcontractors, or consultants are performing work on the Option Property it will require AENA and its contractors, their subcontractors and consultants to carry and maintain at their sole expense policies of insurance (the "Policies") of the types and in the minimum amounts as follows:

A. Optionee, AENA and its contractors, their subcontractors and consultants are responsible for insuring its and their personal property situated or used on the Option Property.

B. For all AENA's contractors', their subcontractors or consultants' employees engaged in performing work on the Option Property, workers' compensation required by the Texas Workers' Compensation Code, and employer's liability insurance with limits of at least \$500,000.00 for each employee accident or disease, or such similar insurance which is in accordance with state and federal law applicable to said employees. AENA's employees engaged in performing work are covered by workers' compensation insurance in the State of Utah. Optionee agrees to require AENA, its contractors, their subcontractors, or consultants who are covered by workers' compensation insurance in the State of Utah or any other state except Texas, to have such workers' compensation policy endorsed to include Other States.

C. Commercial General Liability (CGL) coverage with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000 general aggregate for work to be performed at the Option Property. The CGL policy is endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm or organization shall

automatically be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract.”

D. Business Auto Liability coverage for all Optionee owned and non-owned vehicles operated on the Option Property, with a policy limit of \$1,000,000 (Combined Single Limit).

Optionee will, in a written contract with AENA, require AENA, its contractors, subcontractors and consultants to endorse The Policies, except for worker’s compensation insurance, to name, Optionee, the Port of Corpus Christi Authority of Nueces County, Texas, its Commissioners, Directors, managers, employees, and agents as additional insureds. In addition each of the Policies will be endorsed to provide (a) that it will not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days’ prior written notice to Authority, Attention: Risk Manager, and (b) provide that notwithstanding any language in any policy of insurance held by Authority (“Authority Insurance”) to the effect that the Authority Insurance is primary, the policy or policies held by Optionee are primary coverage for the Optionee and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies. Optionee shall deliver to Authority certificates of renewal 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 company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Optionee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority may procure such insurance at Optionee’s expense, and Authority is entitled to reimbursement from Optionee for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Optionee receives Authority’s notice of payment until reimbursement.

Authority shall be furnished, to the attention of Authority’s Engineer, prior to the presentation of this Agreement to the Port Commission of Authority for its consideration, as proof of the insurance required of Optionee a certificate or certificates of insurance describing the Policies, which certificates must be acceptable, in their form and content, to Authority.

9 Form of Lease. Within forty-five (45) days after the Effective Date the Authority shall provide to Optionee an initial draft of a lease agreement (the “Lease Agreement”) for purposes of leasing the Option Property to Optionee based upon the Authority’s current form of lease agreement. The initial term of the Lease Agreement shall be five (5) years, and Optionee will have the right to extend the term of the Lease for five (5) additional periods of five (5) years each. The base rent under the Lease for the initial term shall be Two Hundred Thousand and NO/100 Dollars (\$200,000.00) per year. The Option Property shall be used for the following purposes and no others during the term of the Lease: stockpiling coal for export via the Authority’s Bulk Terminal. The Lease Agreement shall contain rent adjustment provisions acceptable to Authority and Optionee and other changes to be agreed upon by the Parties to reflect the contemplated transaction. The Parties shall cooperate in good faith and work diligently to negotiate the final form of Lease Agreement. If the Parties do not agree on the final form of the Lease Agreement by 5:00 p.m. Central Time on the Ending Date, this Agreement

will automatically terminate on the Ending Date. For purposes of this Agreement, “Ending Date” means June 11, 2011 for the Primary Term and September 11, 2011 for the Option Term or such other later date as the Parties may agree upon in writing. Upon the Parties’ approval of the final form of the Lease Agreement (“Final Agreement”), the Parties shall promptly attach a copy of the Final Agreement to this Agreement to be executed and delivered upon Optionee’s exercise of the option granted hereunder. Optionee acknowledges that only the Authority’s Port Commission may approve the final form of the Lease Agreement on behalf of the Authority and that the Port Commission is not required to approve the Lease Agreement. Furthermore, Optionee acknowledges and agrees that if the Port Commission does not approve the Lease Agreement the Authority will nevertheless retain all sums paid by Optionee to the Authority pursuant to paragraph 4 as consideration for granting this option.

10. Other Terms and Conditions of the Lease Agreement. The Lease Agreement will also provide that:

1.1. Optionee will pay all *ad valorem* property taxes and special assessments, if any, levied against the Option Property during the term of the Lease.

1.2. Optionee shall maintain and insure the Option Property and any improvements thereon at Optionee’s sole expense.

1.3. The Authority may terminate the Lease Agreement for non-payment of rent or material violations of the lessee’s representations, warranties and covenants thereunder, but only upon notice of default and failure of the lessee to cure monetary defaults within 15 days or failure to cure non-monetary defaults within 30 days. However, lessee shall not be in default for violation of any non-monetary representation, warranty and covenant if it can be cured but not within a period of 30 days if lessee has (i) notified lessor in writing of intention to cure the subject of the notice; (ii) commenced curing such condition within such 30 day period; and (iii) continuously and diligently worked to cure such condition provided the condition is capable of being cured within one year and is, in fact, cured within one year.

11. Reservations. Notwithstanding anything to the contrary in this Agreement, the Agreement and the Lease Agreement are subject to the following reservations and restrictions:

The Authority reserves the right to use as much of the Option Property as is necessary to lay mains for gas, water or sewers on the Option Property, to lay underground electrical or telephone lines across any part of the Option Property, and to lay, or grant easements or rights of way for the laying of, underground fiber optic lines or cables across the Option Property; provided however, that if Optionee leases the Option Property, the Authority’s use of the Option Property pursuant to the reservations in this paragraph 11 shall not interfere with Optionee’s improvements or Optionee’s use of the Option Property.

12. Representations, Warranties and Covenants. Except as otherwise provided in this paragraph or paragraph 11, the Authority agrees not to sell, lease or otherwise encumber the Option Property during the Term of this Agreement without the written consent of Optionee. Authority may, however, during the Term of this Agreement, without Optionee's consent, make temporary use of the Option Property for any lawful purpose and the Authority may, without Optionee's consent, lease all or any portion of the Option Property for lease terms which terminate on or before the date Optionee exercises this option. The Authority and Optionee each warrants to the other that its entering into this Agreement and the Lease Agreement are all within its authority, does not violate any agreement to which it is a party, and does not require the consent of any other person.

13. Notices. Notices required to be given to either Party may be given by certified first-class mail or by fax, to the appropriate Party at its address or fax number, listed below. Notice may also be given by any other reasonable means. In all cases, notice will be considered delivered when received at the address stated for the addressee's receipt of notice. Either Party may change the address or fax number for notice by giving the other Party written notice as provided in this paragraph. The addresses for Notices are as follows:

If to Authority:

Port of Corpus Christi Authority  
Attention: Executive Director  
P.O. Box 1541  
Corpus Christi, TX 78403  
Fax: 361-882-7110

If to Optionee:

Millennium Bulk Logistics, Inc.  
Attention: General Counsel  
170 S. Main Street, Suite 700  
Salt Lake City, Utah 84101  
Fax: 801-539-3789

14. Entire Agreement. This Agreement contains the entire agreement between the Parties relating to the option granted in this Agreement. Any oral representations or modifications concerning the option made by either Party before or after the execution of this Agreement have no force. This Agreement may be altered or amended in the future by written agreement of the Parties.

15. Attorney's Fees. In any action to enforce this Agreement, the prevailing Party is entitled to recover reasonable attorney's fees from the other.

16. Binding Effect. This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of the Parties to the Agreement.

17. Texas Law to Apply. This Agreement is to be construed under Texas law, and all obligations of the Parties are performable in Nueces County, Texas.

18. Legal Construction. If any one or more of the provisions of this Agreement are held to be invalid, illegal, or unenforceable in any respect for any reason, the invalidity, illegality, or unenforceability will not affect any other provision of the Agreement, which will be construed as if the invalid, illegal, or unenforceable provision had never been included.

[The signature page of this Agreement follows this page.]

Executed effective as of the Effective Date.

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

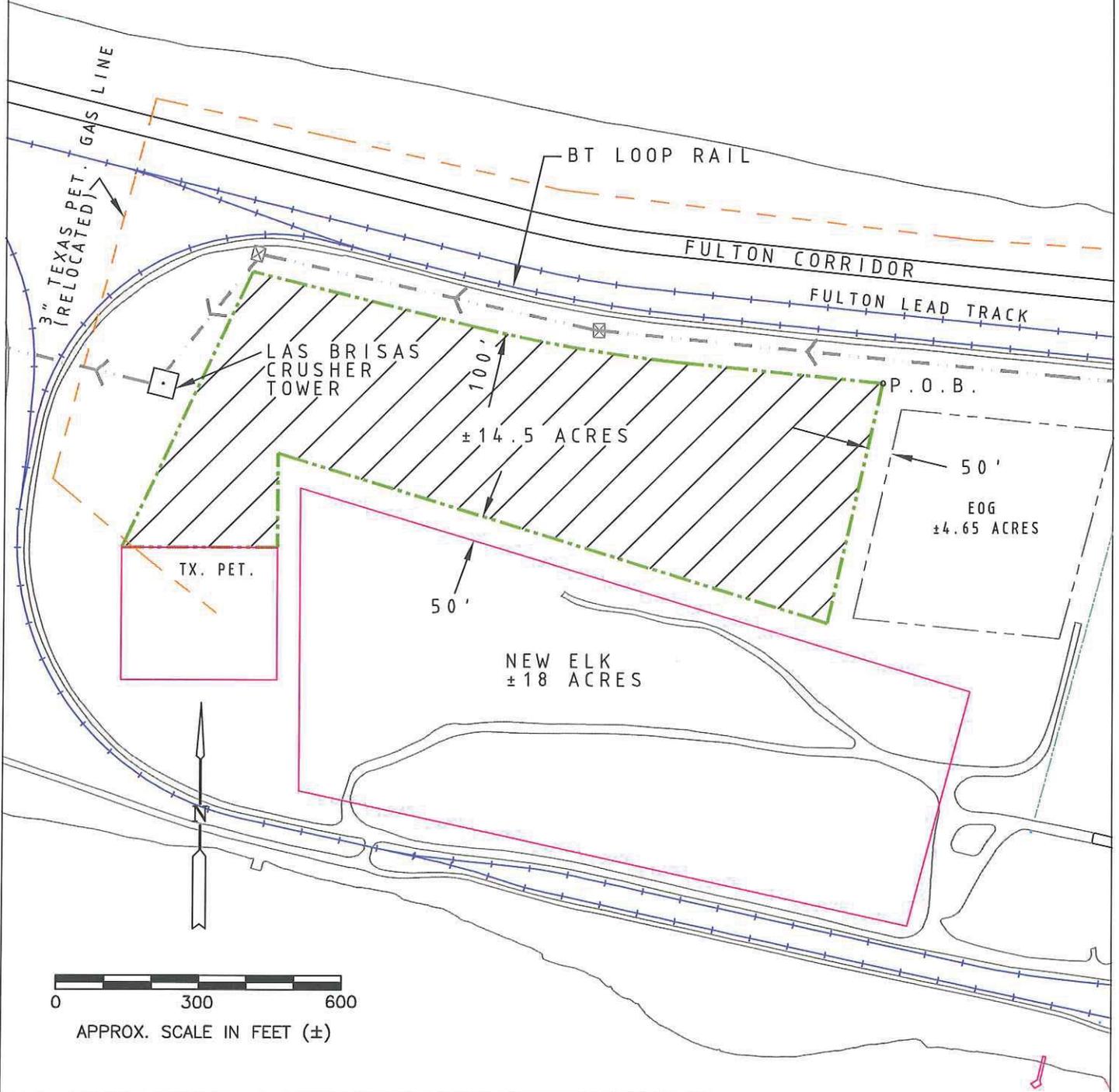
By: \_\_\_\_\_  
John P. LaRue, Executive Director

**MILLENNIUM BULK LOGISTICS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_

DRAFT

NUECES BAY



NO.	DATE	REVISION

**PORT CORPUS CHRISTI**

**PORT OF CORPUS CHRISTI AUTHORITY**

**MILLENNIUM BULK LOGISTICS**

SCALE: AS SHOWN	EXHIBIT A	DATE: APRIL, 2011
DWN. BY: RALPH		