



Port of Corpus Christi

Regular Meeting

Tuesday, February 14, 2012 9:00 AM

Port of Corpus Christi
Regular Meeting
Tuesday, February 14, 2012 - 9:00 AM
Congressman Solomon P. Ortiz International Center, 402 Harbor Drive, Corpus Christi, Texas.

AGENDA

1. Call meeting to order and receive Conflict of Interest Affidavits.
2. Approve the minutes of the January 10 and January 16, 2012 Commission meetings. 5
3. Receive comments from the public. ***(Each speaker will be limited to three minutes)***
4. The Chairman will appoint the members of the Commission's standing and special committees and the chair of each. 15
5. Receive an update on Naval Station Ingleside. 16
6. Review and approve changes to the 2012 Operating & Capital Expenditures Budget. 17
7. Discuss regional maritime security. 18
8. Take action regarding the best method for procuring electrical services and delegate certain authority to the Selection Committee. 19
9. Approve an Interlocal Agreement between PCCA and the San Patricio County Rural Rail Transportation District for acquisition of rail rights-of-way for the Gregory Rail Relief Route and LaQuinta Rail Access Project. 21
10. Approve resolution in support of legislation to extend the renewable energy production tax credit. 28
11. Approve the following agreements between PCCA and Plains Eagle Ford Pipeline LLC, concerning the Viola Barge Mooring Dock: (1) a Barge Dock Improvement and Use Agreement, and (2) a Frequent Users Agreement. 29
12. Approve a Railroad Switching Agreement with Corpus Christi Terminal Railroad, Inc., for switching services at the Bulk Terminal. 73
13. Consent Agenda. The Port Commissioners have been furnished with supporting documentation and staff's recommendation for each of the following items. All Consent Agenda items will be approved, in accordance with the respective staff recommendations, by one vote without being discussed separately unless a Port Commissioner requests otherwise:
 13. A. Approve a contract with R.E. Rabalais Constructors Ltd., dba Rabalais I&E Constructors, the lowest and best bidder based upon bids received on January 24, 2012 for Security Grant 8 North Bank Open Storage Area and North Cargo Storage Area Security Improvements. 85
 13. B. Approve a contract with Russell Marine, LLC, the lowest and best bidder based upon bids received on February 3, 2012 for hoist, foundations and gangway support at Oil Dock 11. 88
 13. C. Approve a contract with Russell Marine, LLC, the lowest and best bidder based upon bids received on February 3, 2012 for Oil Dock No. 6 fender upgrades and breasting/mooring structure replacement. 91
 13. D. Approve a contract with Access Ford, Grapevine Dodge Chrysler Jeep, 94

and Sames Ford Lincoln, the lowest and best bidder based upon bids received on February 3, 2012, for purchase of vehicles.	
13. E. Approve the additional one-year renewal option in the current contract with Susser Petroleum for the purchase of bulk fuel.	97
13. F. Approve a Boundary Acknowledgment and Use Restriction Agreement between PCCA and Charles L. and Sheron Rogers for a 3.851-acre tract of land in Ingleside Cove.	99
13. G. Approve Change Order 4 with Safenet Services, LLC, to install a crash-rated security gate at the north side Security Access Facility.	103
13. H. Approve a Professional Services Purchase Order with Govind Development, LLC for Engineering Services for the design of the Viola Barge Dock Upgrades.	106
13. I. Approve a Lease Agreement with John Bludworth Shipyard, LLC for an 11.634-acre lease located on the north side of the Inner Harbor.	108
13. J. Approve the renewal of an Easement Agreement with Flint Hills Resources Corpus Christi, LLC for four pipelines located at Oil Docks 8 and 9.	145
13. K. Approve a Management Agreement with Ovations Food Services for management of the Congressman Solomon P. Ortiz International Center.	158
13. L. Approve a Freight Handler License for Gulf Coast Limestone.	159
14. 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.	163
15. Receive 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.	164
16. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the purchase of real property in the vicinity of the Inner Harbor.	165
17. The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to consult with its attorney regarding Complaints filed against PCCA before the Federal Maritime Commission by CITGO Refining & Chemicals Company L.P. and Valero Refining - Texas, L.P.	166
18. The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to consult with its attorney regarding the Corps of Engineers Jurisdictional Determination for Wetlands and Waters on PCCA's undeveloped 467.5 acre tract of upland and submerged land adjacent to the western boundary of the former Naval Station Ingleside.	167
19. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the value of PCCA's property on Ingleside Point in San Patricio County, which includes the former Naval Station Ingleside Main Base and 435 acres of undeveloped land adjacent to the western boundary of the former base, and the terms and conditions on which PCCA would sell or lease all or part of this property.	168
20. Adjourn	

JANUARY 10, 2012

The Port Commissioners of the Port of Corpus Christi Authority met in regular session on Tuesday, January 10, 2012 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. Mike Scott
Mr. Robert Kostelnik
Mr. Al Jones
Mr. Charles Zahn

Present:

Mr. John P. LaRue
Mr. Frank Brogan
Mr. Sandy Sanders
Mr. Tony Alejandro
Mr. Arch Archambo
Mr. Greg Brubeck
Ms. Patricia Cardenas
Ms. Sandra Davis
Mr. Dennis DeVries
Ms. Audre Debler
Ms. Lynn Angerstein
Mr. Bland Chamberland
Ms. Sherry DuBois
Mr. Gustavo Espinosa
Mr. David Krams
Ms. Sonya Lopez-Sosa
Mr. Ruben Medina
Mr. Dave Michaelson
Ms. Nelda Olivo
Mr. Bert Perez
Mr. Dave Throop
Ms. Maggie Turner
Mr. Eddie Martinez
Ms. Peggy Mettlen
Mr. Bennie Benavides
Mr. Jesse Samu

Others Present:

Mr. Leo J. Welder, Jr.

Others Present:

Ms. Connie Scott
TX State Rep

Mayor Pete Perkins
City of Ingleside
Mr. Don Rodman
Rodman & Associates
Mr. Mo Morehead
Ms. Nancy Zuniga
MDR
Ms. Betsy Carrell
Citizen
Mr. Tom Curlee
Port Industries of CC
Mr. Tom Moore
Consultant
Capt. Bobby Grumbles
Aransas/CC Pilots Assn.
Mr. George Clower
Mr. Tim Clower
Mr. Larry Ramming
Mr. Dick Fuqua
Mr. Paul McConnell
Canyon Supply & Logistics
Mr. Jeff Greenwalt
Diversity Max
Mr. Pat Veteto
RVE, Inc.
Mrs. Charles Zahn
Citizen
Mr. Harry G. Plomarity
Citizen
Mr. Rick DuPriest
WL Bates
Capt. John Pasch
US Coast Guard
Ms. JoAnn Ehmann
Ingleside on the Bay
Mr. Steven Williams
Kiewit
Ms. Josephine Miller
San Patricio EDC
Mr. Chuck Bogk
ILA #26
Mr. Jim Rimbey
ZEP
Ms. Nancy Allen
USO

Mr. Lillian Riojas
Valero Refining
Mr. Larry Elizondo
CITGO Refining
Mr. Terry Arnold
Citizen
Mr. Phil Gaarder
Flint Hills Resources
Mr. Kevin Kauk
Ms. Katie Stanhoha
Koch
Ms. Susan Fest
BOMA Corpus Christi
Ms. Katie Roberts Verhels
CB Herald
Mr. Fred Nardini
San Patricio County
Ms. Ann Vaughan
Ms. Debra Williams
Port Aransas Chamber of Commerce
Mr. Xavier Valverde
Kiewit
Mr. Daniel Korrs
Del Mar
Ms. Lara Paul
Mr. Dan Loesema
CH2MHill
Ms. Lori Lynares
Ovations Food Service
Mr. Joe Wheless
ValueBank Texas
Mr. Roland Mower
Mr. John Plotnick
CC Regional EDC

I.

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

II.

On motion made by Ms. Hawley and seconded by Mr. Scott, the minutes of the December 13, 2011 and January 3, 2012, Commission meetings were approved, in the form presented to the meeting.

III.

Judge Loyd Neal administered the Oath of Office to newly appointed Port Commissioners Al Jones and Charles Zahn, and reappointed Port Commissioner Richard Borchard. Chairman Carrell also asked for Conflict of Interest Affidavits from the new Commissioners. None were submitted.

IV.

Mr. Scott moved the election of the following officers for 2012: Mike Carrell – Chair, Richard Borchard – Vice Chair, Judy Hawley – Secretary. Mr. Zahn seconded the motion, and the motion passed.

V.

Chairman Carrell asked for comments from the public. Those commenting were Mr. Larry Ramming with Canyon Supply & Logistics, and Mr. Jeff Greenwalt of Diversity Max, both speaking in reference to the Naval Station Ingleside contract. Ms. Ann Vaughan with the Port Aransas Chamber of Commerce congratulated the new Commissioners.

VI.

The Commission received a presentation from Flint Hills Resources on the small craft pier project at the former site of Naval Station Ingleside.

VII.

The Commission received a presentation on PCCA's Rail Master Plan.

VIII.

On motion made by Ms. Hawley and seconded by Mr. Borchard, the Commission approved the 2012 annual contribution to the Workers Compensation Fund of the Texas Municipal League – Intergovernmental Risk Pool in the amount of \$91,602.96, a 37.35% reduction from 2011.

IX.

Action to award a contract for review of PCCA's total compensation based on the evaluation of proposals submitted in response to PCCA's Request for Proposals for Total Compensation Review was postponed until a later date. No action was taken on this item.

X.

On motion made by Mr. Kostelnik and seconded by Ms. Hawley, the Commission approved, in the form presented to the meeting, a Professional Services Purchase Order with HDR Engineering, Inc., in an amount not to exceed \$300,000, to perform services associated with PCCA's asking the Federal Government to assume the operation and maintenance of the La Quinta Channel Extension after it is constructed to -45 feet.

XI.

On motion made by Mr. Borchard and seconded by Mr. Zahn, the Commission approved, in the form presented to the meeting, a Memorandum of Agreement with the Department of the Army to provide technical expertise and oversight reviews for the Federal Assumption of Operations and Maintenance for the non-Federal deepening of the La Quinta Channel Extension.

XII.

On motion made by Ms. Hawley and seconded by Mr. Jones, the Commission authorized staff to proceed with contract negotiations with Ovations Food Services for Management Operator of the Congressman Solomon P. Ortiz International Center ("Ortiz Center") based on evaluation of proposals submitted in response to PCCA's Request for Proposals for future use and operation of the facility. Staff will come back to the Commission in February for final approval of the contract.

XIII.

On motion made by Mr. Zahn and seconded by Mr. Borchard, the Commission approved, in the form presented to the meeting, the second reading of a Franchise granting Canyon Supply & Logistics, LLC the right to access Corpus Christi Bay from navigation-related improvements on the part of Naval Station Ingleside Canyon is acquiring from PCCA and related rights.

XIV.

On motion made by Mr. Kostelnik and seconded by Ms. Hawley, the Commission approved, in the form presented to the meeting, the ratification of the Agreement Regarding Lease Agreement dated December 16, 2011 with New Elk Coal Company, LLC and Computershare Trust Company of Canada.

XV.

On motion made by Mr. Kostelnik and seconded by Mr. Borchard, the Commission approved, in the form presented to the meeting, a first amendment to a lease agreement dated February 8, 2011 with the New Elk Coal Company, LLC.

XVI.

On motion made by Mr. Borchard and seconded by Mr. Kostelnik, all items on the consent agenda were unanimously approved, in accordance with the respective staff recommendations furnished to the Commissioners at the meeting, by one vote without being discussed separately. These items were as follows:

- A.** Approve a Professional Services Purchase Order with RVE Inc. for design and project management for Security Grant 8.
- B.** Approve a Professional Services Purchase Order with RVE Inc. for design and project management for Security Grant 9.

XVII.

The Executive Director reported on the following during his report: Update on rail, LaQuinta, and Harbor Island projects.

XVIII.

Chairman Carrell asked for comments from the Commissioners.

At 10:59 a.m., the Chairman announced that the Commission would go into executive session pursuant to §551.071, §551.072 and §551.074 of the Texas Government Code to deliberate agenda items 19, 20, 21 and 22.

At 2:35 p.m., the Commission meeting reconvened in open session.

XIX.

On motion made by Ms. Hawley and seconded by Mr. Scott, the Commission approved a request from Kiewit Offshore Services, Ltd. for proposed dredging activities by Kiewit pursuant to USACE Permit No. SWG-201-02106 which would widen the La Quinta Channel by 30 feet from Kiewit's facility on the La Quinta Channel to the junction of the La Quinta Channel and the Corpus Christi Ship Channel.

XX.

The following item was for Executive Session only: Deliberate the purchase of real property in the vicinity of the Inner Harbor.

XXI.

The following item was for Executive Session only: Complaints files against PCCA before the Federal Maritime Commission by CITGO Refining & Chemicals Company L.P. and Valero Refining – Texas, L.P.

XXII.

The following item was for Executive Session only: Deliberate the terms of employment of PCCA's Executive Director, Deputy Port Director of Engineering, Finance and Administration, and Deputy Port Director of Operations, Business Development and Communications.

XXIII.

There being no further business, the meeting adjourned at 12:36 p.m.

JANUARY 16, 2012

The Port Commissioners of the Port of Corpus Christi Authority met in special session on Monday, January 16, 2012 at 10:00 a.m., at the Ruben Bonilla Center for Global Trade located at 222 Power Street, Corpus Christi, Texas.

Present: Mr. Mike Carrell
Mr. Richard M. Borchard
Mr. Mike Scott
Mr. Al Jones
Mr. Charles Zahn

Absent: Ms. Judy Hawley
Mr. Robert Kostelnik

Present: Mr. John P. LaRue
Mr. Frank Brogan
Mr. Sandy Sanders
Mr. Arch Archambo
Mr. Greg Brubeck
Ms. Patricia Cardenas
Ms. Sandra Davis
Mr. Dennis DeVries
Mr. Ruben Medina
Mr. Darrin Aldrich
Ms. Nelda Olivo
Mr. Eddie Martinez

Ms. Peggy Mettlen
Mr. Jesse Samu

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

Others Present: Mr. Larry Ramming
Mr. Dick Fuqua
Mr. Mike Castro
Mr. Tim Clower
Canyon Supply & Logistics
Mr. Tom Moore
Consultant
Mr. Rick DuPriest
WL Bates
Mr. Pete Perkins
Mr. Paul Baen
City of Ingleside

Ms. JoAnn Ehmann
Ingleside on the Bay
Mr. Mike Smith
Caller-Times
Mr. S. Molina
AIT Marine
Mr. Joe Fulton
Fulton Construction
Ms. Amanda Tores
Ms. Krystal Perez
Ingleside Index
Mr. Chris Mabriz
Mr. Rudy Trevino
KIII-TV
Mr. Fred Dotts
Ms. Nancy Zuniga
Morehead Dotts
Ms. Mia Gordon
KRIS-TV
Mr. Robert Tamez
LNV
Mr. Roger TenNapel
Flint Hills Resources
Mr. John Plotnik
CC Regional EDC
Mr. Tom Curlee
Port Industries

I.

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

II.

The Chairman asked for comments from the public. Mr. Larry Ramming updated the Commission on the status of the down payment funds for the purchase of NSI.

III.

The Commission verified that as of the time of the meeting Canyon Supply & Logistics, LLC (“Canyon”), had not delivered the cash portion of the purchase price required under the Surplus Property Installment Sales Agreement dated November 8, 2011, by and between PCCA and Canyon, as amended (“Sales Contract”). Therefore, on motion made by Mr. Borchard and seconded by Mr. Zahn, the Commission authorized the Executive Director to give notice of this

default to Canyon, which would have the effect of terminating the Sales Contract upon delivery of the notice to Canyon. The motion passed unanimously.

IV.

On motion made by Mr. Zahn and seconded by Mr. Scott, the Commission accepted and ratified, in accordance with staff's recommendation given to the Commissioners at the meeting, CITGO's change to Section 3 of the Franchise granting CITGO Refining and Chemicals Company, L.P., the right to cross the south bulkhead line of the Industrial Canal from CITGO Docks 1 and 2 and related rights and authorized the Chairman to initial the change. The motion passed unanimously.

V.

On motion made by Mr. Zahn and seconded by Mr. Scott, the Commission accepted and ratified, in accordance with staff's recommendation given to the Commissioners at the meeting, CITGO's change to Section 3 of the Franchise granting CITGO Refining and Chemicals Company, L.P., the right to cross the south bulkhead line of the Tule Lake Channel from CITGO Docks 3 and 6 and related rights and authorized the Chairman to initial the change. The motion passed unanimously.

VI.

On motion made by Mr. Jones and seconded by Mr. Zahn, the Commission accepted and ratified, in accordance with staff's recommendation given to the Commissioners at the meeting, CITGO's change to Section 3 of the Franchise granting CITGO Refining and Chemicals Company, L.P., the right to cross the south bulkhead line of the Industrial Canal from CITGO Dock 7 and related rights and authorized the Chairman to initial the change. The motion passed unanimously.

VII.

There being no further business, the meeting adjourned at 10:15 a.m.

AGENDA ITEM NO. 4

No Attachment

AGENDA ITEM NO. 5

No Attachment

AGENDA ITEM NO. 6

No Attachment

AGENDA ITEM NO. 7

No Attachment

Second Phase

- Confirm that the electrical services contracts of the short-listed respondents are in acceptable legal form;
- Request executable pricing from all short-listed respondents;
- Review executable pricing; and
- At the March 13 commission meeting, the Commission will either (a) award the electrical services contract to the short-listed respondent with the lowest executable price on that date, or (b) authorize the executive director to execute the electrical services contract on any date thereafter with the short-listed respondent with the lowest executable price on that date.

Our current contract price with GEXA is \$0.0712 per kWh plus a pass-through charge of \$0.0448 per kWh from AEP for a total cost of approximately \$0.1160 per kWh. Staff anticipates that the upcoming contract price for the electrical commodity (only) will not exceed \$0.05 per kWh. Based on an estimated annual consumption of 8,140,000 kilowatt hours, the same pass-through transmission and distribution pricing, and an estimated electrical commodity price of \$0.05 per kWh, our total cost should be approximately \$772,000 per year for the next three years. This projected cost excludes costs for the former Naval Station Ingleside and the Cold Storage Facility. PCCA spent approximately \$993,000 on those two facilities in 2011. Sam Kane Beef took over the electricity costs for the Cold Storage Facility in September 2011, and the RFP did not include NSI in order to allow flexibility in the termination of NSI's electrical accounts should a sale opportunity arise. The remaining electricity costs for 2011 were \$878,000.

In the opinion of staff, of the methods available to PCCA for acquiring electrical services, the RFP process outlined above provides the best value for PCCA because it will result in the lowest price per kWh and most favorable contract terms. Staff recommends that the Port Commission concur with this opinion and delegate to the selection committee the authority described in the RFP process above.

This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director



John P. LaRue
EXECUTIVE DIRECTOR

February 14, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charles Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 9***
**Approve an Interlocal Agreement Between the PCCA and the
San Patricio County Rural Rail Transportation District for
Acquisition of Rail Rights-of-Way for the Gregory Rail Relief
Route and La Quinta Rail Access Project**

Dear Commissioners:

In order to improve rail access to the PCCA's proposed La Quinta Intermodal Terminal, the PCCA needs to acquire right-of-way for construction of a relief route and additional rail access around the town of Gregory. Staff has discussed this need with the Board of Directors of the San Patricio County Rural Rail Transportation District. The Rail District is supportive of this goal and has expressed an interest in helping the PCCA acquire the necessary rights-of-way.

Staff prepared the attached Interlocal Agreement between the PCCA and the San Patricio County Rural Rail District which outlines the right-of-way acquisition process and the responsibilities of both parties. The Rail District will prepare a plan and budget for the right-of-way acquisition process, which will be brought back to the Port Commission for approval at a later date.

Port staff recommends approval of this Interlocal Agreement. The Rail District approved this agreement on January 13, 2012. This item is included on the agenda of the December 13, 2011 commission meeting for your consideration and action. If you have any questions, please contact me.

Sincerely,

John P. Baker

John P. LaRue
Executive Director

Attachment

JB 1-23-12

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF CORPUS CHRISTI AUTHORITY AND THE
SAN PATRICIO COUNTY RURAL RAIL TRANSPORTATION DISTRICT
FOR ACQUISITION OF RAIL RIGHTS-OF-WAY FOR THE
GREGORY RAIL RELIEF ROUTE AND LAQUINTA RAIL ACCESS PROJECT**

This AGREEMENT ("Agreement") is made and entered into pursuant to the Interlocal Cooperation Act (Tex. Gov't Code, Ch. 791) by and between the SAN PATRICIO COUNTY RURAL RAIL TRANSPORTATION DISTRICT (the "Rail District"), duly authorized by action of its governing body, and PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS ("PCCA"), duly authorized by its Port Commission. The Rail District and PCCA are collectively referred to herein as the "Parties," and are sometimes referred to herein individually as a "Party."

RECITALS

WHEREAS, PCCA is developing an intermodal terminal on PCCA's LaQuinta Trade Gateway property in San Patricio County (the "Intermodal Terminal"); and

WHEREAS, existing rail access to the Intermodal Terminal runs through the City of Gregory; and

WHEREAS, PCCA and the Rail District believe that the Intermodal Terminal would be better served by a new rail line which relieves traffic congestion in the City of Gregory and provides increased rail access to the LaQuinta Trade Gateway property (the "LaQuinta Rail Project"); and

WHEREAS, PCCA and the Rail District have determined that the LaQuinta Rail Project would improve public safety, expedite rail access to the Intermodal Terminal, reduce congestion in the City of Gregory, and increase the viability of the Intermodal Terminal, which will create jobs and promote growth in the region; and

WHEREAS, easements, rights-of-way, and other interests in land must be acquired for the construction and operation of the LaQuinta Rail Project (collectively, the "Land Interests"); and

WHEREAS, the LaQuinta Rail Project will be constructed and located on the Land Interests; and

WHEREAS, PCCA and the Rail District, exercising their mutual authority and furthering their mutual interests, wish to enter into this Agreement in order to most efficiently and quickly obtain the Land Interests necessary for the LaQuinta Rail Project;

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NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, PCCA and the Rail District mutually undertake, promise and agree as follows:

ARTICLE 1 AQUISITION OF LAND INTERESTS

1.1 Plan for Acquisition of Land Interests. PCCA has engaged an engineering firm to evaluate various routes for the LaQuinta Rail Project. Based on information provided by the engineering firm, PCCA and the Rail District will develop a plan for acquisition of the Land Interests along the preferred route. Acquisition may be by purchase, administrative settlement, or condemnation.

1.2 Acquisition of Land Interests. The Rail District shall, as soon as possible after approval of the plan described in Section 1.1, and subject to the receipt of sufficient funds from the PCCA, undertake the acquisition of the Land Interests. Each deed, easement, or other evidence of an interest in real property relating to any portion of the Land Interests shall include a provision that it is assignable to or otherwise transferrable to PCCA pursuant to the provisions of this Agreement. The Rail District shall inform PCCA of its intention to acquire each portion of the Land Interests and shall not acquire any such portion without the approval of the PCCA. Negotiations and settlement with the property owners will be the responsibility of the Rail District without participation by PCCA. Condemnation proceedings will be initiated at a time selected by the Rail District and will be the Rail District's responsibility. The Rail District may file condemnation proceedings in the name of PCCA, if the Parties agree that is advisable, and PCCA shall have the right, in its sole discretion, to become a party to any of these condemnation proceedings for all purposes, including the right of appeal at any stage of the proceedings.

1.3 Recordation of Instruments. The Rail District shall be responsible for ensuring that proper filings of each instrument conveying a portion of the Land Interests are made in the deed records of San Patricio County to ensure that all interested parties have proper notice of the Rail District's and PCCA's interests in the Land Interests. As each deed, easement, or other evidence of an interest in real property comprising a portion of the Land Interests is acquired by the Rail District, a copy of such instrument, together with evidence of its filing in the deed records of San Patricio County, shall be given to the PCCA.

1.4 Title Insurance. The Rail District shall acquire a title insurance policy or title opinion showing good and marketable title with respect to each portion of the Land Interests acquired. Each such title insurance policy or title opinion shall include the PCCA as an insured party under the policy or as an addressee of such opinion, as the case may be. A copy of each such title insurance policy or title opinion shall be given to the PCCA.

1.5 Conveyance of Land Interests. Upon termination of this Agreement pursuant to Section 3.2 hereof, all of the Rail District's right, title, and interest of every nature whatsoever in and to the Land Interests shall automatically vest in PCCA without the necessity of the execution of any conveyance by the Rail District, and such transaction shall result in the automatic sale and

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delivery of the Land Interests by the Rail District to PCCA, and the vesting of title to the Land Interests in PCCA, in consideration of the performance of PCCA's covenants and agreements contained herein. The Rail District will execute and deliver to PCCA a special warranty deed acknowledging that such sale, delivery, and vesting of title has occurred, but such instrument shall not be necessary to effect the automatic sale, delivery, and vesting of title, which shall occur as described above.

ARTICLE 2 FINANCING OF ACQUISITION

2.1 Budget for Acquisition of Land Interests. The Rail District's acquisition of the Land Interests will be financed by PCCA, inasmuch as PCCA will be the ultimate owner of the Land Interests. The Rail District and PCCA shall develop a mutually agreeable budget for acquisition of the Land Interests, which shall include the estimated purchase price of the Land Interests ("Land Costs") and the estimated reasonable and necessary fees and expenses that the Rail District will incur in acquiring the Land Interests ("Fees and Expenses"). Fees and Expenses include, but are not limited to, (i) fees payable for professional services rendered to or on behalf of the Rail District in connection with the acquisition of the Land Interests, (ii) the salaries of the Rail District's staff or temporary employees attributable to the LaQuinta Rail Project based on time expended, as documented, without markup, and (iii) out-of-pocket expenses attributable to the LaQuinta Rail Project. PCCA shall pay the Land Costs and Fees and Expenses from current revenues available to PCCA.

2.2 Payment of Land Costs. PCCA shall pay the Land Costs of each acquisition of Land Interests at the time the Rail District acquires the Land Interests by delivering sufficient funds to the Rail District or the title company, as may be appropriate, to cover the purchase price or value of the Land Interests being acquired.

2.3 Advance Funding of Fees and Expenses. PCCA shall pay the Fees and Expenses of the Rail District in accordance with this Section 2.3. On the Effective Date PCCA shall provide the Rail District the full amount of the funds needed to cover the Rail District's estimated Fees and Expenses for the period ending March 31, 2012. On or before the first day of each calendar quarter after the Effective Date during the term of this Agreement, PCCA shall provide the Rail District the full amount of the funds needed to cover the Rail District's estimated Fees and Expenses for the ensuing calendar quarter, less any unexpended funds from the prior periods. Funds delivered to the Rail District pursuant to this Section shall be held by the Rail District in a separate account ("LaQuinta Rail Project Account") and may only be applied to the Rail District's Fees and Expenses. If, during any calendar quarter, the balance of the funds in the LaQuinta Rail Project Account is insufficient to pay the estimated Fees and Expense for the remainder of that quarter, the Rail District will notify PCCA of the deficiency and PCCA will promptly deliver additional funds to the Rail District to cover the deficiency. Within 30 days after the end of each calendar quarter during the term of this Agreement, the Rail District shall provide PCCA with a detailed accounting of the expenditure of the funds in the LaQuinta Rail Project Account during that quarter. Within 30 days after the termination of this Agreement, the Rail District shall return to PCCA any funds advanced by PCCA for Fees and Expenses that were not needed to cover Fees and Expenses. If, upon termination of this

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Agreement, there are insufficient funds in the LaQuinta Rail Project Account to pay all the Fees and Expenses incurred by the Rail District prior to the termination of this Agreement, PCCA shall deliver additional funds to the Rail District to cover the deficiency upon receipt of an invoice from the Rail District substantiating the deficiency.

2.4 Inspection of Books and Records. The Rail District shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to PCCA for review and inspection at PCCA's office during the term of this Agreement and for four years after the termination of this Agreement or until any impending litigation or claims are resolved. Additionally, PCCA and its duly authorized representative shall have access to all of the Rail District's governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

2.5 Professional Services. The Rail District shall consult with PCCA before retaining the professional services of any attorneys, appraisers, surveyors, engineers, or independent contractors to assist the Rail District in acquiring the Land Interests.

ARTICLE 3 TERM AND TERMINATION

3.1 Term. This Agreement shall become effective the date it is signed by both Parties (the "Effective Date") and shall remain in effect until the first anniversary of the Effective Date, and it will continue in effect thereafter for successive twelve-month periods thereafter until the Agreement has been terminated in accordance with Section 3.2.

3.2 Termination. Notwithstanding anything to the contrary contained in Section 3.1, this Agreement may be terminated by either Party, with or without cause, at any time by giving the other Party written notice of such termination and the effective date thereof at least 30 days prior to the effective date of the termination specified in the notice; furthermore, this Agreement shall terminate on the date either Party notifies the other in writing that all the Land Interests have been acquired.

ARTICLE 4 GENERAL PROVISIONS

4.1 No Joint Enterprise. This Agreement is not intended to and shall not create a joint enterprise between the PCCA and the Rail District. The Parties are undertaking governmental functions under this Agreement and the purpose of the Agreement is solely to further the public good, rather than any pecuniary or proprietary purpose.

4.2 Agreement not for Benefit of Third Parties. This Agreement is made for the exclusive benefit of PCCA and the Rail District, and not for the benefit of any third party or parties.

JB 1-22-12

4.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, and it shall be performable in Nueces County, Texas.

4.4 Severability. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this Agreement shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this Agreement, for it is the intent of the Parties that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

4.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.

4.6 Amendments. No amendments, modifications or other changes to this Agreement shall be valid or effective without the written consent of the Parties.

4.7 Immunity. It is expressly understood and agreed that nothing in this Agreement waives or relinquishes the right of PCCA or the Rail District to claim any exceptions, privileges, or immunities as may be provided by law.

4.8 Notices. All notices, demands or requests from the Rail District to PCCA shall be given to the Port of Corpus Christi Authority of Nueces County, Texas, Attention: Frank C. Brogan, Deputy Port Director Engineering, Finance and Administration, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other address as PCCA shall request in writing. All notices, demands or requests from PCCA to the Rail District shall be given to the San Patricio County Rural Rail Transportation District, Attention: _____, at _____, or at such other address as the Rail District shall request in writing.

4.9 Rail District's Representative. The Rail District shall designate a representative authorized to act of its behalf with respect to the LaQuinta Rail Project. Until such time as the Rail District gives PCCA written notice to the contrary, the representative for the Rail District shall be the JAMES I. DUNN of the Rail District or such other officer or employee of the Rail District as may be authorized to act on behalf of the Rail District during the PAUSE's absence or incapacity.

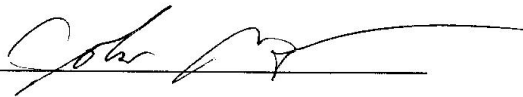
4.10 PCCA's Representative. PCCA shall designate a representative authorized to act of its behalf with respect to the LaQuinta Rail Project. Until such time as PCCA gives the Rail District written notice to the contrary, the representative for PCCA shall be its Executive Director or such other officer or employee of PCCA as may be authorized to act on behalf of the PCCA during the Executive Director's absence or incapacity.

4.11 Unusual Circumstance. It is further understood that if unusual circumstances develop in the acquisition of the Land Interests which are not clearly covered by the terms of this

Agreement, such unusual circumstances or problems will be resolved by mutual agreement between the Rail District and PCCA.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the respective dates set forth below the signature of each Party's representative.

**SAN PATRICIO COUNTY RURAL RAIL
TRANSPORTATION DISTRICT**

By: 

Date: 1-23-12

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

By: _____
Executive Director

Date: _____

RESOLUTION

**SUPPORTING EXTENSION OF THE RENEWABLE ENERGY
PRODUCTION TAX CREDIT**

WHEREAS, Congress is currently debating an extension of the renewable energy production tax credit (PTC); and

WHEREAS, the PTC has proven to be an effective tool to keep electricity rates low, encourage development of proven renewable energy projects and is the primary federal policy that is driving the growth of clean, affordable, homegrown American wind power; and

WHEREAS, if the PTC is not extended, U.S. jobs will be at risk, private investment will decline and wind manufacturing facilities will reduce production; and

WHEREAS, Texas is a leader in wind farm installations and wind power generation and the Port of Corpus Christi plays a vital role in helping South Texas emerge as the nation's capital for wind power generation; and

WHEREAS, the Port of Corpus Christi serves as the gateway for importing wind turbine equipment from overseas to the South Texas region as well as other parts of Texas and beyond; and

WHEREAS, wind turbine shipments through the Port of Corpus Christi generate revenues for a variety of businesses in maritime services and surface transportation; shipments of wind turbine equipment in a single year generated a direct impact of \$39 million in regional business revenues per year and 256 jobs; and

WHEREAS, the business activity and employment directly dependent on wind turbine shipments through the Port further create a total employment impact of 997 jobs including jobs created as a result of indirect and income-induced effects; business revenues and employment impacts support a total of \$74.7 million in household earnings in South Texas and \$7 million in regional tax collections; and

NOW, THEREFORE BE IT RESOLVED, by the Port Commission of the Port of Corpus Christi Authority hereby support the wind energy industries' ability to guarantee firm prices in long term contracts, diversify our electrical supply and provide reduced electric rates for American homes and businesses; and

BE IT FURTHER RESOLVED, by the Port Commission of the Port of Corpus Christi Authority hereby support investment in renewable energy project developments in the U.S. by passing an extension of the PTC.

ADOPTED the _____ day of _____ 2012 by the Board of Port Commissioners of the Port of Corpus Christi Authority.



February 14, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charles Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 11***
**Approve Barge Dock Improvement and Use Agreement with
Plains Eagle Ford Pipeline, LLC**

Dear Commissioners:

Plains Eagle Ford Pipeline, LLC, has expressed an interest in the Viola dock facility to facilitate their barge operations in connection with a tank facility they intend to construct on land they recently purchased near the Viola Barge Dock. The existing Viola Barge Dock facility has limited capabilities, but the 2012 budget included funds to convert the existing dock from a single-berth barge mooring area to a four fully-loaded 30,000-barrel dock. To ensure our investment in this facility, staff negotiated the attached Barge Dock Improvement and Use Agreement with Plains. Staff estimates that it will cost \$3.8 million to improve this facility, and the agreement includes a minimum guaranteed throughput clause to ensure that the upgraded facility will generate revenue over a five-year period equal to or greater than the expense to improve the facility. The agreement also allows Plains to terminate the agreement if the total cost to improve the dock exceeds \$3.8 million, and PCCA is allowed to terminate the agreement if the projected cost exceeds \$5.5 million. The facility would remain a public dock, although the agreement provides priority access for Plains during the term of the agreement.

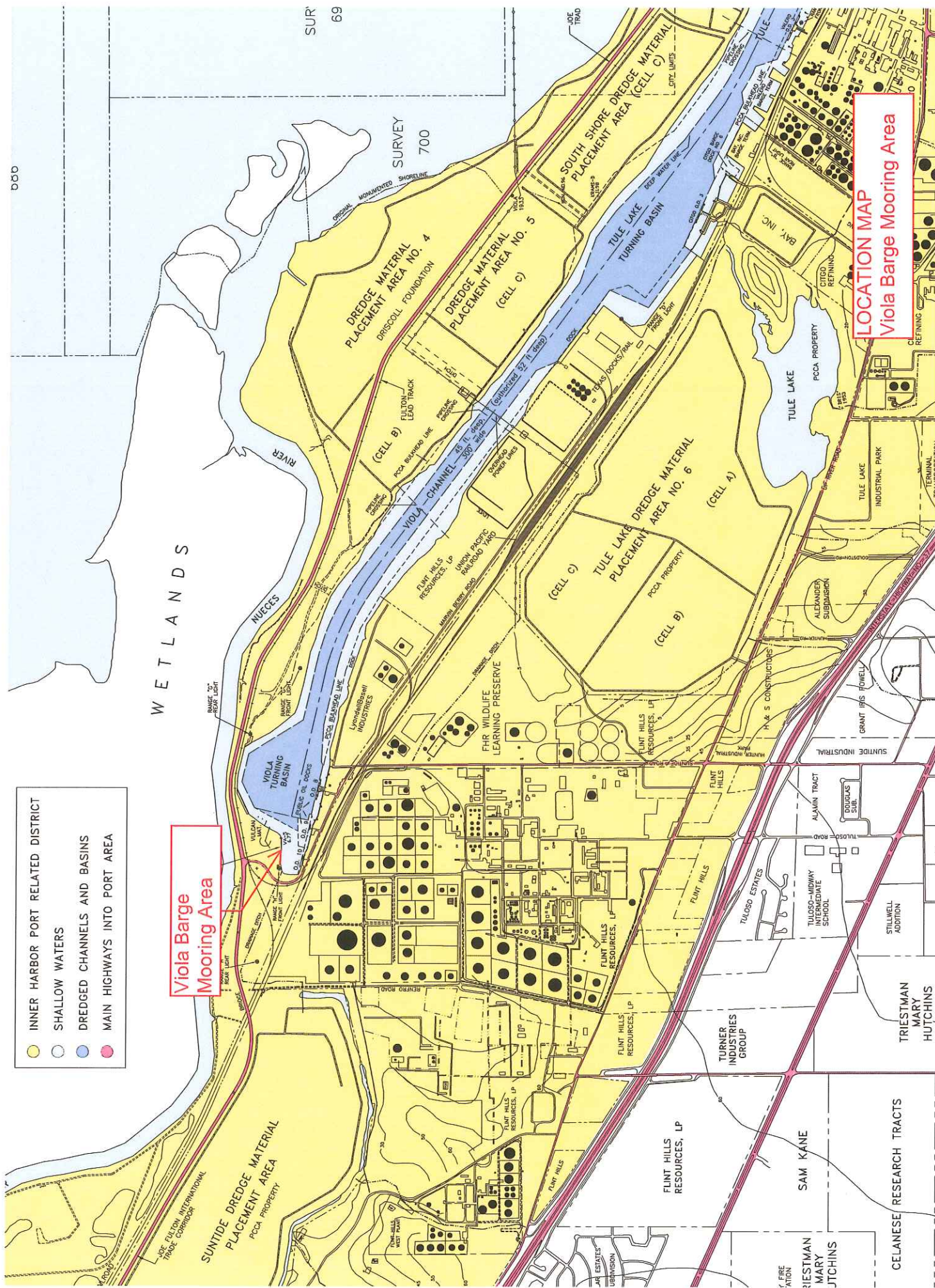
Staff has reviewed the financial capability of Plains Eagle Ford Pipeline, LLC, and is satisfied that they can adhere to the requirements of the Barge Dock Improvement and Use Agreement. Staff recommends that the Port Commission approve the attached Barge Dock Improvement and Use Agreement and allow staff to proceed with the final design. This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,

John P. ...

John P. LaRue
Executive Director

Attachment



PCCA COMMENTS 2/3/12

BARGE DOCK IMPROVEMENT AND USE AGREEMENT

Between

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

And

PLAINS EAGLE FORD PIPELINE LLC

This Barge Dock Improvement and Use Agreement (the "Agreement") dated as of the ____ day of _____, 20__ (the "Effective Date"), by and between PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS (the "Authority") and PLAINS EAGLE FORD PIPELINE LLC (the "Company")

W I T N E S S E T H:

GENERAL RECITALS AND FINDINGS

(a) The Authority is a governmental agency and body politic and corporate of the State of Texas, existing and operating as a navigation district pursuant to Article 16, Section 59 of the Texas Constitution and Chapters 60 and 62, Texas Water Code (collectively, the "Acts") whose principal place of business is Corpus Christi, Texas; and the Company is a limited liability company organized and existing under and by virtue of the laws of the State of Delaware and is fully qualified to transact business in the State of Texas whose principal place of business is Houston, Texas.

(b) This Agreement is authorized and executed pursuant to applicable laws, including the Acts.

(c) The Company, as User, and the Authority will, contemporaneous with the execution of this Agreement, execute the Viola Barge Mooring Dock User Agreement attached hereto as **Exhibit 1** (the "User Agreement") with respect to Company's use to load or unload barges at the Viola Barge Mooring Dock and the dock slip adjacent to it, which said Barge Dock and slip are owned by Authority and located in Nueces County, Texas, and which are more particularly depicted in **Exhibit A** attached to this Agreement and incorporated herein by reference.

(d) The Authority has determined that it will design and construct, based upon the terms of this Agreement, improvements to the Viola Barge Mooring Dock and the dock slip adjacent to it (the "Barge Dock Project") sufficient to accommodate the mooring of four (4) 30,000 barrel tank

barges, each barge approximately 297 feet long x 54 feet wide x 10 feet draft, moored two barges long by two barges wide, as more fully depicted in **Exhibit 2** attached hereto.

(e) Company has determined based upon the terms of this Agreement, that it will provide and install the necessary utilities and equipment improvements (the "Company Facilities") depicted in **Exhibit 2** to safely and properly load and unload Liquid Bulk Cargo to and from barges moored at the Viola Barge Mooring Dock; and that the Company shall be responsible to purchase, contract, service, and maintain the Company Facilities and provide any other services described in this Agreement to be performed by Company.

(f) The Authority has determined that the Barge Dock Project constitutes "other storage facilities", "cargo-handling facilities" and "other facilities incidental to or useful in the development of the district's ports and waterways or in aid of navigation-related commerce in the port" as those terms and phrases are used in Section 60.101 of the Texas Water Code.

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

ARTICLE 1

DEFINITIONS

Section 1.1 CERTAIN DEFINITIONS. In addition to all other words and terms defined herein, and unless a different meaning or intent clearly appears from the context, the following words and terms shall have the following meanings, respectively, whenever they are used in this Agreement:

Acts - Article 16, Section 59 of the Texas Constitution and Chapters 60 and 62, Texas Water Code, as amended.

Agreement - This Barge Dock Improvement and Use Agreement, together with all Exhibits attached to this Agreement, and all amendments and supplements to this Agreement.

Authority - Port of Corpus Christi Authority of Nueces County, Texas, a governmental agency and body politic and corporate of the State of Texas.

Authority's Dock or the Barge Dock- the Authority's Viola Barge Mooring Dock. Upon completion of the improvements by Authority and Company to the Viola Barge Mooring Dock, it will be named the Authority's "Public Oil Dock No. 5".

Business Day - A day (i) other than a Saturday or Sunday and (ii) on which banks located in the State of Texas are not closed by law or executive order.

Commencement Date - The first day of Liquid Bulk Cargo throughput (exclusive of any Liquid Bulk Cargo run through the Company Facilities to test the performance of the system) across the Viola Barge Mooring Dock, or any portion thereof, by Company or an affiliate of Company; or six (6) months following the date Authority notifies Company in writing that it has completed its Barge Dock Project, whichever occurs date occurs first.

Company – Plains Eagle Ford Pipeline LLC a limited company organized and existing under the laws of the State of Delaware and its permitted successors and assigns.

Company Facilities - The Plains Eagle Ford Pipeline connection, including, but not limited to: pumps, pipelines, combustors, manifolds, and support facilities depicted in **Exhibit 2** to this Agreement for the handling of Liquid Bulk Cargo at the Barge Dock.

Company Representative - Any person at the time designated to act on behalf of the Company in matters relating to this Agreement by written certificate furnished to the Authority, containing the specimen signature of any such person and signed on behalf of the Company by the President, any Vice President or the Treasurer, or any authorized employee of the Company. Such certificate may designate an alternate or alternates. The Company Representative may be an employee of the Company.

Cost of Construction of the Barge Dock Project - All costs (except internal costs) incurred by the Authority, for its own account, with respect to the design and construction of the Barge Dock Project.

Cost of Construction and Installation of the Company Facilities - All costs (except internal costs) incurred by the Company, for its own account, with respect to the purchase, construction and installation of the Company Facilities on the Barge Dock Project.

Liquid Bulk Cargo - crude, crude oil, gasoil, residual fuel oil and similar and related feedstock, condensate, or other processed petroleum product.

Port Commission - The governing body of the Authority.

Section - Any subdivision of this Agreement designated by Arabic numerals.

Specifications - The drawings, plans and written descriptions contained in the Contract Documents for each Contractor's contract for the Barge Dock Project and the purchase, construction and installation of the Company Facilities on the Barge Dock Project.

Term - The Term of this Agreement begins on the Effective Date and ends five years after the Commencement Date defined in Article I, Section 1-1.

ARTICLE 2

REPRESENTATIONS

Section 2.01 REPRESENTATIONS BY AUTHORITY. The Authority makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Authority is a governmental agency, body politic and corporate of the State of Texas and a "district" within the definition set forth in the Acts.

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

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

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

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

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

Section 2.02 REPRESENTATIONS BY COMPANY. The Company makes the following representations as the basis for the undertakings on its part herein contained: It is a limited liability company duly organized under the laws of the State of Delaware; it is duly qualified to do business in the State of Texas; it is not in violation of any provisions of the laws of the State of Texas in a manner which materially impairs the Company's ability to perform its obligations hereunder; it is fully empowered to enter into and perform all agreements on its part herein contained; it has been authorized to enter into and deliver this Agreement in accordance with its governing documents and applicable state law; and the execution and delivery by it of this Agreement and the performance of the agreements herein contained do not contravene any provision of its governing documents or other requirements of law or constitute a material default under any existing agreement, indenture, mortgage, loan agreement, commitment or any other existing agreement of any kind to which it is a party or by which it is or may be bound.

ARTICLE 3

THE BARGE DOCK PROJECT

Section 3.01 DESIGN, ENGINEER'S OPINION AND COMPANY'S OPTION.

Authority estimated a Cost of Construction of the Barge Dock Project to be \$3.8 Million, and this amount is used as the basis for the Minimum Guaranteed Throughput stated in Article 4. Authority will promptly after the date this Agreement is executed obtain the services of a qualified Engineer (the "Engineer"), reasonably acceptable to Company, to perform engineering services including, but not limited to, the Preliminary Design Phase, surveying, geotechnical studies, and the Final Design Phase as outlined in Authority's Barge Dock Project. Once the Final Design Phase is complete, Authority will obtain competitive sealed bids for construction of the Barge Dock Project in accordance with Chapter 60, Texas Water Code and Authority's Project Manual.

Within ten (10) days after the bids are opened, Authority will determine a revised Cost of Construction of the Barge Dock Project which will include costs to date for any planning, surveying, permitting, engineering, design and construction services for the Barge Dock Project, plus the amount of the recommended contract award to the successful bidder, and associated improvements for access to the Barge Dock, plus 5% of the recommended contract awards for contingencies. The Minimum Guaranteed Throughput will be adjusted by changing the \$3.8 Million used as the basis for the Minimum Guaranteed Throughput in Article 4 to the revised Cost of Construction of the Barge Dock Project. Authority will notify Company in writing within ten (10) days after the bids are opened of the amount of the revised Cost of Construction, and, will also provide Company the detailed information by which Authority determined the revised Cost of Construction of the Barge Dock Project (all information provided Company pursuant to this Section 3.01 is collectively called the "Bid Information"). If the revised Cost of Construction exceeds \$3.8 million, Company has an option to terminate the Agreement within ten (10) days after notification of the revised Cost of Construction by Authority. If Company elects to terminate the Agreement the parties will have no further obligation each to the other as of the date of termination of the Agreement.

If the revised Cost of Construction of the Barge Dock Project exceeds \$5.5 million, Authority has an option to notify Company within twenty (20) days after the Bid Information is provided by Authority to Company that Authority elects to terminate the Agreement effective the date Company receives the notification of termination. If Authority elects to terminate the Agreement, the parties will have no further obligation each to the other as of the date of termination of the Agreement.

In the event neither party elects to terminate this Agreement, then final planning and construction of the Barge Dock Project will commence promptly after the Authority's option expires or when Authority notifies Company in writing that Authority will not exercise its right to terminate the Agreement.

After completion of Authority's improvements of the Barge Dock Project, a final accounting of expenses will be performed and the final Minimum Guaranteed Throughput volumes will be determined based on the formula in Section 4.01.

Section 3.02 CONSTRUCTION AND COST OF THE BARGE DOCK PROJECT.

(a) Barge Dock Project. The Authority shall construct the Barge Dock Project with all reasonable dispatch, delays incident to governmental permitting, strikes, riots, acts of God or the public enemy, or other causes beyond the reasonable control of the parties only excepted.

(b) Construction of the Barge Dock Project. The Authority shall construct the Barge Dock Project in the manner provided in this Agreement and in accordance with the description of the Barge Dock Project attached hereto as **Exhibit 2** and in the Specifications. It is agreed and understood that the Authority will enter into and execute all agreements and contracts necessary to cause the design and construction of the Barge Dock Project, and that the Authority will carry out, pay, supervise and enforce all such agreements and contracts, and will require its Contractor to provide insurance coverage on and in connection with the Barge Dock Project which insurance coverage is described in **Exhibit 3**, attached hereto and incorporated herein which will name the Company and Authority as additional insureds in all insurance policies or coverages relating to the construction of the Barge Dock Project. The Authority shall pay for the Cost of Construction of the Barge Dock Project as provided in its contract with the Contractor awarded the contract for construction of the Barge Dock Project, and permitted by the Acts. The Authority will own the improved Barge Dock.

Section 3.03 CONSTRUCTION AND COST OF THE COMPANY FACILITIES.

(a) Company Facilities. The Company shall construct the Company Facilities with all reasonable dispatch, delays incident to governmental permitting, strikes, riots, acts of God or the public enemy, or other causes beyond the reasonable control of the parties only excepted.

(b) Construction of the Company Facilities. The Company shall construct the Company Facilities in the manner provided in this Agreement and in accordance with the depiction of the Company Facilities attached hereto as **Exhibit 2** and in the Specifications. It is agreed and understood that the Company will enter into and execute all agreements and contracts necessary to cause the design and construction of the Company Facilities, and that the Company will carry out, pay, supervise and enforce all such agreements and contracts, and will require its Contractor to provide insurance coverage on and in connection with the installation of the Company Facilities as described in **Exhibit 3**, attached hereto which will name the Authority and Company as additional insureds in all insurance policies or coverages relating to the construction of the Company Facilities. The Company shall pay for the Cost of Purchase, Construction and Installation of the Company Facilities as provided in its contract with the Contractor awarded the contract for construction of the Company Facilities. Along as Company is a Frequent User of Public Oil Dock No. 5 the Company will own the Company Facilities.

(c) Company hereby grants to the Authority, its representative and Contractors all necessary and reasonable rights of ingress and egress to the installation of the Company Facilities

on the Barge Dock Project required to coordinate Authority's construction of the Barge Dock Project on the schedule to be determined by Authority and Company and their respective Contractors, and the Authority agrees that it will cooperate with the Company, its representative and Contractor so that the Barge Dock Project and the Company Facilities shall be designed and constructed as provided in this Agreement and the Specifications for the construction of the Barge Dock Project and the Company Facilities.

ARTICLE 4

THROUGHPUT GUARANTEE

Section 4.01 Minimum Guaranteed Throughput

(a) Company guarantees that it, or its affiliates, shall during each of the following five (5) years (under this Agreement, a year shall mean twelve (12) consecutive months), the first Year (the "Year") beginning with the Commencement Date, and continuing each successive Year thereafter move over Authority's Viola Barge Mooring Dock and pay Authority's then current tariff rates for each such movement, a minimum number of 42 gallon barrels of Liquid Bulk Cargo per Year (the "Minimum Guaranteed Throughput ") as follows:

Year No. 1-four (4) million barrels;
 Year No. 2-five (5) million barrels;
 Year No. 3- ten (10) million barrels;
 Year No. 4- twelve and one-half (12.5) million barrels; and
 Year No. 5- twelve and one-half (12.5) million barrels.

(b) Once Authority determines the Cost of Construction of the Barge Dock Project as described in Section 3.1, an adjustment to the Minimum Guaranteed Throughput will be calculated for each of the Years in Section 4.01 with the following example:

Revised Barrels=Original Barrel Quantity in Section 4.01 multiplied by Cost of Construction of the Barge Dock Project then divided by \$3.8 million

Example 1 (increase): Assuming Cost of Construction is \$4.8 million, adjusted Minimum Guaranteed Throughput for Year 4 would be:

12.5 million barrels X \$ 4.8 million ÷ \$3.8 million = 15,789,500 barrels

Example 2 (decrease): Assuming Cost of Construction is \$3.0 million, adjusted Throughput Guarantee for Year 4 would be:

12.5 million barrels X \$3.0 million ÷ \$3.8 million = 9,868,400 barrels

(c) Excess Volumes:

Shipments shall not be cumulative during the Term of this Agreement, except that any excess barrels for any single Year shall carry over into the next succeeding Year as a credit for the purpose of calculating the Minimum Guaranteed Throughput.

(d) Deficiency Volumes:

(1) **Deficit Barrels:** Company agrees to pay to the Authority for each Year set forth in this Section an amount equal to the total amount of Authority's then current tariff rates for each movement applied to the Minimum Guaranteed Throughput for wharfage 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 Dock designated in this Section 4.01 for such Year.

(2) **Dockage:** Company agrees to pay the amount for dockage associated with the deficit barrel throughput based on the average time at the Barge Dock and the average barrels per barge loaded or unloaded for such Year.

(3) **Current Tariffs:** The current tariff rates for each Year are the Authority's rates for the Cargo moved across Authority's Dock that are in effect on the first day of such Year.

An "affiliate," as herein used, is a corporation or other entity, the controlling interest of which is owned by the same persons, corporations, or other entities owning controlling interest in the Company.

Company 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 4.01 in order that Authority may ascertain therefrom any amounts due to Authority from Company as the Minimum Guaranteed Throughput. 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 Year a computation shall be made as to the amount of the balance of the Minimum Guaranteed Throughput payable by Company to Authority for such Year, and Company shall pay to Authority the balance of the Minimum Guaranteed Throughput due for such Year, if any, on or before the sixtieth day after the end of such Year (the "Due Date"). If Company has been unable to determine with certainty the amount of the balance of the Minimum Guaranteed Throughput payable with respect to any Year prior to the Due Date for such payment, then Company shall pay to the Authority on or before such Due Date an amount equal to Company's good faith estimate of what the balance of the Minimum Guaranteed Throughput for such Year will be. If the actual balance of the Minimum Guaranteed Throughput for the Year is different from the estimated amount paid for such Year, Company will notify the Authority of such discrepancy as soon as it is known and either Company will pay any deficiency to the Authority, or the Authority will refund any overpayment to Company, within thirty days after the date on which one of the parties notifies the other of such discrepancy. No audit may be conducted after a trailing twenty-four (24) month period from the calendar month in question.

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The covenants of this Section 4.01 are material to this Agreement, and should Company fail to satisfy such covenants, Authority may terminate this Agreement upon thirty (30) days written notice to Company.

ARTICLE 5

INDEMNITY

Company shall defend, indemnify and hold harmless Authority, its commissioners, officers, directors, managers, employees, and agents (for the purposes of this Article 5, the “Indemnified Parties”) from and against any and all expenses (including reasonable attorneys’ fees and other costs of litigation) and liabilities for, and resulting from, the sole, joint, concurrent, or comparative negligence of Company, its agents or employees (collectively, “Company Parties”), in connection with the exercise by Company 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 Company Parties and the Indemnified Parties, then Company’s obligation to the Indemnified Parties shall only extend to the percentage of the total responsibility of the Company Parties in contributing to such Indemnified Claim. In Indemnified Claims against any Indemnified Party by or for an employee of a Company Party, the Company’s indemnification obligation under this Article 5 shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Company Party under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 6

MEDIATION

Authority and Company agree they will, before taking any other legal action, including the filing of an action in State or Federal Court, attempt in good faith, to mediate in Corpus Christi, Texas, any controversy or claim arising out of or related to this Agreement before a mediator to be agreed upon by Authority and Company. Authority and Company must agree upon a mediator within fifteen (15) days after a written request for mediation by either party. If the parties cannot agree on the appointment of a mediator within fifteen (15) days, the parties shall request that the Presiding Administrative District Judge sitting in Nueces County, Texas, appoint a mediator and such appointment will be final. The mediator will schedule a mediation meeting at a time and place determined by the mediator. Authority and Company will each pay one-half of the costs of mediation to the mediator.

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ARTICLE 7

OPERATION OF THE BARGE DOCK

Authority agrees that Company has, during the Term of this Agreement, and any extension of the Term, a priority right (the "Docking Right") to use the Barge Dock which is that, except for vessels moving military cargoes at Public Oil Dock No. 5, a vessel that is bound for the Barge Dock to load or unload Liquid Bulk Cargo for the Company across the Barge Dock to or from a pipeline or storage tanks of the Company shall be scheduled by the Harbormaster to the Barge Dock ahead of any other vessel bound for the Barge Dock. The Company's Docking Right, however, does not include the right to require the Harbormaster to order a vessel moored at the Barge Dock and engaged in loading or unloading cargo from such vessel to depart the Barge Dock until after such vessel has completed its loading or unloading at the Barge Dock.

ARTICLE 8

COVENANTS, EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Default by the Company or Authority.

(a.) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "Default" under this Agreement: If for ten (10) calendar days after service by mail or otherwise to one of the parties hereto to the other of written notice of a breach or default by under any provision of this Agreement, the party receiving the notice does not or shall neglect or fail to comply with or remedy such breach or default, or if the breach or default complained of is such that it cannot be completely remedied or cured within the ten (10) day period, then the breach or default shall not be an enforceable breach or default against the party complained of if such party has commenced curing such breach or default within the 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 the Company or the Company Facilities, or the Authority or the Barge Dock Project be had in bankruptcy, reorganization, arrangement or receivership, or if any assignment shall be attempted to be made of this Agreement for the benefit of creditors; or if either party abandons or vacates a substantial portion of the Work for fourteen (14) consecutive days; then in any of said instances or in any similar instance, the complaining party shall have the rights and remedies that may be provided at law or in equity and the following options:

(1) Without terminating this Agreement, make demand for Mediation in accordance with this Agreement; or

(2) Terminate this Agreement.

(b.) In the event of a breach or default by either party to this Agreement, whether a party failed to perform first, breached first, or defaulted first shall be disregarded. This clause does not relieve a defaulting party or breaching party from its obligation to perform. All rights

and remedies afforded by law or in equity with respect to material breaches or defaults are expressly reserved by each party notwithstanding this provision.

Section 8.02 Consequential Damages.

Notwithstanding anything in this Agreement to the contrary, neither Authority nor Company shall be liable under any circumstances to the other party for special, indirect, punitive, incidental, exemplary or consequential damages resulting from or arising out of this Agreement, including, without limitation, loss of profit or business interruption, loss of or deferral of crude oil and/or the receiving or transporting of crude oil, however the same may be caused, whether by the sole, joint or concurrent negligence, fault or liability without fault of any party, their contractors or subcontractors, but shall be limited to actual damages. Notwithstanding the immediately preceding sentence, a party may recover from the other party all costs, expenses or damages (including, without limitation, indirect, special, consequential, incidental, exemplary, punitive and other damages, as well as reasonable attorney's fees) paid or owed to any third party in settlement or satisfaction of claims of the type described herein for which such party has a right to recover from the other party.

Section 8.03 No Waiver.

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

ARTICLE 9

GENERAL PROVISIONS

Section 9.01 Compliance.

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

Section 9.02 No Partnership.

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

Section 9.03 Parties Bound

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

Section 9.04 Applicable Law

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

Section 9.05 Severability

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

Section 9.06 Time of Essence

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

Section 9.07 Rights and Remedies Cumulative

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

Section 9.08 Attorneys' Fees

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

Section 9.09 Public Disclosure

Authority is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Public Information Act (Texas Government Code, chapters 551 and

552), and as such Authority is required to disclose to the public (upon request) this Agreement and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, Company agrees that the disclosure of this Agreement or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Authority as required by the Texas Open Meetings Act, Texas Public Information Act or any other law will not expose Authority (or any party acting by, through or under Authority) to any claim, liability or action by Company.

Section 9.10 Authority

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

Section 9.11 Recording

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

Section 9.12 Interpretation

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

Section 9.13 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 9.14 Contractual Relationship

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

Section 9.15 Assignment.

Except as to Company's affiliates whose credit worthiness is approved by the Authority, the Company shall not assign its interest in this Agreement or any of its rights or obligations hereunder without the written consent of the Port Commission. If the Company assigns its interest in this Agreement as provided in this Section, the Company shall be jointly and severally liable with the assignee for all of the obligations of the Company hereunder.

Section 9.16 Notices.

Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by either party to the other party upon either of the following dates:

(a) The date of the mailing thereof, as shown by the post office receipt if mailed to the other party hereto by certified mail at the applicable address as follows:

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

Plains Eagle Ford Pipeline, LLC
Attn: James Pinchback, Director
333 Clay Street, Suite 1600
Houston, Texas 77002

cc: Lawrence J. Dreyfuss

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or the latest address specified by such other party in writing; or

(b) The date of the receipt thereof by such other party if not so mailed by registered or certified mail.

Section 9.17 Entire Agreement

This 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 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.

Section 9.18 Recitals

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

Section 9.19 Exclusion of Prior Drafts

Drafts of this Agreement and prior correspondence regarding this Agreement shall not be used by either party as evidence of the intent of the parties or otherwise be admissible in evidence in interpreting this Agreement

Section 9.20 Binding Effect

It is expressly understood that the provisions of this Agreement do not impart enforceable rights in anyone who is not a party, a party affiliate, or a successor or assign of a party hereto. No third party (including an employee or a contractor of a party) is intended to have or shall have any rights under this Agreement.

[SIGNATURE PAGE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this agreement in two (2) originals, each of which shall constitute an original, to be and become effective as of the date first above written.

WITNESS:

Port of Corpus Christ Authority

By: _____
John P. LaRue
Executive Director

Date: _____

Plains Eagle Ford Pipeline LLC

WITNESS:

By: _____

Name

Title

Date: _____

EXHIBIT A
DRAWING OF THE VIOLA BARGE MOORING DOCK
AND ADJACENT SLIP

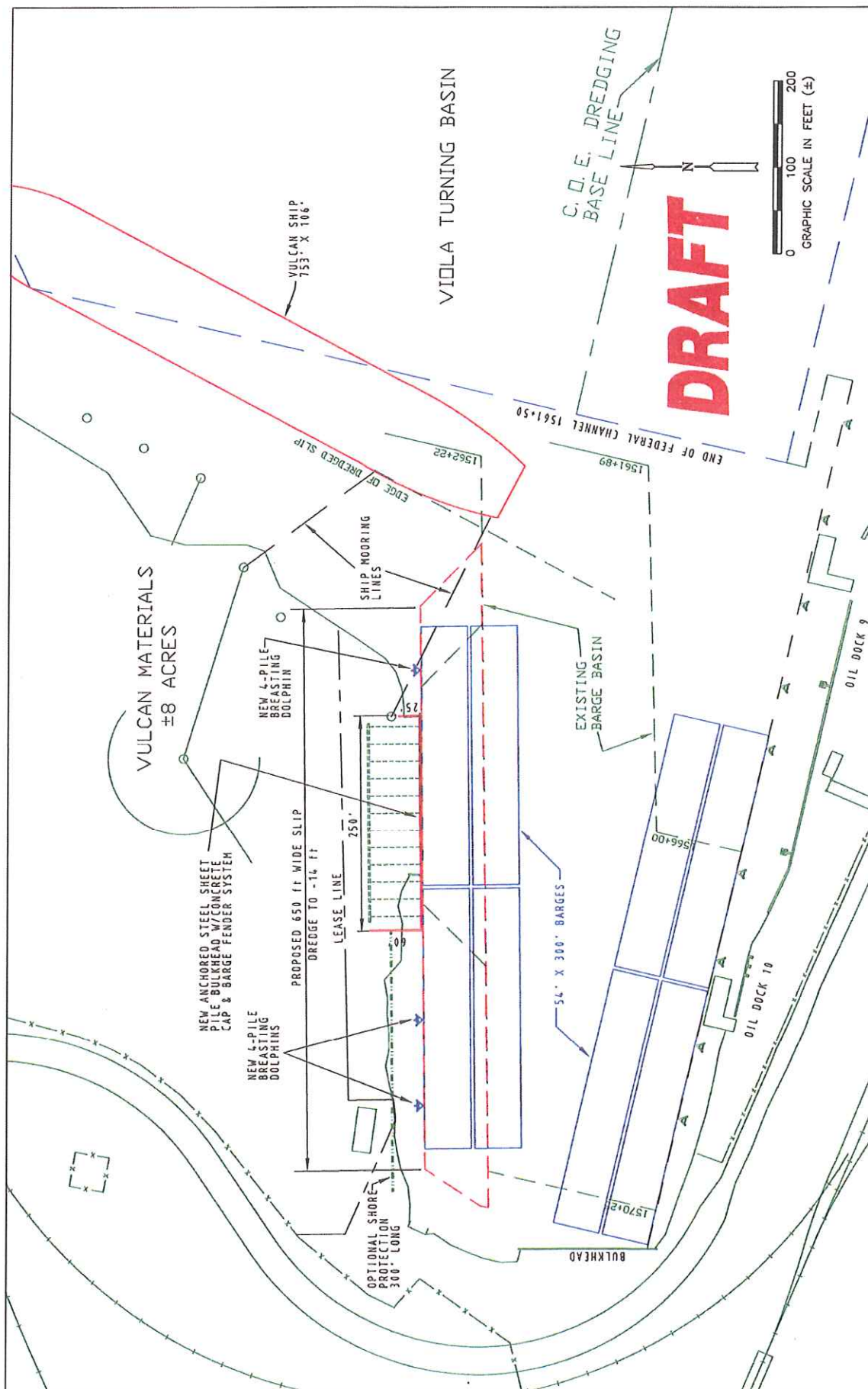


**EXHIBIT 1
USER AGREEMENT**

“DRAFT”

AGREEMENT OF THE FREQUENT USERS AND THE PORT OF CORPUS CHRISTI AUTHORITY FOR VIOLA BARGE MOORING DOCK (PUBLIC OIL DOCK NO. 5)

I. PURPOSE

The purpose and intent of this Agreement (the "Agreement") entered into on _____, 20____, by and between the Port of Corpus Christi Authority (hereinafter “the Authority”) and the Users (as hereinafter defined), is to provide the Users of Authority’s Viola Barge Mooring Dock located in the Inner Harbor of the Port of Corpus Christi, its, Dock Houses, Breasting Structures, Mooring Facilities, and Dock Spill Containers (hereinafter “the Barge Dock”), access to certain equipment (hereinafter “the Facilities”), owned and operated individually or collectively by each of the Users and administered by the Dock Administrator (hereinafter “Administrator” and as hereinafter defined) on behalf of the Users, and with materials, and services required for the use of the Barge Dock by the Users.

II. FREQUENT AND OCCASIONAL USERS

The individuals, corporations, and partnerships, which use the Barge Dock and Facilities, are referred to in this agreement as “Users”. Users that use the Barge Dock and Facilities more than twelve (12) times per year are classified as “Frequent Users” for the purposes of this Agreement. All Users other than Frequent Users are referred to in this Agreement as “Occasional Users”. Frequent Users shall be entitled to the rights and subject to the obligations of Frequent Users under this Agreement but shall not be required to pay a fee to the Administrator in connection to their use of the Barge Dock and Facilities. Occasional Users shall pay a fee, as determined by the Frequent Users to this Agreement, to the Administrator to recover costs incurred due to their use of the Barge Dock and Facilities. Occasional User fees shall be credited to the current expense account maintained by the Administrator (see Paragraph V). Both Frequent and Occasional Users must be familiar with all regulatory, safety, and operating requirements of bulk loading/unloading of petroleum and chemical products. The parties to this Agreement are Users of the Barge Dock subject to this Agreement unless otherwise noted in Appendix V.

III. ADMINISTRATOR

In the event that there are three (3) or more Frequent Users party to the Agreement, the Frequent Users shall agree to and will select by vote of a simple majority, one (1) of the Frequent Users to act as the Administrator for the Users. The elected Administrator shall serve in this capacity for a period of two (2) years, at the end of such period, the Administrator duties and responsibilities may remain with the current Administrator or rotate to one of the other Frequent Users, by another vote of the simple majority. In the event there are only two (2) Frequent Users,

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the Administrator position will rotate between the two (2) Frequent Users unless the current Administrator agrees to continue with the consent of the other Frequent User; and in the event there is only one (1) Frequent User who is a party to this Agreement, such Frequent User shall serve as the Administrator until such time as there are more than one (1) Frequent Users who execute this Agreement at which time the provisions in this Agreement relating to the rotation of Frequent Users serving as Administrator shall be followed. Should a serving Administrator resign or no longer be a Frequent User of the Barge Dock, a new Administrator shall be elected by the remaining Frequent Users, as described above, and shall serve for a period of two (2) years from the date of its election. The Administrator may be removed at any time by the majority vote of the Frequent Users at a special meeting, which may be called by any Frequent User. Each Frequent User must be given at least three (3) working days written notice of the date, time, place, and purpose of any such special meeting.

IV. ADMINISTRATORS DUTIES AND RESPONSIBILITIES

The Administrator shall be responsible to purchase, contract, service, and maintain the common items and services included in this Agreement. The Administrator shall submit to any other Frequent Users a quarterly accounting of all purchases, expenses, and each Frequent User's credit/debit balance. The method of accounting shall be agreed upon by a simple majority vote of the Frequent Users. All materials purchased by the Administrator shall be the common property of the Frequent Users in undivided equal shares. The Administrator shall maintain records, which specify the cost of materials, contracts, and services purchased, contracted, or otherwise provided for in order to carry out the intent of this agreement.

V. OBLIGATIONS OF OCCASIONAL USERS

Occasional Users shall pay to the Administrator a fee of \$1,200.00 per barge and \$2,400.00 per a larger vessel for each loading or unloading operation that they conduct at the Barge Dock and Facilities. Each barge or any other larger vessel constitutes a separate vessel for the purpose of this Agreement. Such fee shall be reviewed and adjusted annually with final approval required from the Authority for any fee increases. Billing for use by an Occasional User will be done within fourteen (14) calendar days with payment due upon receipt of the invoice. All fees collected by the Administrator shall be credited to an operating expense account for the operating period in which the fees were collected. The Occasional User agrees by its use of the Barge Dock and the Facilities to be fully responsible and liable for, and **will defend, indemnify and hold harmless the Frequent Users, the Administrator, Plains All American Pipeline, L.P., and Authority, (for the purposes of this Section V, the "Indemnified Parties") from and against any and all expenses and liabilities for, and resulting from, the sole, joint, concurrent, or comparative negligence of the Occasional User, its agents or employees (collectively, "Occasional User Parties"), in connection with the exercise by the Occasional User Parties 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 Occasional User Parties and the Indemnified Parties, then Occasional User Parties obligation to the Indemnified Parties shall only extend to the percentage of the total responsibility of the Occasional User Parties in**

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contributing to such Indemnified Claim. In Indemnified Claims against any Indemnified Party by or for an employee of a Occasional User Party, the Occasional User Party's indemnification obligation under this Section V shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Occasional User Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

The Occasional User also agrees by its use of the Barge Dock and Facilities to adhere to all applicable operating, safety, and security procedures and federal, state, and local laws and regulations (see Appendix I).

VI. NEW FREQUENT USERS

After the date of this Agreement, any User that wants to become a Frequent User shall be required to pay to the Administrator, as a condition to such User becoming a Frequent User, a prorated share of the original cost of the common Facilities (as well as any subsequent improvements and/or replacements), including the original equipment and materials then in use on the Barge Dock, at the replacement value, which in no event shall be less than the original, installed cost of the equipment and materials. The prorated share shall equal the replacement value of the Facilities divided by the number of Frequent Users that will thereafter use the Facilities. Such payment shall be credited to the existing Frequent Users' accounts in equal shares. From the date the new user becomes a Frequent User, expenses shall be shared by all Frequent Users according to the procedures specified in Paragraphs II and IX.

VII. FACILITIES, SERVICES, AND UTILITIES

The Facilities are identified in Appendix IV hereto and are for the use of all Users. The Facilities are owned by various of the Frequent Users individually or by the Authority, but will be operated and maintained by the Administrator on behalf of all Frequent Users.

The Facilities and services to be provided by the Administrator on behalf of all Frequent users shall consist of safety equipment, fire extinguishers, life rings, ladders, gangways, telephone, air, dock drain lines, dock sumps, sump pumps, motors, and controls. The Administrator shall also maintain the dock potable water lines to the eye and safety showers from Authority's potable water supply line.

The Authority shall furnish electrical power from the service entrance to the distribution panel in the dock house and to all existing branch circuits. The Administrator, on behalf of all the Frequent Users, shall be responsible for all additional circuits and/or service requirements.

The Authority shall be responsible for the maintenance of the Barge Dock, breasting structures, mooring facilities, and dock house. The Authority shall have no responsibility for the maintenance of the Facilities owned by the Frequent Users, or operated by the Administrator on behalf of the Frequent Users.

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VIII. MAINTENANCE RESPONSIBILITY

The Administrator shall provide a level of maintenance consistent with industry standards for the equipment used on the Barge Dock. The maintenance shall include, but not be limited to:

A. Repair, replacement, and maintenance of all Facilities and equipment operated by the Administrator excluding the Barge Dock, which shall be maintained by the Authority. All other items owned by the individual Frequent Users will be both provided and maintained by the respective individual owner.

B. Repair, replacement, and maintenance of all safety equipment, fire extinguishers, life rings, ladders, gangways, telephone, air, dock drain lines, dock sumps, sump pumps, motors, and controls operated by the Administrator.

C. Weed control under and adjacent to the pipelines of the Frequent Owners.

IX. MAINTENANCE CHARGES AND CAPITAL EXPENDITURES

A. In the event the cost of a single maintenance item or capital project is estimated to exceed Five Thousand Dollars (\$5,000.00), the Administrator will summarize the scope and cost in writing to each Frequent User. All such items or projects shall require the approval of all the Frequent Users.

B. In emergency situations, the Administrator may undertake corrective maintenance action with the telephone approval of the Frequent Users, such approval to be subsequently confirmed in writing.

C. Existing Facilities shall be maintained and replaced unless it is determined by a unanimous vote of the Frequent Users that they are no longer needed.

D. Maintenance charges and capital expenditures described above shall be the actual cost to the Administrator. Should the Administrator provide any maintenance from its own in-house workforce or provide any equipment from its own warehouse stock, the price considered paid by the Administrator shall be equal to the Administrator's company costs only.

E. The cost to each Frequent User will be based on the percentage of total volume moved across the Barge Dock during the previous six (6) month period. The Authority will furnish the individual volume information for the previous six (6) month period for each Frequent User upon request of the Administrator. Payment shall be due fourteen (14) days from the date of the receipt of an invoice from the Administrator. At the end of each calendar year, the Frequent Users' apportioned share of the yearly costs will be reviewed and may be modified by unanimous consent of the Frequent Users.

F. Any equipment needed by one (1) or more of the Frequent Users may be installed and maintained subject to this Agreement with the prior written approval of the Authority. Title to any such equipment individually installed will be solely in the entity that installed the equipment.

Such equipment shall not infringe upon the existing use of the Barge Dock and Facilities by the other Frequent Users.

X. RESPONSIBILITIES OF ALL PARTIES

A. This Agreement does not and shall not relieve any of the Frequent or Occasional Users that have loading/unloading equipment on the Barge Dock from the responsibility of properly operating and maintaining its own pipe manifolds, communications equipment, and their other equipment on the Barge Dock.

B Each Frequent and Occasional User must have a current U. S. Coast Guard Letter of Adequacy and shall ensure that its employees, agents, servants, and contractors are in compliance with all other applicable U. S. Coast Guard requirements.

C. Each Frequent and Occasional User must have a current Texas General Land Office Discharge Prevention and Response Certificate and insure that it is in compliance with all applicable regulations of the Texas Oil Spill Prevention and Response Act of 1991, the Oil Pollution Act of 1991, and any regulations published thereunder.

D. Each Frequent and Occasional User is responsible for dock cleanup after each use of the Barge Dock, for promptly removing any temporary facilities or equipment from the Barge Dock after each use of the Barge Dock, and for restoring the Barge Dock to the same condition it was in prior to the installation of said temporary facilities or equipment, normal wear and tear excepted. If cleanup and restoration of a dock is not performed to the satisfaction of the next User, said next User must first notify the Administrator and prior User, if known, prior to initiating any cleanup or removal of temporary facilities and equipment. The Administrator shall charge the prior User for all actual costs incurred by the next User in making the Barge Dock ready for its use.

XI. OIL/CHEMICAL SPILLS

In the event any oil/chemical spill or other pollution results from operations at the Barge Dock, the first Frequent or Occasional User to observe the spill should initiate those appropriate actions to control and stop the spread of the spill. If the source of the spill is determined to be from one of the Frequent Users equipment, the Frequent User should be immediately notified of the spill so that it can initiate a response. If a spill occurs or is caused during Barge Dock usage by a Frequent User, the Frequent user will initiate and provide a response. If a spill occurs while no User is at the Barge Dock, and is not caused by a specific User's equipment, then the Administrator will respond to the spill upon notification of the spill. Whoever responds to the spill will also immediately notify the U. S. Coast Guard, Authority, and other governmental authorities (i.e. Texas General Land Office, Texas Commission on Environmental Quality, etc.) to the extent required by federal, state, and local laws and ordinances.

The Frequent or Occasional User responsible for the spill shall be responsible for the cleanup and attendant costs to include any penalty or fine imposed by any federal, state, or local entity. If the party responsible for the spill is not readily apparent, the Administrator, on behalf of all the Frequent Users, shall assume control of the cleanup response until such time that the

responsible party is identified. If the responsible party can not be identified, the cost of the response on behalf of the Users will be distributed and prorated per the normal formula based on Barge Dock usage.

Upon completion of the cleanup, the responsible party shall document and report the spill to the Administrator on the form attached to this Agreement as Appendix II. **The responsible party shall defend, indemnify, and hold harmless the Authority, all other Frequent and Occasional Users, and the Administrator for all damages resulting from the spill.**

XII. DOCK EMISSIONS

It is the intent of the Frequent Users to manage their individual marine loading operations at the Barge Dock in compliance with throughput and emission limitations to voluntarily limit emissions at the Barge Dock. To the extent of its authority, the Authority will require compliance with these limitations on all current and future Users.

XIII. INSURANCE REQUIREMENTS

The Authority and the Frequent Users agree that no party is required to carry any insurance for any other party. Each party may acquire and maintain such insurance as it deems proper to protect itself against third party claims or damage to its property. Such insurance shall inure solely to the benefit of the party procuring same; provided, however, that such insurance shall provide for waiving all rights by subrogation or otherwise against all other parties hereto.

Occasional Users shall provide proof of insurance to the Administrator as set out under Appendix III hereto.

XIV. INDEMNITY PROVISIONS

The Administrator shall defend, indemnify, and save Frequent Users, Occasional Users, and Authority, harmless from any losses, costs, expenses, damages, judgments, or other liabilities arising from or out of the gross negligence of the Administrator in the performance of its obligations hereunder, which result in the death or injury to any person or damage to the property of any person, firm, or corporation, including the employees of the Frequent Users, Occasional Users, Authority, and their contractors. It is agreed, however, that the Administrator's liability to the Frequent Users, Occasional Users, Authority, and their officers, agents, representatives, and employees shall not include liability for contingent, consequential, special, or indirect damages.

Each Frequent User, Occasional User, and (to the extent permitted by law) Authority, **will defend, indemnify and hold harmless the Administrator (for the purposes of this Section XIV, its individual capacity only and not as a Frequent User), the "Indemnified Party") from and against any and all expenses and liabilities for, and resulting from, the sole, joint, concurrent, or comparative negligence of the Frequent User, Occasional User, and (to the extent permitted by law) Authority its agents or employees (collectively, "User Parties"), in connection with the exercise by the User Parties 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 User Parties and the Indemnified Parties, then User Parties obligation to the Indemnified Parties shall only extend to the percentage of the responsibility of each of the User Parties in contributing to such Indemnified Claim. In Indemnified Claims against Indemnified Party by or for an employee of a User Party, the User Party's indemnification obligation under this Section XIV shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the User Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. It is agreed, however, that any liability pursuant to the indemnity set forth in this paragraph shall not include liability for contingent, consequential, special, or indirect damages.

Except as qualified by the previous paragraphs in this Agreement, all Frequent Users, Occasional Users, and (to the extent permitted by law) Authority (the "User Parties"), **will defend, indemnify and hold harmless each other (the "Indemnified Parties") from and against any and all expenses and liabilities for, and resulting from, the sole, joint, concurrent, or comparative negligence of the User Parties, in connection with the exercise by the User Parties 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 User Parties and the Indemnified Parties, then User Parties obligation to the Indemnified Parties shall only extend to the percentage of the responsibility of each of the User Parties in contributing to such Indemnified Claim. In Indemnified Claims against any Indemnified Party by or for an employee of a User Party, the User Party's indemnification obligation under this Section XIV shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the User Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.**

XV. DEMURRAGE

The parties to this Agreement recognize that the Barge Dock is a public facility with vessel scheduling and berthing controlled by the Authority's Harbormaster. Therefore, any demurrage, which results from the Authority's Harbormaster's scheduling a vessel or vessels into the Barge Dock, will not be for the account of the Frequent Users or the Administrator.

XVI. FORCE MAJEURE

No failure or admission by the Administrator, the Authority, or any Frequent User or Occasional User which is a party hereto, with the exception of the failure to make payment due the Administrator in the performance of any obligation under this Agreement, shall be considered a breach of this Agreement or create any liability for damages if and to the extent such failure or omission shall arise from any cause or causes beyond the control of such parties, including but not limited to acts of God, fires, storms, hurricanes, floods, wars (whether or not affecting the United States of America), rebellions, insurrections, riots, explosions, strikes, lockouts, transportation embargoes, and compliance with rules, regulations, or orders of any governmental authority ("*force majeure*").

In the event the Administrator, the Authority, or any Frequent or Occasional User to this Agreement is rendered unable, in whole or in part, by *force majeure*, as hereinabove defined, to carry out its obligations under this Agreement, other than to make payments when due hereunder, it is agreed that upon such Administrator's, Authority's, Frequent or Occasional User's giving notice with reasonably full particulars of such *force majeure*, in writing to the other parties within twenty-four (24) hours after the occurrence of the cause relied upon, the obligations of the Administrator, Authority, Frequent or Occasional User giving such notice, so far as the obligations are affected by such *force majeure*, shall be suspended during the continuance of any inability caused by the *force majeure* event, but no longer, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

XVII. AUDIT

The parties hereto and their duly authorized representatives shall have access to the accounting records and other documents maintained by the Administrator and other parties which relate to the use of the Barge Dock and shall have the right to audit such records at any reasonable time or times within two (2) years after the termination of this Agreement or their use of the Barge Dock under this Agreement, whichever occurs first.

XVIII. TERM AND CANCELLATION

This agreement shall continue in effect for five (5) years from the date first mentioned above (until _____, 20__), and then from year-to-year thereafter, provided, however, that the Authority or any Frequent User may terminate its participation in this Agreement at the end of said five (5) year period or at the end of any other term thereafter by giving ninety (90) days prior written notice of termination to the Administrator and the other parties to this Agreement. In addition, any party may terminate its participation in this Agreement if the Frequent Users cannot agree on a new Administrator to replace an Administrator that has resigned or is removed or whose term has expired.

Any charges incurred by the Administrator prior to termination by any Frequent User shall be chargeable against said Frequent User in accordance with Paragraphs IV, IX, X, and XI herein. In addition, said Frequent User may be informed of any maintenance, the need for which arose in whole or in part prior to or on the termination date and which is then being performed or will be

performed within six (6) months, and the cost of said maintenance shall be chargeable in whole or in part against said Frequent User in accordance with Paragraph IX herein. Said maintenance will be performed and a bill rendered to said Frequent User within six (6) months after the aforementioned termination date.

XIX. NOTICES

All notices, invoices, statements, bills, and papers provided for in this Agreement shall be in writing and shall be given by mail directed to the post office address of the parties hereto as indicated in Appendix V or to such other address, with notice thereof given by registered or certified letter addressed to the Authority and other Frequent Users.

XX. SUCCESSORS AND ASSIGNS

This Agreement shall inure to and be binding upon the parties hereto and their respective personal representatives, successors, and assigns. In the event any purchaser or assignee is no longer a Frequent User, it shall not remove any equipment affixed to the Barge Dock nor shall it be entitled to any return of any monies deposited in any accounts maintained by the Administrator.

XXI. ENTIRE AGREEMENT

This document and all attachments hereto constitute the entire Agreement among the parties, and it shall not be modified, altered, amended, or rescinded except through a written document, which is signed by the appropriate representatives of each of the parties hereto or their respective successors in interest. This Agreement supercedes any and all proposals, negotiations, and representations, of the parties, made or had prior to the execution hereof, relative to the subject matter of this Agreement. This Agreement is being entered into by each of the Frequent Users at the request of the Authority and is intended to facilitate the use and coordinate the maintenance of the Barge Dock and Facilities, as well as the remediation of any oil spill resulting, or threatening to result from Users' Activities. By entering into this Agreement, the undersigned do not intend to create a partnership, joint venture, or affiliation for profit between or among them. This Agreement is for the sole benefit of Authority, Frequent Users, Occasional Users and the AdministratorS and no other person, entity or third party unless the benefit to a person, entity or third party is expressly stated in this Agreement.

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IN WITNESS WHEREOF, the parties have executed this agreement in two (2) originals, each of which shall constitute an original, to be and become effective as of the date first above written.

WITNESS:

Port of Corpus Christ Authority

By: _____

John P. LaRue
Executive Director

Date: _____

WITNESS:

Plains All American Pipeline, L.P.

By: _____

Name

Title

Date: _____

**APPENDIX I
BARGE DOCK
OCCASIONAL USERS FORM**

DOCK OPERATOR	
Name	
Street Address	
P. O. Box	
City/State/Zip	
Telephone Number	

Occasional User must attach a copy of Letter of Adequacy as required in Part 154.110 of the U.S. Coast Guard Pollution Prevention Regulations.

LIST OF PRODUCTS TO BE LOADED/UN LOADED	

TIMEFRAME FOR PRODUCT MOVEMENT	
Starting Date	
Completion Date	

PIPELINE ON DOCK NO.	TO BE USED

PIPELINE OWNER

HAZARD MATERIALS OFFICER FOR NUECES COUNTY AREA	
Name:	
Title:	
Address:	
Business Phone:	24-Hr Phone:

ALTERNATE HAZARD MATERIALS OFFICER FOR NUECES COUNTY AREA	
Name:	
Title:	
Address:	
Business Phone:	24-Hr Phone:

DUTIES OF OCCASIONAL USERS	
1.	The Port of Corpus Christi Authority (Authority) and several companies (the Frequent Users) have entered into an agreement addressing the operation of Oil Barge Dock (“the Users Agreement”). The Users Agreement anticipates that other parties will use the Barge Dock on an infrequent basis and provides that such parties will have certain obligations to the Authority, to the Frequent Users, and to the Administrator of the Barge Dock. These obligations are set forth below. A copy of the Users Agreement is available for your inspection during normal business hours at the offices of the Authority and at the offices of the Administrator for the Barge Dock.
2.	Occasional Users must be familiar with all regulatory, safety, and operating requirements of bulk loading/unloading of petroleum and chemical products.
3.	Occasional Users agree by their use of the Facilities, and may be required to agree in writing, to be fully responsible and liable and defend and indemnify the Frequent Users, the Administrator, and the Authority for any pollution and environmental damage, cleanup, injury or death to any person, and for any damage to the Frequent User and/or any other third party’s equipment and facilities and/or the Port Authority’s Barge Dock or lands, both submergent and fast, which may be caused or contributed to by the Occasional User, and to adhere to all applicable operating, safety, and security procedures and federal, state, and local laws and regulations.
4.	Each Occasional User will be responsible for dock cleanup, for promptly removing any temporary facilities or equipment from the Dock after use, and for restoring any dock to the same condition it was in prior to the installation of said temporary facility or equipment, normal wear and tear excepted.
5.	Each Occasional User will ensure that the dock is left in a clean condition, and Occasional User cleanup action will include those items listed in its operation manual.
6.	Any offending Occasional User will be responsible for the cleanup and attendance costs either with its own personnel and equipment, its contractors, or through the Corpus Christi Area Oil Spill Association.

7. Each Occasional User agrees that the entity determined to be responsible for any oil/chemical spill or other pollution will pay any penalty or fine imposed by any local, state, or federal authority or agency.
8. Each Occasional User is responsible for properly operating and maintaining its own pipe manifolds, communication equipment, tool houses, or other equipment on the Barge Dock.
9. Each Occasional User must have a current U.S. Coast Guard Letter of Adequacy for its operations manual and will ensure that its employees, agents, servants, and contractors are in compliance with all other applicable U.S. Coast Guard requirements.
10. Each Occasional User must have a current Texas State General Land Office Discharge Prevention and Response Certificate and insure that it is in compliance with all applicable regulations of the Texas Oil Spill Prevention and Response Act of 1991, the Oil Pollution Act of 1990, and any regulations promulgated thereunder.
11. Any offending Occasional User will defend, indemnify, and hold harmless the Authority, the Frequent Users, and the Administrator for all damages resulting from any oil or chemical spill or other pollution.
12. Each Occasional User, its agents and servants, will defend, indemnify, and save the Administrator (in his individual capacity only and not as a Frequent User) harmless from any losses, costs, expenses, damages, judgments, or other liabilities arising from or out of its acts or omissions or those of their respective contractors, agents, servants, or employees, in the performance of its obligations hereunder, which result in the death or injury to any person or damage to the property of any person, firm, or corporation, including the employees and property of the Frequent Users, Occasional Users, Authority, their agents or servants, and their contractors.
13. Each Occasional User will maintain insurance policies, which comply with the provisions of Appendix III to the Users Agreement. A true and correct photocopy of Appendix III is attached hereto.

Respectfully submitted,

COMPANY: _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Mail form to: Administrator for Barge Dock

**APPENDIX II
BARGE DOCK
OIL SPILL NOTIFICATION FORM**

DOCK OPERATOR	
Name	
Street Address	
P. O. Box	
City/State/Zip	
Telephone Number	

OIL SPILL NOTIFICATION	
Date:	Time:
U.S. Coast Guard	883-3162
Port of Corpus Christi Harbormaster	882-1773 or 885-6151
Administrator for Barge Dock	
Oil Spill Association	884-1651

OIL SPILL CONTAINED	
Date:	Time:

CLEANUP OPERATIONS STARTED	
Date:	Time:
Contractors Used	

CLEANUP OPERATIONS COMPLETED	
Date:	Time:

NOTIFICATION OF COMPLETED OPERATIONS	
U.S. Coast Guard	883-3162
Port of Corpus Christi Harbormaster	882-1773 or 885-6151
Administrator for Barge Dock	

Respectfully submitted,

COMPANY: _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Mail form to: Administrator for Barge Dock

APPENDIX III INSURANCE SCHEDULE

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

**APPENDIX IV
FACILITIES LISTING BY DOCK**

A. Facilities operated and maintained by the Administrator:

- All Loading Arms
- Transfer Hoses
- Cranes and/or Hoists
- Piping and Racks
- Drain Piping, Sumps, and Sump Pumps (Complete with all electrical wiring to motors, starters, controls, and alarms.)
- Spill Containment
- Safety Skids
- Utility Piping And Wiring
- Fire Extinguisher
- Gangway
- Life Ring
- Telephone In Dock House
- Furnishings In Dock House
- Service Air and Gas Systems
- All Oil Spill Pollution Control Equipment

B. Facilities Installed by the Authority to be Operated and Maintained by the Administrator:

None

**APPENDIX V
FREQUENT USER/AUTHORITY
MAILING/PHONE LIST**

Administrative Contact

ATTN: _____

_____, Texas _____
_____, (Office)
_____, (FAX)
_____, (Mobile)

Operations Contact

(FREQUENT USER OF BARGE DOCK)

ATTN: _____

_____, Texas _____
_____, (Office)
_____, (FAX)
_____, (Mobile)

(FREQUENT USER OF BARGE DOCK)

ATTN: _____

_____, Texas _____
_____, (Office)
_____, (FAX)
_____, (Mobile)

ATTN: _____

_____, Texas _____
_____, (Office)
_____, (FAX)
_____, (Mobile)

(OWNER OF BARGE DOCK)

Port of Corpus Christi Authority
ATTN: Greg Brubeck
Deputy Director of Engineering Services
P. O. Box 1541
Corpus Christi, Texas 78403
885-6138 (Office)
881-5161 (FAX)
816-3609 (Mobile)

Port of Corpus Christi Authority
ATTN: Greg Brubeck
Deputy Director of Engineering Services
P. O. Box 1541
Corpus Christi, Texas 78403
885-6132 (Office)
881-5163 (FAX)
816-8823 (Mobil)

**EXHIBIT 2
DRAWINGS OF THE
AUTHORITY BARGE DOCK
AND COMPANY FACILITIES**

EXHIBIT 3
INSURANCE COVERAGES TO BE
PROVIDED BY THE CONTRACTORS
FOR AUTHORITY AND FOR COMPANY

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

Authority shall be furnished by Company, to the attention of Authority's Real Estate Manager, and Company shall be furnished by Authority, to the attention of _____, prior to each Contractor commencing any work, as proof of the insurance policies (the "Policies" required of Contractor, a certificate or certificates of insurance (and the endorsements required in this paragraph shall be attached to the certificate or certificates of the insurance) describing the Policies, which certificates must be acceptable, in their form and content, to Authority and Company. Each of the Policies will be endorsed to (a) (except for Workers' Compensation and employer's liability insurance) name Authority, its Port Commissioners, officers, officials, employees and agents as an additional insured, and to name Company, its officers, officials,

employees and agents as additional insureds, (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: Real Estate Manager and to Company, attention: _____ and (c) provide that notwithstanding any language in any policy of insurance held by Authority ("Authority Insurance") or any language in any policy of insurance held by Company ("Company Insurance" to the effect that the Authority Insurance is primary or Company Insurance is primary, the policy or policies held by Contractor are primary coverage and the Authority Insurance or Company Insurance is non-contributory.

Contractor shall deliver to Authority and Company certificates of renewal at least thirty (30) days prior to the expiration date of each of the Policies and copies of new policies at least thirty (30) days prior to terminating any of the Policies. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to Authority and Company if either exceeds \$50,000.00; and, in such event, Authority may decline to approve this Contractor's contract without any liability to Contractor. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority or Company may procure such insurance at Contractor's expense, and Authority or Company is entitled to reimbursement from Contractor for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Contractor receives Authority's or Company's notice of payment until reimbursement.

RAILROAD SWITCHING AGREEMENT

THIS RAILROAD SWITCHING AGREEMENT (the “Agreement”) is made this 14th day of February, 2012, between **Corpus Christi Terminal Railroad, Inc.**, a Delaware corporation (“CCPN”), with offices at 13901 Sutton Park Drive South, Suite 125, Jacksonville, FL 32224; and **Port of Corpus Christi Authority of Nueces County, Texas** (“PORT”), with offices at 222 Power Street, Corpus Christi, TX 78401 (each being sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the PORT owns and operates a dry bulk terminal (“Bulk Terminal”) on the north side of the Inner Harbor of the Port of Corpus Christi; and

WHEREAS, coal, petroleum coke, ore, minerals, and other bulk commodities are shipped to and from the Bulk Terminal by rail; and

WHEREAS, the Bulk Terminal is serviced by a loop rail track which is depicted on Exhibit A attached hereto (“Loop Rail Track”); and

WHEREAS, rail traffic in the Bulk Terminal has increased dramatically and is expected to increase even more dramatically; and

WHEREAS, CCPN is a corporation engaged in the business of providing railroad switching services; and

WHEREAS, in order to preserve and protect the safety of the residents of the PORT and maintain an orderly flow of rail cars in the Bulk Terminal, the PORT wishes to engage CCPN to provide switching services for the Bulk Terminal on the Loop Rail Track;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and premises set forth herein, the parties agree as follows:

1. DEFINITIONS.

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

“Bulk Terminal” means the dry bulk terminal owned and operated by the PORT on the north side of the Inner Harbor of the Port of Corpus Christi.

“Bulk Terminal Staff” means those employees of the PORT responsible for all railroad transportation functions at the Bulk Terminal, including all matters and activities related to the movement and relocation of Rail Cars at the Bulk Terminal.

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“Bulk Terminal Tracks” means the land, structures and railroad trackage over which railroad equipment operates (railroad trackage includes rails, cross-ties, switching equipment, sub-grade and other related track structure components) at the Bulk Terminal.

“CCPN” means Corpus Christi Terminal Railroad, Inc., a Delaware corporation.

“CCTR Lease” means that certain lease agreement dated July 25, 1997, by and between the PORT and CCPN, as amended, for certain railroad property and facilities in the Port of Corpus Christi other than the Loop Rail Track.

“Contract Year” means each 365-day period commencing on the Effective Date of this Agreement during the term of this Agreement.

“Effective Date” means February 14, 2012.

“Force Majeure Event” means, with respect to a Party, any occurrence which is not within the reasonable anticipation or control of such Party, including but not limited to: (i) acts of God, such as floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; (ii) acts of the public enemy, war, blockade, riot, insurrection, vandalism or sabotage; (iii) fire, accident, wreck, derailment, washout, explosion, or damage to equipment; (iv) lawful or unlawful strikes, lockouts or labor disputes; or (v) governmental laws, ordinances, orders or regulations, whether valid or invalid and including, but not limited to, rail embargoes or restrictions on facilities, equipment or operations of such Party or rail carriers in general.

“Locomotive” means that certain locomotive identified as SW-1000 (Repowered as a “GenSet”), 1,340 horsepower, 125 ton Locomotive No. PCC 1401; Gen set # 1, serial number - 41158 1326 model number - RP-503; Gen set # 2, serial number – 41158 1327 RP model number –RP- 503.

“Loop Rail Track” means the loop rail track which services the Bulk Terminal, the location of which is depicted on Exhibit A attached hereto.

“PORT” means the Port of Corpus Christi of Nueces County, Texas, a political subdivision of the State of Texas operating as a navigation district under Chapters 60 and 62 of the Texas Water Code.

“Rail Cars” means all rail cars either inbound to or outbound from the Bulk Terminal, rail cars in the process of being loaded, unloaded, or stored at the Bulk Terminal, or rail cars being transferred between points within the Bulk Terminal during the term of this Agreement.

“Rail Car Unloading Station” means the existing rail car dump station at the Bulk Terminal used to unload coal, pet coke or other bulk commodities utilizing the gates on the bottom of the Rail Cars.

“Railroad” means any common carrier railroad company or rail carrier delivering inbound Rail Cars to the Bulk Terminal or the interchange yards for delivery to the Bulk

Terminal, or picking up or receiving outbound Rail Cars from the Bulk Terminal on designated interchange tracks.

“Switching Personnel” means railroad switching crews employed by CCPN to perform the Switching Services with each such crew consisting of one conductor and one locomotive operator.

“Switching Services” means, as more specifically described in Section 2.1, the movement and relocation of Rail Cars by CCPN in order to facilitate their loading, unloading or transfer within the Bulk Terminal on trackage owned by the PORT and includes the provision of Switching Personnel necessary to carry out the Switching Services.

“Unit Train” means any freight train of 67 Rail Cars or more of a single commodity operated by CCPN.

1.2 Other Definitions. Subject to Section 1.1, capitalized terms in this Agreement which are not defined in Section 1.1 are defined in the text of this Agreement the first time they are used.

1.3 Construction. Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine, and neuter. Unless the context requires otherwise, the singular number includes the plural number and vice versa. All references to Section(s), unless the context requires otherwise, are to section(s) of this Agreement, and all references to Exhibit(s), unless the context requires otherwise, are to exhibit(s) attached hereto, each of which is incorporated herein and made a part of this Agreement for all purposes. The recitals are incorporated herein and made a part hereof.

2. SERVICES TO BE PROVIDED BY CCPN.

2.1 Switching Services. CCPN hereby agrees to exclusively perform and provide all Switching Services required by the PORT to support the operations of the Bulk Terminal during the term of this Agreement, beginning on the Effective Date; provided, however, that the Bulk Terminal Staff may make emergency movements and/or relocations of Rail Cars on the Loop Rail Track with the prior written permission of CCPN or if necessary to preserve or protect the public health and safety of the residents of the PORT or to preserve the property of the PORT in the case of a public calamity. The Switching Services shall be provided on an “as and when needed basis.” All Switching Services provided hereunder shall be performed in a prompt, safe and efficient manner in compliance with all applicable federal, state, and local laws, rules, regulations, directives and orders governing such services. CCPN will provide a utility truck to facilitate the Switching Services.

The PORT will endeavor to provide CCPN with at least 24 hours advance notice of the requirements for Switching Services. Advance notice will not be required, however, in cases of bona fide emergencies. Tasks for each shift shall be conveyed to CCPN’s designated supervisor by the Bulk Terminal Staff at the commencement of each shift, subject to periodic revisions thereafter. Direct supervision of switching activities shall repose exclusively with CCPN. CCPN may be required to make changes in the starting times of shifts upon reasonable advance notice from the

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Bulk Terminal Staff. Each shift will observe one meal period of thirty (30) minutes arranged so as not to interfere with the PORT's switching requirements.

All Switching Services performed by CCPN shall be conducted in accordance with those procedures commonly referred to as Yard Limit Rules.

Primary Switching Services will cover the following: (i) unloading inbound pet coke or coal cars at the Rail Car Unloading Station; (ii) loading outbound pet coke cars; and (iii) switching Rail Cars for loading cargo at the Bulk Terminal, such as rutile sand, slag, and other products inbound by water for outbound rail movements.

2.2 Switching Personnel. All Switching Personnel shall be in good health, having passed qualifying pre-employment physical examinations, including drug screening tests prior to commencing work at the PORT. Switching Personnel will comply with written rules governing their conduct, the safety of equipment entrusted to their care, the safety of PORT personnel and property and the switching and handling of hazardous materials. CCPN agrees to adopt and enforce upon its Switching Personnel written operating and safety rules and precautions for their conduct and protection while at the Bulk Terminal. CCPN will provide Switching Personnel with all required personal protective equipment.

All work performed hereunder shall be in accordance with CCPN's General Code of Operating Rules and all applicable federal and state laws and regulations. CCPN personnel shall be issued a copy of all PORT Safety Rules and any applicable PORT procedures. CCPN shall require each of its personnel performing services hereunder to fully comply with all rules, regulations, terms, conditions, or policies described above. Failure of any CCPN personnel to fully comply with same shall constitute sufficient cause for the PORT to cause CCPN to exclude such personnel from the Bulk Terminal. CCPN personnel will be subject to compliance with the CCPN Drug/Alcohol/Contraband Policy on file with PORT. In the event of a breach of such rules, regulations, terms, conditions, manuals, or policies, CCPN shall, at the PORT's request, immediately withdraw such CCPN personnel from the Bulk Terminal.

2.3 Relationship of the Parties. All Switching Services performed by CCPN hereunder shall be as an independent contractor and not as an employee or agent of PORT. The Parties are entirely independent of one another and have no authority to act on behalf of, or bind, one another in connection with any third party dealings.

Matters governing the terms and conditions of employment of CCPN's employees, agents, or independent contractors, such as work schedules, wage rates, and the manner and means through which the Switching Services will be accomplished are wholly the responsibility of CCPN. It is expressly understood that the PORT shall have no responsibility for the performance of the work delegated to CCPN and covered by this Agreement and that the PORT shall in no way be the employer of any CCPN employees used to perform such work.

2.4 Unsatisfactory Performance. The PORT and CCPN will work together to resolve unsatisfactory performance issues, if any. In the event CCPN's performance, in the reasonable opinion of the PORT, continues to be unsatisfactory, the PORT shall give CCPN written notice of such unsatisfactory performance ("Unsatisfactory Performance Notice"), which notice shall

be accompanied by an explanation of such unsatisfactory performance. CCPN shall be allowed fifteen (15) days to cure the unsatisfactory performance and render satisfactory performance. Should CCPN fail to cure and render satisfactory performance within such fifteen-day period, the PORT may terminate this Agreement by giving CCPN a written notice of termination, which termination shall be effective 60 days from receipt by CCPN of such notice.

3. TERM. This Agreement shall become effective on the Effective Date and, unless sooner terminated pursuant to the provisions of this Agreement, shall expire on the first anniversary of the Effective Date (the “Initial Term”); provided, however, that following the end of the Initial Term this Agreement shall automatically renew for two additional periods of one year each unless the PORT gives written notice to CCPN of its election not to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or the second anniversary of the Effective Date, as applicable.

In the event the PORT defaults by failing to pay CCPN undisputed Switching Services fees in accordance with the terms hereof, which default continues for thirty (30) days after written notice from CCPN to the PORT designating such default, CCPN may terminate this Agreement. Any liabilities created under this Agreement shall survive any termination or expiration of this Agreement.

Notwithstanding anything to the contrary contain in this Agreement, the Agreement shall automatically terminate on the date the CCTR Lease terminates, if this Agreement is still in effect on such date.

4. COMPENSATION.

4.1 Compensation Rates. In consideration of the performance by CCPN of the Switching Services required by the PORT under this Agreement, the PORT agrees to compensate CCPN on a crew-hour basis at the following rates during the following periods:

Initial Term -- \$108.00 per crew hour (the “Initial Rate”);
First Option Period – Initial Rate *times* First Period Adjustment Factor;
Second Option Period – Initial Rate *times* Second Period Adjustment Factor.

The First Period Adjustment Factor is the percentage change (increase or decrease) from December 2011 to December 2012 in the Consumer Price Index for All Urban Consumers (CPI-U) for the South Region for All Items (1982-84=100) (Not Seasonally Adjusted) published by the United States Department of Labor, Bureau of Labor Statistics. The Second Period Adjustment Factor is the percentage change (increase or decrease) from December 2011 to December 2013 in the Consumer Price Index for All Urban Consumers (CPI-U) for the South Region for All Items (1982-84=100) (Not Seasonally Adjusted) published by the United States Department of Labor, Bureau of Labor Statistics.

The PORT agrees to utilize the services of the crew for a minimum of 1,200 crew-hours per Contract Year. CCPN shall not charge for the first eight hours of Switching Services provided for the handling of Unit Trains. Switching services provided beyond eight hours on any individual Unit Train shall be invoiced to the PORT at the applicable rate. The foregoing Unit

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Train unloading terms apply only to the existing Rail Car Unloading Station and shall not apply to any new Rail Car unloading facility built at the Bulk Terminal.

4.2 Invoicing. CCPN shall invoice the PORT on or about the first calendar day of each calendar month for the previous month's service. Payment shall be due on or before the 15th day following the receipt of the invoice. The Parties agree that any amounts invoiced to the PORT for Switching Services under this Agreement shall not be subject to revenue sharing under the CCTR Lease.

4.3 Taxes. Any applicable sales, use, excise tax or other governmental charges applicable as of the Effective Date are deemed to be included in the contract price and such taxes or governmental charges shall therefore not be added to the stated prices herein.

4.4 Recordkeeping and Audit. CCPN shall establish and maintain adequate books, records, and electronic data pertaining to the Switching Services provided pursuant to this Agreement and which support and substantiate the invoices CCPN submits to the PORT pursuant to Section 4.2. CCPN shall preserve and protect this information during the term of this Agreement and for a period of one year after the termination of this Agreement. During this time the PORT or its duly authorized representative, upon reasonable advance notice, shall have access to and the right to examine the books, records and electronic data maintained by CCPN pursuant to this Agreement during normal business hours.

5. LOCOMOTIVE. The PORT shall make the Locomotive available to CCPN during the term of this Agreement for its use in performing Switching Services under this Agreement. CCPN shall provide the two-way radio communications equipment for the Locomotive that meets all applicable federal and state licensing requirements. CCPN will conduct daily inspections of the Locomotive and report any defects to the PORT promptly.

The PORT shall, at its expense, maintain the Locomotive for dependable operating service, shall provide monthly inspections and preventative maintenance service, shall supply all replacement parts, including brake shoes, and shall perform all repairs (other than minor repairs made by CCPN), periodic inspections, and filter changes. Periodic maintenance will include the inspection, repair and lubrication of all electrical components and electrical motors, the replacement of filters necessary on the diesel engine, the adjustment of brakes, inspection of the diesel engine, oil sampling, inspection of the air brake system and inspection of the locomotive appliances. The PORT will supply the Locomotive with fuel, all lubricating oils, water, sand, and other current operating supplies in accordance with Locomotive's specifications. If the Locomotive fails to operate, the PORT will make immediate repairs to Locomotive advising CCPN of the estimated time the Locomotive will be out of service. The PORT shall pay all property taxes, if any, applicable to and on the Locomotive.

Other than damage caused by the PORT, CCPN shall be responsible for all physical damage to the Locomotive from any cause, other than normal wear and latent defects, while Locomotive is in the possession of CCPN, including, without limitation, damage resulting from collisions, accidents, derailments and from the negligence or vandalism of CCPN or CCPN's employees, or from the acts or omissions of CCPN or its employees. CCPN's liability for damage to the Locomotive shall not, however, exceed the sum of One Million, Two Hundred and Fifty Thousand

Dollars (\$1,250,000.00) per incident or occurrence. CCPN will perform daily inspections, minor repairs and routine maintenance of adding lubricating oils, adjusting brake pistons, when needed, and changing brake shoes. Except as otherwise provided herein, all risk of loss or damage to the Locomotive shall be borne by CCPN while the Locomotive is in the possession of CCPN.

6. MAINTENANCE AND REPAIR OF TRACKS. The PORT shall be responsible for maintenance of all Bulk Terminal Tracks and shall, at a minimum, maintain said tracks to a FRA Class 1 standard and keep the Bulk Terminal Tracks clear and passable at all times and reasonably safe for the provision of the Switching Services. CCPN shall not operate over any Bulk Terminal Tracks that fail to meet FRA Class I standards. Furthermore, in no event shall CCPN operate over any Bulk Terminal Tracks that in its opinion are unsafe or unfit for the intended operation. CCPN shall promptly advise the PORT in writing of any maintenance and repairs to the Bulk Terminal Tracks that CCPN deems necessary for the safe and efficient performance of its Switching Services hereunder; provided, however, CCPN shall assume no liability due to a failure to report any track defects. To the extent any maintenance or repairs necessary to the Bulk Terminal Tracks for the safe and efficient performance of the Switching Services are not made, CCPN shall be entitled to suspend its performance of the Switching Services hereunder until such maintenance and repairs are complete.

7. INDEMNIFICATION. The Parties hereby agree that all liability, losses, costs, or expenses (including reasonable attorneys' fees) resulting from personal injury (including death) and property damage shall be borne by the Parties as follows:

7.1 Indemnity by CCPN. Other than with respect to damage to the Locomotive which is covered under Section 5, CCPN shall defend, indemnify, protect and hold the PORT and its officers and employees harmless from all claims, demands, suits, judgments, liabilities, costs (including reasonable attorneys' fees) and expenses occasioned by any death, personal injury, or loss of or damage to property, solely to the extent caused by the gross negligence or willful misconduct of CCPN.

7.2 Indemnity by the PORT. The PORT shall defend, indemnify, protect and hold CCPN and its directors, officers, employees and parent and affiliated companies harmless from all claims, demands, suits, judgments, liabilities, costs (including reasonable attorneys' fees) and expenses occasioned by any death, personal injury, or loss of or damage to property, solely to the extent caused by the gross negligence or willful misconduct of the PORT.

7.3 Limitation on Liability. IN NO EVENT AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION (TORT, CONTRACT OR OTHERWISE) SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR INTERRUPTION OF BUSINESS EXPENSES) ARISING OUT OF OR RELATED TO THIS AGREEMENT.

7.4 Survival. This indemnity section shall survive this Agreement's expiration or termination.

8. INSURANCE.

8.1 Coverage. CCPN shall purchase and maintain at its sole expense, during the term of this Agreement, insurance of the following types and in the following minimum following amounts:

(a) Coverage for claims under the Federal Employers Liability Act (FELA), disability benefit laws and any other employee benefit acts or laws applicable to CCPN in the performance of its services hereunder, with a limit of \$5,000,000.00;

(b) Coverage for claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, if any, not subject to FELA at statutory limits and employer's liability limits of \$1,000,000.00;

(c) Comprehensive Railroad Liability Insurance (including coverage for all railroad operations and loss of use) with a combined policy limit of at least \$5,000,000.00. Such insurance shall also include coverage for (i) claims or damages relating to or arising from bodily injury or death of persons other than CCPN's employees, (ii) claims for damages relating to injury to, or destruction of, real or tangible personal property of others in CCPN's care, custody or control, and (iii) damages to the Locomotive resulting from collisions, accidents, derailments, or vandalism or from the negligence of the CCPN or its employees, or from the acts or omissions of CCPN or its employees while the Locomotive is being used by CCPN or is in CCPN's possession (subject to the limits in Section 5);

(d) Comprehensive Automobile Liability Insurance with a combined single limit of at least \$1,000,000 covering the operation of any automobile, truck or other work vehicle that is either owned or leased by CCPN and used directly or indirectly in conjunction with the Switching Services provided hereunder; and

(e) Coverage for claims for hazardous materials spills, including evacuation and cleanup.

8.2 Carriers and Certificates. All of the insurance described in Section 8.1 hereof shall be obtained by CCPN from an insurance carrier or carriers authorized by the State of Texas to underwrite risks therein and all insurance policies for the aforementioned coverage shall be satisfactory to the PORT. Prior to the date on which CCPN commences the performance of Switching Services hereunder, CCPN shall provide the PORT with certificates of insurance evidencing the required insurance coverage hereunder. The PORT shall be named as an additional insured with respect to the insurance described in Section 8.1, except the insurance coverage described in Section 8.1(a) and (b). Copies of all renewal certificates shall also be furnished to the PORT immediately upon renewal of any insurance coverage required hereunder. CCPN shall pay the insurance premium on any insurance policy required herein and the Parties hereto agree that the compensation rates set forth in Section 4.1 include payment for CCPN's assumption of these insurance obligations. Nothing in this Agreement shall be construed as limiting CCPN's liability to the limits of the insurance coverage required above.

8.3 Waiver of Subrogation. CCPN hereby waives and releases all future claims that it may now or hereafter have against the PORT, its Commissioners or employees for

loss, damage or injury to its equipment which arises out of or occurs in connection with CCPN's performance of this Agreement to the extent such loss, damage or injury is covered by the property damage insurance required by Section 8.1 hereof. The foregoing waiver is intended to include any rights the carrier of such insurance may have against the PORT by virtue of the doctrine of subrogation.

9. FORCE MAJEURE. If either Party hereto shall be delayed, hindered in, or prevented from the performance of its obligations hereunder by reason of a Force Majeure Event, such Party's performance shall be excused for the period of time equivalent to the delay caused by such Force Majeure Event; provided such Party gives prompt notice to the other Party of such delay.

10. ASSIGNMENT. Neither Party shall assign its rights or transfer its duties in this Agreement, in whole or in part, or any interest arising hereunder, without the other Party's prior written consent, which consent shall not be unreasonably withheld. Any assignment, delegation or transfer of this Agreement or any interest herein without the other Party's prior written consent is void.

11. SUCCESSORS AND ASSIGNS. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

12. NOTICES. All notices under this Agreement shall be in writing and shall be given to the Party entitled to receive the same (i) by hand, (ii) via facsimile transmission to the Party's facsimile number listed below, or (iii) by United States certified mail, postage prepaid, return receipt requested, addressed to the Party for whom intended as follows:

To CCPN: President
Corpus Christi Terminal Railroad, Inc.
13901 Sutton Park Drive South, Suite 125
Jacksonville, FL 32224
Fax: 904-223-8711

To PORT: Executive Director
Port of Corpus Christi Authority
222 Power Street
Corpus Christi, Texas 78401
Fax: 361-881-5155

13. GOVERNING LAW. Enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict-of-laws principles that would require the application of any other law. The obligations of the Parties under this Agreement are performable in Nueces County, Texas.

14. COUNTERPARTS; FACSIMILE. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or email is as effective as executing and delivering this Agreement in the presence of the other Party. This

AGENDA ITEM NO. 12

Agreement shall be effective upon receipt of the signature page of the last of the Parties to sign this Agreement. In proving this Agreement, a Party must produce or account only for the executed counterpart of the Party to be charged.

15. ENTIRE AGREEMENT. This Agreement contains the entire understanding and agreement of the Parties hereto in respect of the subject matter hereof and supersedes all prior agreements and undertakings between the Parties with respect to such subject matter.

16. AMENDMENTS. This Agreement may be amended only by a written instrument duly executed by authorized representatives of both Parties.

17. SEVERABILITY. If any provisions of this Agreement are invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement. Any part, term or provision of this Agreement that is held to be unenforceable, illegal, or in conflict with any federal, state, or local laws as determined by a court of competent jurisdiction shall be considered severable from the rest of the Agreement. The remaining portions of the Agreement shall not be affected. The rights and obligations of the parties shall be construed and inferred as if the Agreement did not contain the particular term, part, or provision held to be invalid, unless the invalid provisions contain the material financial or service terms of this Agreement, or when considered in the aggregate, render continued operation of this Agreement manifestly unjust, in which case this Agreement shall be deemed void.

18. WAIVERS. The failure of any Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter, nor will the waiver of any Party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or other provision.

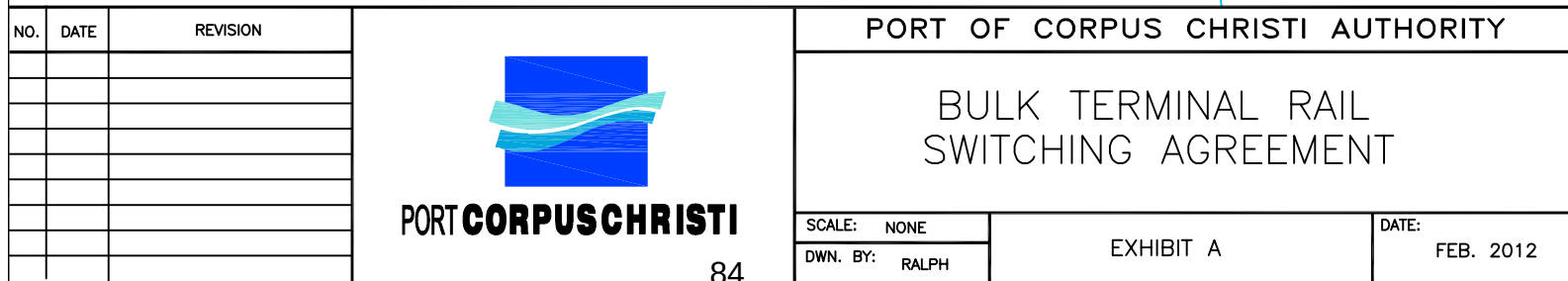
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

CORPUS CHRISTI TERMINAL RAILROAD, INC.

By: _____
Name: William A. Jasper
Its: President

PORT OF CORPUS CHRISTI AUTHORITY OF
NUECES COUNTY, TEXAS

By: _____
John P. LaRue
Executive Director



Staff recommends approval of a contract with R.E. Rabalais Constructors Ltd., dba Rabalais I&E Constructors, in the total amount of \$2,021,700 (75% or \$1,516,275 will be grant funds and 25% or \$505,425 will be PCCA funds). Staff further recommends that the Director of Engineering Services be granted a 3% contingency in accordance with the PCCA's standard contingency guidelines. This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

Attachment



**BID TABULATION FOR
 SECURITY GRANT 8
 NORTH BANK OPEN STORAGE AREA AND NORTH CARGO STORAGE AREA SECURITY IMPROVEMENTS
 PROJECT NO. 08-052F and 08-052J
 Bid Opening: January 24, 2012, at 2:00 PM**

Company Name	Bid Bond/Check	PART A ^A	PART B ^B	TOTAL BASE BID	Addendum 1
Rabalais I&E Constructors	5% Bid Bond	\$1,340,623.00	\$681,077.00	\$2,021,700.00	Acknowledged
Safenet Services, LLC	5% Bid Bond	\$2,077,523.70	\$1,082,085.18	\$3,159,608.88	Acknowledged

^APART A. The Scope of work consists of security lighting, power, security fencing and rail gates at the North Bank Storage Area, as specified in the project drawings and technical specifications.

^BPART B. The scope of work consists of installing light poles, camera poles, power, underground fiber-optic cable, and final camera alignment, as specified in the project drawings and technical specifications.

Read by: Greg Brubeck

Tabulated by: Carlos Martinez

Checked & Prepared by: Carlos Martinez

Date: January 24, 2012

February 14, 2012

Subject: ***AGENDA ITEM NO. 13-B***
Approve a Contract with Russell Marine, LLC, the Lowest and Best Bidder Base Upon Upon Bids Received on February 3, 2012, for Hoist Foundations and Gangway Support at Oil Dock 11

Oil Docks 4, 7, and 11 are primarily used by Valero, CITGO and Magellan and are some of the busiest public docks in the Inner Harbor. Over the years, staff has been working with the customers at these docks to resolve a number of operational issues. These issues include outdated booms and hoists, lack of dedicated access to and from the ships, congestion on the dock platform, and the need for a secondary escape route from the lower platforms on these docks.

In order to improve efficiency and safety during loading and unloading operations at these docks, PCCA has agreed to make infrastructure improvements to support new customer-supplied hoists to handle the larger loading hoses and dedicated gangways, a hose rack platform located at the rear of the dock, and a secondary escape route from the lower deck of each dock. The 2012 budget included \$770,000 to provide these improvements at Oil Dock 11. (Oil Docks 4 and 7 will follow in later budget cycles.)

On February 7, 2012, we received four responses to our Notice to Bidders (see attached bid tabulation sheet). The lowest evaluated bid was submitted by Russell Marine, LLC, with a base bid of \$887,950.00 for construction of the improvements and \$4,000.00 per day for standby time if required. The users of these docks added last-minute changes during the final design phase—increases in the gangway length and hoist height as well as gangway lighting—that account for the additional costs to the final project cost.

Russell Marine, LLC, is located in Channelview, Texas, and even though they have not worked directly for PCCA, they have successfully performed work for the Texas Department of Transportation

including improvements to the ferry landing in Port Aransas. Staff reviewed Russell Marine's qualifications, and references verified that work by Russell Marine was successfully completed.

Staff recommends that the Port Commission award a contract to Russell Marine, LLC, in the amount of \$887,950.00 and that the Director of Engineering Services be authorized a 7% contingency in accordance with the standard contingency guidelines for marine projects. Staff further recommends acceptance of additive bid item 1 for standby charges in the amount of \$4,000.00 per day if required during construction. This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

Attachment



**BID TABULATION FOR HOIST FOUNDATION & GANGWAY SUPPORT
AT OIL DOCK 11
PROJECT NO. 08-001A
Bid Opening: February 7, 2012 at 3:00 p.m.**

Company Name	Bid Bond or Check	Base Bid ^A	Additive Bid Item 1 ^B	Evaluated Bid ^C	Time of Delivery*	Addend No. 1	Addend No. 2
Russell Marine LLC	5% Bid Bond	\$887,950.00	\$4,000.00	\$919,950.00	275	X	X
J M Davidson, Ltd.	5% Bid Bond	\$913,511.00	\$2,200.00	\$931,111.00	180	X	X
Orion Construction, LP	5% Bid Bond	\$1,066,500.00	\$48,000.00	\$1,114,500.00	180	X	X
CCC Group, Inc.	5% Bid Bond	\$1,093,759.00	\$6,000.00	\$1,141,759.00	240	X	X

*In calendar days

^A BASE BID: Scope of work of this project consists of fabricating and installing a steel crane foundation, a steel gangway support platform over dock house roof and beyond, a steel dock extension structure on south side of dock, and a steel personnel walkway from lower deck of dock back to shore. Project scope also includes driving several piles in various locations in and around Oil Dock 11 to support these new steel structures. Furthermore, relocation of certain dock lighting is required. This is a Lump Sum bid item.

^B ADDITIVE BID ITEM 1: Standby Charges. This is a Unit Price bid item.

^C EVALUATED BID: Total Evaluated Bid of Base Bid (Total Lump Sum of Bid Item A) + 8 Days x Additive Bid Item 1

Tabulated By: Greg Brubeck, P.E.

Checked By: Jacob Morales, P.E.

Checked & Prepared By: Melinda Maldonado

Date: February 7, 2012

February 14, 2012

Subject: ***AGENDA ITEM NO. 13-C***
Approve a Contract with Russell Marine, LLC, the Lowest and Best Bidder Based Upon Bids Received on February 3, 2012, for Oil Dock No. 6 Fender Upgrades and Breasting/Mooring Structure Replacement

This project is designed to upgrade and replace a lightweight fender system that was found to be severely damaged during routine annual inspections for the 2012 budget. The existing fender system consists of fiberglass composite piling and timber fender beams which were found moderately to severely damaged with many of the pilings broken below the waterline. In addition, a nearly 40-year-old three-pile steel barge breasting/mooring structure immediately adjacent to the dock is severely damaged and needs to be replaced.

On February 3, 2012, we received four responses to our Notice to Bidders (see attached bid tabulation sheet). The apparent lowest evaluated bid was submitted by Russell Marine, LLC, with a base bid of \$595,790 and a total evaluated bid of \$649,790. The total evaluated bid is a hypothetical mix of the base bid and additive bid items 1, 2, and 3, based on what staff estimates will most likely occur, and is used to measure the cost competitiveness of the contractor's bid.

Russell Marine, LLC, is located in Houston, Texas, and was established a few years ago by Russell Inerra, an experienced marine contractor who also founded Orion Construction and Triton Marine, both successful marine contractors. Though Russell Marine, LLC, has not worked directly for the PCCA, they have performed work for the Texas Department of Transportation including the ferry landing in Port Aransas, Texas. Staff reviewed Russell Marine's qualifications and contacted references who verified that work by Russell Marine was successfully completed.

Staff recommends a contract be awarded to Russell Marine, LLC, in the amount of \$602,790, which includes the base bid and one set of spare fenders (additive bid item 3), and that the Director of Engineering Services be authorized a 7% contingency in accordance with the PCCA's standard contingency guidelines for marine and rehabilitation projects. Staff further recommends acceptance of additive bid item 1 standby charges in the amount of \$3,500 per day and additive bid item 2 pile build-ups in the amount of \$3,000 per 10' segment.

The 2012 budget included \$600,000 for this project. Based on the bids received, staff believes the apparent low bid to be fair and reasonable. This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

Attachment



**BID TABULATION FOR OIL DOCK NO. 6
FENDER UPGRADES AND BREASTING/MOORING STRUCTURE REPLACEMENT
PROJECT NO. 11-027B
Bid Opening: February 3, 2012 at 2:00 p.m.**

Company Name	Bid Bond or Check	Base Bid ^A	Additive Bid Item 1 ^B	Additive Bid Item 2 ^C	Additional Calendar Days	Additive Bid Item 3 ^D	Additional Calendar Days	Evaluated Bid ^E	Time of Delivery*	Addendum No. 1
Russell Marine LLC	5% Bid Bond	\$595,790.00	\$3,500.00	\$3,000.00	5	\$7,000.00	5	\$649,790.00	275	X
JM Davidson, Ltd.	5% Bid Bond	\$724,832.00	\$2,200.00	\$7,786.00	16	\$8,132.00	120	\$786,108.00	160	X
Orion Construction, LP	5% Bid Bond	\$859,000.00	\$6,000.00	\$7,200.00	1	\$8,000.00	1	\$955,800.00	180	X
H2O Construction	5% Bid Bond	\$1,036,500.00	\$5,000.00	\$5,000.00	0	\$7,000.00	30	\$1,098,500.00	100	X

*In calendar days

^A BASE BID: includes the removal of Breasting Structure #3; installation of one 3-pile structure (west of the dock) and one 3-pile structure (east of the dock); installation of two 2-pile structures within the limits of the existing dock (including removal of & rebuilding portions of dock for access); installation of four fender elements (one on each structure); installation of 3 fender panels spanning the four new structures; and all other work incidental to completing the work described in accordance with the plans, specifications and

^B ADDITIVE BID ITEM 1: Standby Charges

^C ADDITIVE BID ITEM 2: Pile Build-Up. If directed by the PCCA, provide additional 10 feet length of 24-inch diameter x 0.75-inch wall thickness steel pipe pile, including material, cost of welding, 100% radiograph examination, coating outside of pile, driving, and any other related work items. This is a Lump Sum bid item.

^D ADDITIVE BID ITEM 3: Spare Set of Rubber Fender Elements. Provide a set of (2) two additional new rubber fender elements as replacements for those included in the BASE I

^E EVALUATED BID: Base Bid + 10 days x Additive Bid Item 1 + 4 Pile Build-Ups x Additive Bid Item 2 + Additive Bid Item 3

Tabulated By: David Krams, P.E.

Checked By: Dave Michaelsen, P.E.

Checked & Prepared By: Melinda Maldonado

Date: February 3, 2012



PORTCORPUSCHRISTI

February 14, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charles Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: AGENDA ITEM NO. 13-D
Approve Contracts with Access Ford, Grapevine Dodge Chrysler Jeep,
and Sames Ford Lincoln, the Lowest and Best Bidders Based Upon
Bids Received on February 3, 2012, for the Purchase of Vehicles

Dear Commissioners:

Each year, the Port of Corpus Christi Authority budgets for the replacement of aging and worn vehicles in order to maintain a dependable and operational vehicle fleet. The 2012 budget included \$240,000 for the replacement of seven vehicles as summarized below:

<u>Unit No.</u>	<u>Department</u>	<u>Make/Model/Year</u>	<u>Mileage</u>	<u>Disposition</u>
269	Maintenance	Ford F-350 – 1999	86,056	Trade-in
275	Maintenance	Ford F-250 – 1999	155,533	Trade-in
284	Maintenance	Ford F-350 – 2001	110,077	Trade-in
298	Bulk Terminal	Chev. Silverado – 2002	34,979	Trade-in
299	Bulk Terminal	Chev. Silverado – 2002	29,925	Trade-in
342	Police Dept.	Chev. Silverado – 2005	153,641	Trade-in
348	Exec. Director	Chev. Suburban – 2007	181,161	Trade-in

Although the Bulk Terminal units listed above have low mileage, the vehicle bodies and frames have become so badly deteriorated due to their constant exposure to the corrosive environment that staff no longer drives these units off the facility complex.

On February 3, 2012, we received four responsive bids to our Notice to Bidders (see attached bid tabulation sheet). The following companies were the apparent low bidders to provide replacement vehicles:

Access Ford	Ford F-350 Crew Cab Flatbed Truck <i>(Replaces Unit 269)</i>
	Ford Expedition EL XLT <i>(Replaces Unit 348)</i>

Grapevine Dodge Chrysler Jeep	Dodge Ram 3500 Dual Rear Wheel Crew Cab & Chassis <i>(Replaces Unit 284)</i> Two Dodge Ram 1500 Crew Cab Trucks <i>(Replaces Units 298 & 299)</i> Dodge Ram 1500 Four Wheel Drive Crew Cab Truck <i>(Replaces Unit 342)</i>
Sames Ford Lincoln	One Ford F-350 Four Wheel Drive Crew Cab <i>(Replaces Unit 275)</i>

Access Ford and Sames Ford Lincoln dealerships are located in Corpus Christi and have furnished vehicles to the PCCA in the past. The Grapevine Dodge Chrysler Jeep dealership is located in Grapevine, Texas, and this is the first time they have submitted bids to the PCCA. Grapevine Dodge learned about this purchase through the PCCA's newly implemented online e-bid system.

Staff recommends that contracts be awarded to Access Ford in the amount of \$58,113.70 for the purchase of two vehicles, Grapevine Dodge Chrysler Jeep in the amount of \$75,029.00 for the purchase of four vehicles, and Sames Ford Lincoln in the amount of \$27,536.56 for the purchase of one vehicle. This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

Attachment



BID TABULATION FOR PURCHASE OF VEHICLES
PROJECT NO.12-009A
Bid Opening: February 3, 2012 at 3:30 p.m.

Bid Items	Company Name			
	Access Ford	Allen Samuels	Grapevine Dodge Chrysler Jeep	Sames Ford & Lincoln
Bid Item 1^A	2012 Ford F-350 Crew Cab/Chassey	Chevrolet One-Ton SRW Flatbed		Ford F-350 W3E Chew Cab 4x2
Bid Amount	\$ 30,781.00	\$ 36,902.54		\$ 31,377.47
Less Trade-In	\$ 2,500.00	\$ 3,000.00		\$ 3,000.00
Total Bid Item 1	\$ 28,281.00	\$ 33,902.54		\$ 28,377.49
Time of Delivery	8 - 10 Weeks	5/3/2012		6 - 8 Weeks
Bid Item 2^B	2012 Ford F-350 4/4 Crew Cab	Chevrolet 3500 HD		Ford F-350 Crew 4x4
Bid Amount	\$ 30,669.00	\$ 38,177.39		\$ 31,036.56
Less Trade-In	\$ 2,000.00	\$ 3,000.00		\$ 3,500.00
Total Bid Item 2	\$ 28,669.00	\$ 35,177.39		\$ 27,536.56
Time of Delivery*	8 - 10 Weeks	5/3/2012		6 - 8 Weeks
Bid Item 3^C	2012 Ford F-350 Crew Cab/Chassey	Chevrolet 1 Ton Reg Cab DRW Chassis	Dodge Ram 3500 DD3293	Ford W3G F-350 Crew Chassis
Bid Amount	\$ 28,432.00	\$ 32,146.99	\$ 24,108.00	\$ 29,494.47
Less Trade-In	\$ 3,500.00	\$ 4,000.00	\$ 3,800.00	\$ 3,500.00
Total Bid Item 3	\$ 24,932.00	\$ 28,146.99	\$ 20,308.00	\$ 25,994.47
Time of Delivery*	8 - 10 Weeks	5/3/2012	75 - 85 Days	6 - 8 Weeks
Bid Item 4^D	2012 Ford F-150 Super Crew	Chevrolet CC10543	Dodge Ram 1500 DS1L98	Ford W1C F-150 Crew Cab 4x2
Bid Amount	\$ 23,270.00	\$ 30,355.77	\$ 20,690.00	\$ 24,432.11
Less Trade-In	\$ 1,000.00	\$ 1,700.00	\$ 3,700.00	\$ 1,000.00
Total Bid Item 4	\$ 22,270.00	\$ 28,655.77	\$ 16,990.00	\$ 23,432.11
Time of Delivery*	8 - 10 Weeks	5/3/2012	60 - 75 Days	4 - 6 Weeks
Bid Item 5^E	2012 Ford F-150 Super Crew	Chevrolet CC10543	Dodge Ram 1500 DS1L98	Ford F-150 4x2 Crew
Bid Amount	\$ 23,570.00	\$ 30,355.77	\$ 20,690.00	\$ 24,431.75
Less Trade-In	\$ 1,000.00	\$ 1,700.00	\$ 3,700.00	\$ 1,500.00
Total Bid Item 5	\$ 22,570.00	\$ 28,655.77	\$ 16,990.00	\$ 22,931.75
Time of Delivery*	8 - 10 Weeks	5/3/2012	60 - 75 Days	4 - 6 Weeks
Bid Item 6^F	2012 Ford F-150 4/4 Super Crew	Chevrolet CK10543 LTZ	Dodge Ram DS6H98	Ford W1E F-150 Crew 4x4
Bid Amount	\$ 31,699.00	\$ 41,278.56	\$ 26,541.00	\$ 35,525.11
Tax, Title License & Fees	\$ 1,890.38	\$ 2,492.31	---	\$ 1,934.57
Less Trade-In	\$ 6,500.00	\$ 6,500.00	\$ 5,800.00	\$ 6,000.00
Total Bid Item 6	\$ 27,089.38	\$ 37,270.87	\$ 20,741.00	\$ 31,459.68
Time of Delivery*	8 - 10 Weeks	5/3/2012	60 - 75 Days	4 - 6 Weeks
Bid Item 7^G	2012 Ford Expedition EL XLT	Chevrolet Suburban		Ford Expedition EL
Bid Amount	\$ 37,260.00	\$ 53,966.10		\$ 39,676.45
Tax, Title License & Fees	\$ 2,072.70	\$ 3,516.56		\$ 2,131.53
Less Trade-In	\$ 9,500.00	\$ 8,500.00		\$ 10,000.00
Total Bid Item 7	\$ 29,832.70	\$ 48,982.66		\$ 31,807.98
Time of Delivery*	8 - 10 Weeks	5/3/2012		4 - 6 Weeks
Addendum No 1	X	X	X	X
Addendum No 2	X	X	X	X

^ABID ITEM 1: Lump sum price for the purchase of One-Ton Crew Cab Flatbed Truck Less Trade-In 1999 Ford F-350 Truck

^BBID ITEM 2: Lump Sum price for the purchase of One-Ton Four Wheel Drive Crew Cab Truck Less Trade-In 199 Ford F-250 Truck

^CBID ITEM 3: Lump sum price for the purchase of One-Ton Cab & Chassis Dual Rear Wheel Crew Cab Truck

^DBID ITEM 4: Lump sum price for the purchase of Half-Ton Crew Cab Truck Less Trade-In 2002 Chevrolet Half-Ton Truck

^EBID ITEM 5: Lump Sum price for the purchase of Half-Ton Crew Cab Truck Less Trade-In 2002 Chevrolet Half-Ton Truck

^FBID ITEM 6: Lump sum price for the purchase of Four Wheel Drive Half-Ton Crew Cab Truck Less Trade-In 2005 Chevrolet Silverado Truck, 4WD

^GBID ITEM 7: Lump sum price for the purchase of High Occupancy SUV Less Trade-In 2007 Chevrolet Suburban

Tabulated By: David Michaelsen, P.E.

Checked By: Jacob Morales, P.E.

Checked & Prepared By: Melinda Maldonado

Date: February 3, 2012



Port Commissioners
Agenda Item No. 13e
February 14, 2012

2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,

A handwritten signature in blue ink, appearing to read "John P. LaRue". The signature is fluid and cursive, with the first name "John" and last name "LaRue" clearly distinguishable.

John P. LaRue
Executive Director

Agreement. Staff sees no reason not to accommodate this request. Therefore, staff and the Rogers are currently working on a Boundary Acknowledgment and Use Restriction Agreement with respect to the 3.851-Acre Tract. In the agreement, the PCCA agrees to make no claim of title to the 3.851-Acre Tract and the Rogers agree to the use restriction on the property described above.

Staff and counsel are currently reviewing the final terms of the Boundary Acknowledgment and Use Restriction Agreement. The final form of this agreement will be provided prior to the Commission meeting on February 14, 2012. Subject to these final negotiations, staff will recommend approval. This item is included on the agenda of the February 14, 2012, Commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

Attachment

bing Maps

My Notes

On the go? Use m.bing.com to find maps, directions, businesses, and more.



<http://www.bing.com/maps/print.aspx?mkt=en-us&z=17&s=ndcp=27.833497,-97.226839...> 2/9/2012



CHANGE ORDER

Change Order No. 4
Date: February 14, 2012
Page: 1 of 1

PROJECT: Security Grant 7 – Northside Security and Critical Docks Access Control
PROJECT NUMBER: 07-034C
CONTRACTOR: Safenet, 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:

See attached description of modifications and breakdown of charges on Page 2.

Increase in Contract Price:	\$ 184,160.92
Increase in Contract Time (ADDITIVE BID ITEM 3 ONLY):	41 Days
Original Contract Amount:	\$ 2,906,878.97
Total Amount of Previous Change Orders:	\$ 52,139.68
Amount of this Change Order:	\$ 184,160.92
Revised Contract Amount:	\$ 3,143,179.57

Notice to Proceed Date for Original Contract:	March 31, 2011
Original Contract Time:	365 days
Previous Changes in Contract Time:	0 days
Calendar Days for Change Order #4 (ADDITIVE BID ITEM 3 ONLY):	41 days
Revised Contract Time:	406 days
Required Completion Date for Change Order #4 (ADDITIVE BID ITEM 3 ONLY):	May 10, 2012
Required Completion Date for Original Contract:	March 30, 2012

The change in contract price includes all costs involved with 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 Safenet, LLC as signed by their duly authorized representatives below.

PORT OF CORPUS CHRISTI AUTHORITY

Safenet, LLC

By: _____
Carlos A. Martinez, P.E.
Project Manager

By: _____
David Alexander
General Member

By: _____
Greg Brubeck, P.E.
Director of Engineering

Date: _____

Date: February 14, 2012

PROJECT: Security Grant 7 – Northside Security and Critical Docks Access Control
PROJECT NUMBER: 07-034C
CONTRACTOR: Safenet, LLC

1. Delete storm sewer improvements and automatic gate at Texaco Road (Additive Bid Item #4), as shown on attached drawings.

ITEM	QTY	UNIT	UNIT PRICE	TOTAL
18" Class III RCP	15	LF	\$53.02	\$795.30
30" Class III RCP	35	LF	\$86.68	\$3,033.80
30" Class V RCP	295	LF	\$81.46	\$24,030.70
18" Culvert S.E.T.	1	EA	\$523.79	\$523.79
18" Headwall & Apron w/ grating	1	EA	\$2,025.02	\$2,025.02
30" Culvert S.E.T. w/ grating	1	EA	\$1,571.37	\$1,571.37
30" Culvert S.E.T.	1	EA	\$827.78	\$827.78
Concrete Rip-Rap	1020	SF	\$10.99	\$11,209.80
12' Rolling Gate w/ operator	1	EA	\$10,274.73	\$10,274.73

Decrease (\$ 54,292.29)

2. Add fence opening, bollards, and K4 rated crash gate, as described on attached technical specification (6 pages) and as shown on attached drawings (5 pages, 11x17).

ITEM	QTY	UNIT	UNIT PRICE	TOTAL
Site grading	1	LS	\$1,248.00	\$1,248.00
48" square opening in fence	1	EA	\$602.00	\$602.00
8" bollards	8	EA	\$470.06	\$3,760.48
12' K4 rated crash gate	1	EA	\$232,842.73	\$232,842.73

Increase \$ 238,453.21

TOTAL INCREASE IN CONTRACT PRICE \$ 184,160.92

TOTAL INCREASE IN CONTRACT TIME* 41 Days*

***APPLIES TO WORK AT TEXACO ROAD (ADDITIVE BID ITEM #4) ONLY. COMPLETION. DATE FOR ALL OTHER WORK LOCATIONS REMAINS MARCH 30, 2012.**

Staff recommends approval of a professional services purchase order with Govind Development, LLC, in an amount not to exceed \$148,000 for engineering services associated with the Viola Barge Dock Upgrade project. Govind is a local engineering firm, and members of its staff have successfully performed numerous civil, marine and rehabilitation projects for the PCCA over the years.

This item is included on the agenda of the February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director



PORTCORPUSCHRISTI

February 14, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charles Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject:

AGENDA ITEM NO. 13-I
Approve the Renewal of a Lease Agreement with
John Bludworth Shipyard, LLC, for a 11.634-Acre Lease
Located on the North Side of the Inner Harbor

Dear Commissioners:

John Bludworth Shipyard, LLC, (formerly known as Jay Bludworth, Inc.) first leased the subject property on November 10, 1998, for a primary term of five years with two 5-year option periods. John Bludworth is currently anticipating several expansion projects and would like to renew their lease now prior to its expiration in 2013 before making any significant capital expenditures to equipment and facilities to meet anticipated future business opportunities.

Staff and legal counsel drafted the attached lease agreement for an initial term of five years with five 5-year option periods. Based on an increase in the land equalization value from \$55,000 in 1998 to \$150,000 per acre in 2012 and an increase in the rate of return from 8% to 10%, the monthly rent will increase from \$5,599.13 to \$14,542.50 during the initial five-year term. The rental amount is subject to adjustment in accordance with changes in the equalization value at the beginning of each option period.

The renewal agreement has been drafted on the PCCA's long-term lease template and all terms and conditions have been reviewed and accepted by John Bludworth Shipyard. Staff recommends approval of the lease as drafted. This item is included on the agenda of the February 14, 2012 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: John Bludworth Shipyard, LLC
P. O. Box 2441
Corpus Christi, Texas 78403

Leased Premises: As depicted on Exhibit A in the attached lease agreement.

Use: For the operation and maintenance of a ship repair and ship building yard with a floating drydock and other related facilities.

Initial Term: Five years.

Options Periods: Five, five year option periods.

Start Date: February 14, 2012

Initial Monthly Rent: \$14,542.50

Current Monthly Rental: \$5,599.13

Adjustment of Rent: At the beginning of each option period.

Remarks: Lessee agrees to maintain, service and repair the Authority owned improvements (i.e. the steel bulkhead and drydock slip listed on Exhibit B to the lease agreement) at its own expense during the Term of this lease, such that these improvements are kept in a safe and serviceable condition. These items will be delivered back to Authority in the condition they were in on the date this lease agreement was made, less normal wear and tear, upon termination of the lease.

LEASE AGREEMENT

Between

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

And

JOHN BLUDWORTH SHIPYARD, LLC
(*“Lessee”*)

February 14, 2012

LEASE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This **LEASE AGREEMENT** is made this 14th day of February, 2012 (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 **JOHN BLUDWORTH SHIPYARD, LLC**, a Texas limited liability corporation, whose principal address is P. O. Box 2441, Corpus Christi, Texas 78403, (hereinafter called "Lessee").

This **LEASE AGREEMENT** supersedes, cancels and replaces Lessee's current Lease Agreement, as amended, dated November 10, 1998 by and between **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, and **JAY BLUDWORTH, INC.**

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, stated in this Section, real property situated in Nueces County, Texas, which is described as follows:

The surface estate of that certain tract of 11.634 acres of land, more or less, which tract is particularly described on **Exhibit A** attached hereto and incorporated herein by reference and all Authority owned improvements situated thereon described on **Exhibit B** attached hereto, (hereinafter called "Leased Premises").

TO HAVE AND TO HOLD the Leased Premises for an initial term (the "Initial Term") of five (5) years, beginning on the 14th day of February, 2012, and (subject to earlier termination as herein provided) ending at midnight, Central Time, the 13th day of January, 2017. The "Term" of this lease means the period of time beginning with the Effective Date and ending upon termination of this lease.

Authority hereby grants to Lessee the option to extend the Term of this lease for five (5) additional option periods of five (5) years each, beginning on the first day after the expiration of the Initial Term and each option period hereof; but if, at the date the Initial Term or any option period 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 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 Initial Term or any option period 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 period pursuant to **Section 3.02** of this lease agreement.

Section 1.02. Holding Over

If Lessee holds over beyond the Initial Term or any option period 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 equal to ten percent (10%) of the product of Equalization Value of the Leased Premises multiplied by the number of acres of land in the Leased Premises. For the purpose of fixing annual rent for the Initial Term of this lease, the Equalization Value of the Leased Premises is fixed at One Hundred Fifty Thousand and NO/100 Dollars (\$150,000.00) per acre and includes Authority owned improvements consisting of approximately 500 feet of steel bulkhead and a 100 foot wide and 150 foot long bulkheaded dry-dock slip dredged to a depth of 30 feet. The total sum to be paid Authority by Lessee as rent during the Initial Term of this lease, subject to any adjustments of rent made pursuant to this lease agreement, is Eight Hundred Seventy-Two Thousand, Five Hundred Fifty and NO/100 Dollars (\$872,550.00), and may be paid in monthly installments of Fourteen Thousand Five Hundred Forty-Two and 50/100 Dollars (\$14,542.50). "Equalization Value" is that value per acre placed on the Leased Premises by Authority from time to time 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 9th day of January, 2012 or ten days after the approval of this lease by Authority, whichever occurs last. Rent for any fractional year or month at the beginning or end of the Term will be prorated on a per-day basis. Such monthly installment of rent is due and payable on or before the 1st day of each succeeding month thereafter; or each annual payment of rent is due and payable on or before 9th day of January of

each succeeding year following the first year of the Initial Term of this lease. 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 if the monthly rent due under this agreement is paid after the 10th day of a month. 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.

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 of the Leased Premises. If the Equalization Value of the Leased Premises increases during the Initial Term or any option period of this lease, the Authority shall give Lessee written notice of the new Equalization Value at least ninety (90) days prior to the end of the Initial Term or option period, as the case may be. Unless Lessee objects to the new Equalization Value as provided herein, the annual rent for the Leased Premises during the next succeeding option period will be ten percent (10%) of the product of the new Equalization Value of the Leased Premises multiplied by the number of acres of land in the Leased Premises.

If Lessee is not notified of a new Equalization Value at least ninety (90) days before expiration of the Initial Term or the current option period of this lease, as the case may be, it ~~is~~ shall be conclusively presumed that the Equalization Value for the ensuing option period of this lease will be the same as the then current Equalization Value.

In the event Lessee does not agree with the new Equalization Value, Lessee shall have the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the new 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 Initial Term or the current option period, as the case may be, 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 fair market value for the next ensuing option period of this lease agreement. The fair market value determined by the appraiser will be the Equalization Value, and the annual rent or monthly rent for the next ensuing option period of the Term will be determined and paid in accordance with **Section 3.01** 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 Equalization Value of the Leased Premises for an option period be less than the then current Equalization Value of the Leased Premises.

Section 3.03. 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 operation and maintenance of a ship repair and ship building yard with a floating drydock and other related facilities. Lessee agrees to coordinate the loading and unloading of the drydock with Authority's Harbor Master's office.

Lessee agrees to maintain, service and repair the Authority owned improvements (i.e. the steel bulkhead and drydock slip) at its own expense during the Term of this lease, such that these improvements are kept in a safe and serviceable condition. These items

will be delivered back to Authority in the condition they were in on the date this lease agreement was made, less normal wear and tear, upon termination of the lease.

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 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.

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, 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. Wharfage

The Leased Premises contain frontage on the Corpus Christi Ship Channel, and Lessee is granted access to the Leased Premises from, and right of use of said channel without payment of dockage or wharfage charges, for shipping and receiving, by water transportation, materials used for construction of the Leased Premises and materials and commodities used or consumed by Lessee in its business conducted on the Leased Premises. All other commodities or cargo moved from or to water

transportation at the Leased Premises will pay all of Authority's tariff charges applicable to the same. Lessee must report in writing monthly to Authority the amount of such commodities handled and pay to Authority at its offices in Corpus Christi monthly the amount due pursuant to this lease agreement and Authority's tariff. Authority shall have the right at reasonable times during business hours to inspect the books and records of Lessee concerning such shipments and payments.

Section 4.05. Permitted Use; Continuous Operation

Lessee will continuously maintain the Leased Premises open for its usual business and available for the purposes permitted hereunder during its usual business hours on days other than Saturday, Sunday or legal holidays.

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 4.06. Live Loads

Live loads in proximity to any bulkhead on the Leased Premises must be limited to weight and distances from the bulkhead so as not to damage the bulkhead.

Section 4.07. Mooring of Vessels

Only ships, boats, barges, or other vessels or equipment being loaded, unloaded, repaired, or constructed by Lessee may be moored along the water frontage of the Leased Premises. Lessee must notify the Harbormaster of all vessel movements into and out of the slip at Leased Premises. Mooring ships, boats and barges of others, including pleasure craft and houseboats, is prohibited unless special arrangements are made with Authority for the payment of Authority's charges for such berthing.

Lessee will provide at its expense all moorings necessary, or required by Authority's Harbormaster, to moor ships, boats, barges or other vessels or equipment at the Leased Premises. Such moorings must be located so as not to be in contact with either tieback rods or anchorage for the bulkhead at the Leased Premises. Lessee agrees to remove, or cause to be removed, within twenty-four (24) hours after notice from Authority's Harbormaster, any vessel owned or controlled by Lessee and docked at the Leased Premises, which in the sole opinion of the Authority's Harbormaster is a hazard to navigation.

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 Texas Historical Commission, or its successor. Lessee shall undertake its activities on the Leased Premises in a manner consistent with public policy relating to the location and preservation of archeological sites and other cultural resources in, on, or under public lands. Lessee shall use the highest degree of care and all reasonable safeguards to prevent the taking, alteration, damage, destruction, salvage, or excavation of cultural resources and/or landmarks on the Leased Premises. Upon discovery of an archeological site, Lessee shall immediately give written notice of such discovery to Authority and to the Texas Historical Commission, as set out in the Committee's rules. 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 Term, at its own expense and risk, maintain the Leased Premises and all improvements on them in good order and condition, including but not limited to making all repairs and replacements necessary to keep the premises and improvements in that condition. All maintenance, repairs, and replacements required by this Section must be performed promptly when required 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 a rate of 10% annually from the date of the notice until the date paid by Lessee to Authority.

At the expiration of the Term, Lessee will surrender the premises in good order and repair except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal made by Lessee pursuant to its obligations under this lease agreement.

Section 5.03. Approval of Alterations and Improvements

Lessee must submit to Authority plans 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 reasonable 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 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 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.

Section 5.12. Side Yard Limits

No permanent improvements may be constructed within five (5) feet of the Leased Premises' boundary lines.

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 so long as doing so does not interfere with Lessee's use of the leased premises.

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 Ten Million and NO/100 Dollars (\$10,000,000.00). 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;

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 not due to a casualty loss or Force Majeure; 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 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

Section 10.01. Subordination of Landlord's Lien

It is contemplated that Lessee may be required to borrow funds for construction of improvements on the Leased Premises from time to time during the Term, and it may be desirable or convenient for Lessee to borrow additional funds for additional improvements, alterations, repairs or for other purposes to benefit the Leased Premises. Accordingly, it is agreed that Lessee shall at all times during the Term of this lease, without the consent of Authority (but provided written notice and a copy of the security instruments are delivered to Authority), have the right to mortgage or convey by deed of trust or any other security instrument the leasehold rights of Lessee created by this lease agreement, together with all of Lessee's rights, titles, and interest in the buildings and improvements then or thereafter to be placed on the Leased Premises; provided, however, that any such mortgage, deed of trust, security conveyance or encumbrance will at all times be subject to and shall recognize the superior right, title and interest of Authority to the Leased Premises and to Authority's rights hereunder to require Lessee's payment of all rent due hereunder and Lessee's full and faithful performance of all covenants and conditions of this lease agreement due Authority.

Subject to the conditions stated in this Article, Authority subordinates its landlord's lien on the improvements and other property Lessee places on the Leased Premises to the rights of the holder of any such mortgage, deed of trust or other security instrument.

Section 10.02. Holder of Security

In the event at any time during the Term Lessee or anyone holding under Lessee shall be in default of any of the covenants or any of the conditions of this lease agreement, then and in such event the holder of the mortgage, deed of trust or other security instrument may, before forfeiture is invoked by Authority, make any and all payments and do and perform any and all acts or things which may be necessary or required to prevent a forfeiture of this lease agreement; and the party making such payments or performing such acts or things shall thereby and thereupon be subrogated to all the rights of Lessee under this lease agreement. Authority agrees that, if requested in writing by the holder of any mortgage, deed of trust or other security instrument, it will send to the said holder at the address specified in the written request copies of all written notices of demand which Authority may serve upon Lessee, or anyone holding under Lessee, under and pursuant to the terms of this lease agreement.

It is understood, however, that the mortgagee, trustee, beneficiary of said deed of trust or other holder of security above-mentioned shall in no way be liable to Authority for the payment of any rent or for the performance of any other covenants and conditions under this lease agreement until such time as it shall acquire by conveyance from Lessee or by foreclosure or other proceedings provided by law or by the terms of mortgage, deed or trust, or security instrument, all the right, title and interest of Lessee under this lease agreement; provided, however, that any party who shall acquire said right, title and interest of Lessee as above provided shall thereupon and thereby become liable for the full performance and all payments theretofore and thereafter required to be made by Lessee under the covenants and conditions of this lease agreement, as fully and completely and to the same extent as Lessee itself would have been if it still had retained its right, title and interest under this lease agreement.

ARTICLE 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 or 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, and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the Term, 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.

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 \$2,000,000.00 general aggregate at the Leased Premises

D. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000.00 (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 Real Estate 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 from Lessee to Authority, Attention: Real Estate 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.

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 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, Lessee will promptly commence and thereafter prosecute diligently to completion the restoration of the same to the condition in which the destroyed or damaged portion existed prior to the casualty. Lessee will perform such restoration with at least as good workmanship and quality as the improvements being restored and in compliance with the provisions of Article 5 hereof. Notwithstanding the foregoing provisions of this paragraph to the contrary, if all of such improvements are wholly destroyed by any casualty or are so damaged or

destroyed that, in Lessee's good faith judgment reasonably exercised, it would be uneconomic to cause the same to be restored (and Lessee shall give written notice of such determination to Authority within ninety (90) days after the date 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 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 Authority is entitled to receive and retain the award for the taking of the Leased Premises except for damages awarded to Lessee.

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 (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, 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 request 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 reasonable 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 except due to negligence of Authority.

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, John Bludworth Shipyard, LLC, at P. O. Box 2441, 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, 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 (15) 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 (120) 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"

JOHN BLUDWORTH SHIPYARD, LLC

By: _____

Name: _____

Title: _____

"Lessee"

STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged before me on the 14th day of February, 2012, 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 _____, 2012, by _____, _____ of John Bludworth Shipyard, LLC, a Texas Limited Liability Corporation, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

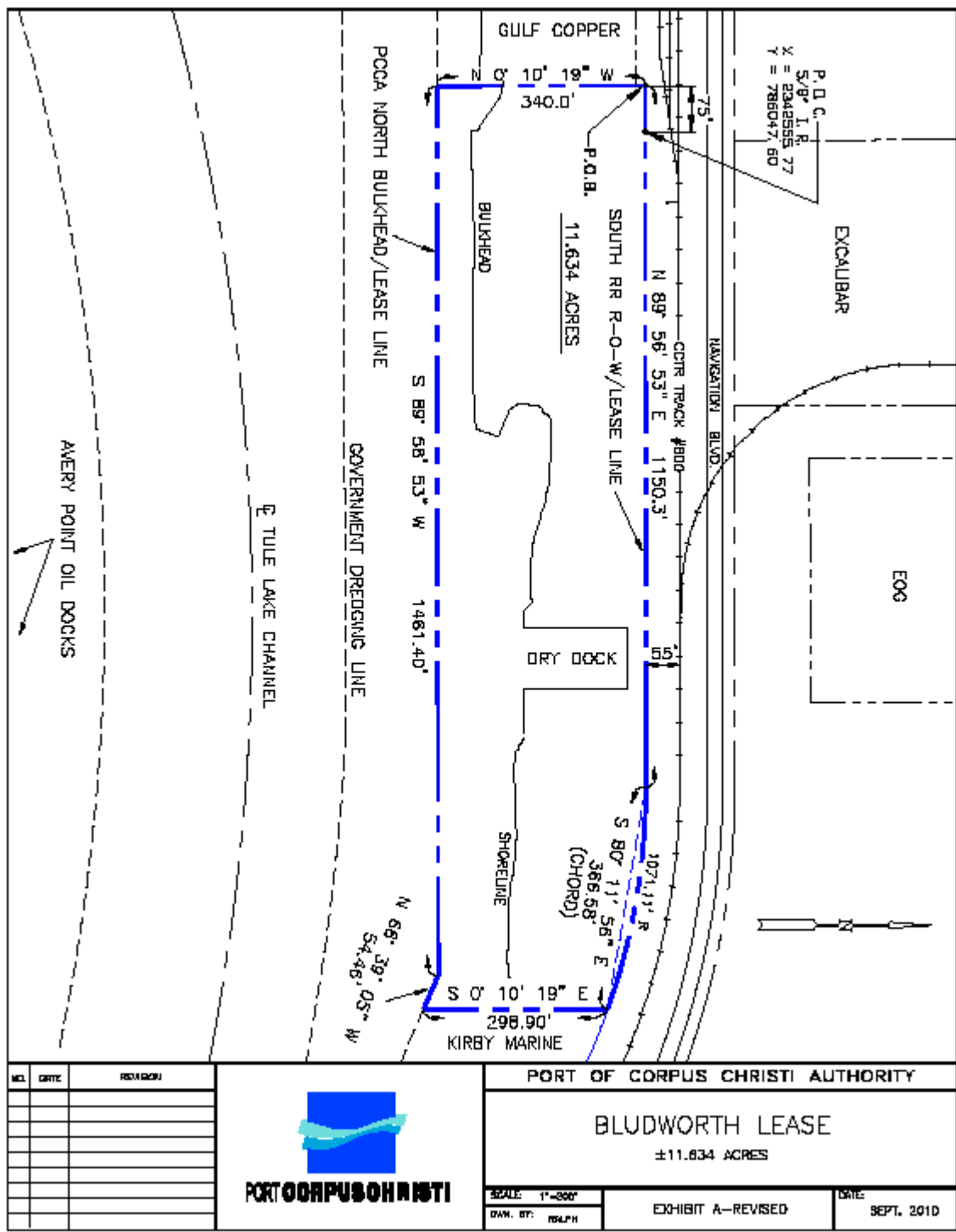


EXHIBIT A

EXHIBIT B

Authority Owned Improvements:

1. Approximately 500 feet of steel bulkhead.
2. A bulkheaded dry-dock slip, which is 100 feet wide, 150 feet long and dredged to a nominal depth of 30 feet.

All of these improvements will be delivered back to Authority upon termination of the lease.



February 14, 2012

Subject: ***AGENDA ITEM NO. 13-J***
Approve the Renewal of Easement Agreement with Flint Hills Resources
Corpus Christi, LLC, for Four Pipelines Located at Oil Docks 8 and 9

The original easement agreement granted by Nueces County Navigation District No. 1 to Gulf States Oil and Refining Company on February 19, 1980, for four pipelines connecting to Oil Docks 8 and 9 at the Viola Turning Basin has expired. The pipelines and related facilities located within the easement are still active, and Flint Hills Resources Corpus Christi, LLC, presently owns and operates these four pipelines.

Staff and legal counsel drafted the attached Pipeline Easement for a 30-year period. This new easement agreement replaces the expired agreement effective February 14, 2012. The pipelines and facilities located within the easement are dock transfer lines generating wharfage fees for the PCCA; therefore, the standard fees for pipelines crossing PCCA property are waived for the first 10 years of the 30-year term of the agreement. However, the PCCA reserved the right in the new easement agreement to charge a fee for the second and third 10-year terms should the PCCA decide to do so at that time.

Staff recommends approval of the easement as drafted. This item is included on the agenda of February 14, 2012 commission meeting for your consideration and action. Should you have any questions, please contact me.

Joh. P. Schreier

Attachment

**PORT OF CORPUS CHRISTI AUTHORITY
EASEMENT SUMMARY**

Grantee: Flint Hills Resources Corpus Christi, LLC

Easement Location: As depicted on the attached drawing,

Use: 4 Pipelines and scraper trap site serving Oil Docks 8 & 9 near Viola Turning Basin

Term: 30 years

Options: None

Start Date: February 14, 2012

Fee: \$10.00 other good and valuable consideration

Adjustment of Fee: Port reserves right to charge a fee at beginning of second and third ten year anniversary of agreement

Remarks: The pipeline and related facilities within easement serve Oil Docks 8 & 9 generating wharfage fees for the Port, therefore the standard fee for easements crossing Port owned real estate are waived for the first ten year period of the thirty year term of the agreement. The Port has reserved the right to charge a fee for the second and third ten year period.

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 Flint Hills Resources Corpus Christi, LLC, a Delaware limited liability company authorized to do business in Texas, whose principal address is 4111 E. 37th St. N., Wichita, KS 67220, (hereinafter called "Grantee"), as successor in interest in and to that certain Easement for Pipelines from Nueces County Navigation District No. 1 to Gulf States Oil and Refining Company, dated February 19, 1980 and having an expiration period of thirty years from and after the date thereof, 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 four (4) pipelines (the "Pipeline") for the uses herein set out upon, over and across the Pipeline Easement hereby granted, together with a scraper trap setting, such valves, fittings, meters and other equipment and appurtenances as may be necessary for such purposes. Pipeline as used in this Agreement means one or more pipelines which are described herein by number and size which are in the Pipeline Easement. The Pipeline Easement shall be five (5) feet on either side of the centerline of the Pipeline Easement as described and depicted on Exhibit A, attached hereto and incorporated herein by reference for all purposes.

This Pipeline Agreement supersedes, cancels and replaces, as of February 14, 2012, the current Pipeline Agreement dated February 19, 1980, by and between Authority and Lessee, described in the foregoing paragraph.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, the rights and privileges hereby conveyed for Thirty (30) years beginning on the 14th day of February, 2012 (the "Effective Date"), and ending at midnight on the 13th day of February, 2042, 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. Number and Size of Pipelines. The Pipeline shall not exceed the following number of pipelines and a nominal inside diameter as follows:

In that portion of the Pipeline Easement extending from the east boundary of Authority's property to Oil Dock No. 8, a distance of 712.78 feet more or less, four pipelines, one each of twenty inch (20"), eighteen inch (18"), sixteen inch (16") and twelve inch (12").

In that portion which extends from Oil Dock No. 8 to Oil Dock no. 9, a distance of 700 feet more or less, four pipelines, one each of sixteen inch (16"), one fourteen inch (14") and two twelve inch (12").

B. Fee. For the first ten (10) years of the term of this Agreement, Grantee will pay to the Authority a fee in the amount of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, including the covenants and conditions herein made and provided to be kept and performed by the respective parties, due and payable on the Effective Date or within ten (10) days after the approval of this Pipeline Easement by Authority. At the beginning of each succeeding ten (10) year period during the term of this easement, Authority reserves the right to charge a fee based upon Authority's then current schedule for the fee for pipelines of the said pipeline diameter. Authority must provide Grantee not less than thirty days prior notice of the change in the fee. Grantee may prepay all annual installments due for each ten (10) year period on the date that begins each such period, or pay the fee in equal annual payments on or before the date that begins each year in the ten (10) year period..

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 and use the Pipeline in a good and workmanlike manner and in compliance with all applicable governmental and industry standards for construction and 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.

No boring pit or receiving pit may be placed in the Pipeline Easement. All backfill placed in the Pipeline Easement must be compacted so as to prevent settlement or erosion. Grantee shall bury the Pipeline to a safe depth as is or may be reasonably required as a result of the presence on, or construction on, or adjacent to, the areas within the Pipeline Easement of any road, railroad, pipeline, or pole line. In refilling any hole or ditch; Grantee must compact the subsoil to ninety-five percent (95%) of original compaction. After any construction, repair or removal, Grantee shall compact, loosen, or otherwise condition the topsoil to the degree of compaction of non-disturbed topsoil so that there will be no settling or compaction of soil and so that the land disturbed will be the same level as the surrounding lands which will maintain drainage previous to such work and prevent erosion.

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 initial construction of the Pipeline.

Following completion of construction 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, during, or after, completion of construction of the Pipeline, 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 or pipelines, 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 or pipelines 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 change in the installation of each pipeline in the Pipeline Easement, or any modification thereof, an as-built drawing of the location of the Pipeline and any modification.

Grantee shall be responsible for coordination of any construction, maintenance and 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;

(3) any bodily injury to or death of any employee of the Grantee Parties occurring in connection with constructing, installing, maintaining or removing the Pipeline; or

(4) 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, 41 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 to the extent required in Section G of this Pipeline Easement.

(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 (including “sudden and accidental” environmental coverage, and “contractually assumed liability” 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 \$3,000,000.00 over and above the underlying primary coverage limits stated in subparagraph (a), (b) and (c) in this Section.

(e) U. S. Longshore and Harbor Workers' Insurance in the statutory amount in compliance with the United States Longshore and Harbor Workers' Act.

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, but Grantee may elect to “self insure” any such increases in amounts.

Authority shall be furnished Authority, Attention: Real Estate 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 to the extent of Grantee's indemnity obligations hereunder (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: Real Estate Manager, from Grantee 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.

Grantee shall deliver to Authority certificates of insurance at least thirty (30) days prior to the expiration date of each of the Policies. Authority acknowledges that the insurance policies required hereunder are currently (and are anticipated in the future to be) subject to deductibles, but Grantee agrees that such insurance policies will not be subject to self-insured retentions except as expressly permitted herein. 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. [Deleted]

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 or petroleum products/derivatives for twenty-four (24) months, 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 Flint Hills Resources Corpus Christi, LLC, Attention: Executive VP- Operations at 4111 E. 37th St. N., Wichita, KS 67220, 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.

(Signatures are on the next page.)

WITNESS this ____ day of _____, 20__.

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

By: _____

John P. LaRue
Executive Director

“Authority”

**FLINT HILLS RESOURCES CORPUS
CHRISTI, LLC**

By: _____

Name: _____

Title: _____

"Grantee"

STATE OF TEXAS §
 §
COUNTY OF NUECES §

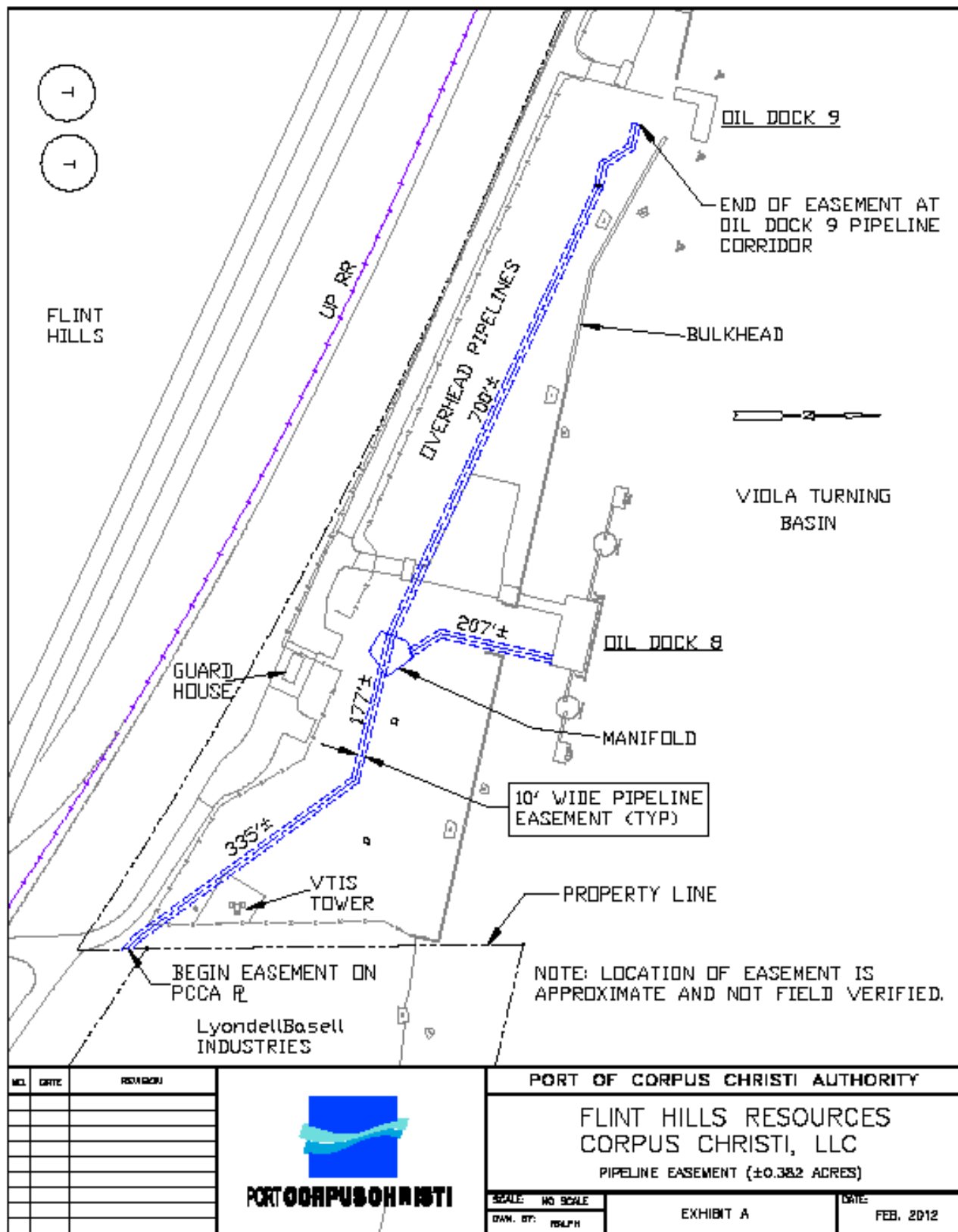
 This instrument was acknowledged before me on the _____ day of _____,
20____, by JOHN P. LaRue, Executive Director of Port of Corpus Christi Authority of Nueces County,
Texas, on behalf of the Port.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF _____ §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of _____, 20____, by
_____, _____, of _____, a _____, on behalf of said
_____.

NOTARY PUBLIC, STATE OF _____





John P. LaRue
EXECUTIVE DIRECTOR

February 14, 2012

Honorable Mike Carrell
Honorable Richard Borchard
Honorable Judy Hawley
Honorable Robert Kostelnik
Honorable Mike Scott
Honorable Al Jones
Honorable Charles Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: *AGENDA ITEM NO.13-K*
Approve a Management Agreement with Ovations Food Services
For management of the Congressman Solomon P. Ortiz International Center

Dear Commissioners:

We are approaching the end of the contract period for the management contract with Ovations Food Services for management and operation of the Ortiz Center. In September 2011, staff began the RFP process to determine the future use and operation of the Ortiz Center.

At the January 10, 2012 Port Commission meeting, staff provided a presentation on the RFP process and evaluation of the four proposals received. At this meeting, Commission approved staff's recommendation to award the management operator contract to Ovations Food Services based on evaluation of information provided in the proposals and interviews.

Staff has now finalized a management contract with Ovations Food Services. The new contract with Ovations is a five-year contract to begin March 1, 2012, and includes option to renew for two additional two-year periods.

Staff recommends that the Executive Director be authorized to execute the Management Operator Agreement between Ovations Food Services and the Port of Corpus Christi Authority for management and operation of the Ortiz Center.

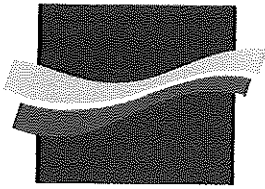
Sincerely,

John P. Parker

John P. La Rue
Executive Director



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PORTCORPUSCHRISTI

APPLICATION FOR STEVEDORE AND/OR FREIGHT HANDLERS LICENSE

Pursuant to the provisions of Item 667, Port of Corpus Christi Tariff 100-A, application is hereby made for a license to operate as a Freight Handler at The Port of Corpus Christi, Nueces County, Texas. In support thereof, the following information is submitted.

1. Company or firm name:

Gulf Coast Limestone, Inc.

2. (a) Principal business address:

P.O. Box 66, Seabrook, Texas 77586

1402 Third Street, Seabrook, Texas 77586

(b) Telephone: 281-474-4124

Fax: 281-474-2055

3. (a) Address at which books and records are or will be maintained:

1402 Third Street, Seabrook, Texas 77586

(b) Telephone: 281-474-4124

Fax: 281-474-2055

4. (a) Form of business entity, viz, proprietorship, partnership, corporation, other (please specify)

Corporation

(b) If a corporation, state of incorporation: Texas

5. (a) Names and position of principal officers, and addresses if different from No. 2(a)

Robert R Robinson

Janet S Mayfield

Glenda Walker

(b) Names and address of individuals and/or firms owning or having direct or indirect controlling interest in applicant's business.

6. Nature of applicant's business

Aggregate material supplier and unloader

7. (a) Describe equipment and facilities available to applicant for carrying on proposed licensed operations.

Excavators used to unload material from railcars

(b) Are equipment and facilities owned by applicant? If not, describe arrangements under which they are available to applicant.

Equipment is either owned or leased by applicant

8. In support of this application, and to establish proof of applicant as a competent operator with past practices which demonstrate a commitment to safe and efficient performance of stevedoring and/or freight handling, and skill, experience, equipment and personnel necessary to do so, please provide documentary evidence of: (NOTE: Statements or additional pages may be attached hereto and will be considered a part hereof.)

(a) Financial responsibility: see certificate of insurance already on file

(b) Experience in the proposed operation: \$85,000 railcars unloading annually

(c) Ownership or availability of equipment and facilities essential to performance of proposed service.

(d) Capability of providing required insurance coverage. already on file

9. (a) Does applicant currently hold a valid license to perform the proposed service, or similar service at any other port? (Please specify the service and port or ports.)

n/a

(b) Has applicant actually performed the proposed service in the past two months? Yes X No
If "Yes" state where and for whom services provided

POCC for Gulf Coast Limestone and Capitol Aggregates

If "No" state reason

In the event this license application is approved and license granted, the applicant agrees to abide by the provisions of The Port of Corpus Christi Authority Tariff 100-A, changes thereto and reissues thereof.

The person whose signature appears below on behalf of the applicant declares that he or she has read this application, understands its contents to be true and factual, and is authorized to sign on behalf of the applicant.

Signed this 31 day of January, 2012

On behalf of Gulf Coast Limestone, Inc.
(TYPE OR PRINT NAME OF APPLICANT)

By: (Signature and Title) *Jennifer Bielat / Controller*
(TYPE OR PRINT NAME AND TITLE BELOW LINE)
Jennifer Bielat Controller

Signed this _____ day of _____, 201__

On behalf of The Port of Corpus Christi Authority

By: (Signature and Title)
Director of Operations
Harbormaster

AGENDA ITEM NO. 14

EXECUTIVE DIRECTOR'S REPORT

To be attached at a later date

AGENDA ITEM NO. 15

No Attachment

AGENDA ITEM NO. 16

No Attachment

AGENDA ITEM NO. 17

No Attachment

AGENDA ITEM NO. 18

No Attachment

AGENDA ITEM NO. 19

No Attachment