



NOTICE OF PORT COMMISSION MEETING

The Port Commission ("Commission") of the Port of Corpus Christi Authority ("PCCA") of Nueces County, Texas, will hold a Regular Session Meeting on Tuesday, February 16, 2016, at 9:00 a.m., at the Congressman Solomon P. Ortiz International Center, 402 Harbor Drive, Corpus Christi, Texas.

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

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

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

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

The agenda for the meeting is as follows:

1. Call meeting to order:
 - A. Safety Briefing
 - B. Pledge of Allegiance
 - C. Invocation
 - D. Receive Conflict of Interest Affidavits.
2. Approve the minutes of the January 19, 2016, Commission meeting.
3. Receive comments from the public. (Each speaker is limited to three minutes.)
4. Establish a new Commission Committee, appoint members and chair of each Commission Committee, and appoint PCCA's representatives on governing boards and committees of outside organizations.
5. Review the Role of the Port Commission and the Operating Rules of the Port Commission and related matters.
6. Receive committee reports from the following Commission committees:
 - A. Security
 - B. Audit

7. Receive staff reports on the following matters:
 - A. Water Update – status of the Industrial Desalinization Project
 - B. Channel Improvement Project Update
 - C. Operations Update – ship and barge transit comparisons to last year, tonnage throughput at Bulk Terminal, dock and rail activity comparison to last year, Channel disruptions in January, and status of Bulk Terminal belt cover project
 - D. Environmental Update – status of EMS program for stevedores, update on Bulk Terminal air monitoring network pilot test, update on pending RFQ and RFP evaluations, update on TERP grant reimbursements, and update on energy conservation program
 - E. Commercial Update – wind energy cargo, general cargo, and Latin America Trade Development
 - F. Engineering Update – status of Oil Dock 14 Construction
8. Update on the Harbor Bridge Replacement Project and the Hillcrest land acquisition and relocation program.
9. Receive presentation from the U.S. Navy on the celebration of Naval Air Station Corpus Christi's 75th anniversary.
10. Approve a three-year Lease Agreement with Weststar Food Company, LLC, for use of the East Transfer Facility.
11. Approve a Railcar Storage Agreement with M&G Resins USA, LLC, for hopper railcars on PCCA rail tracks.
12. Authorize Staff to submit a RESTORE Act Grant application.
13. Approve Port of Corpus Christi Authority updated Environmental Policy.
14. Consent Agenda. The Port Commissioners have been furnished with supporting documentation and staff's recommendation for each of the following items. All Consent Agenda items will be approved, in accordance with the respective staff recommendations, by one vote without being discussed separately unless a Port Commissioner requests otherwise.
 - A. Approve a Lease Agreement with the U.S. Coast Guard for maritime navigational aids for the Tule Lake Channel.
 - B. Terminate a contract awarded to SATX CCTV, LLC, for the purchase of a camera system under Security Grant 14 — Security Equipment Maintenance and Upkeep.
 - C. Award a contract to Garrett Construction Company, the lowest and best bidder based on bids received on January 25, 2016, to resurface the Southside Storage Yard.

- D. Award a contract to T&T Construction, the lowest and best bidder based on bids received on January 29, 2016, for the Inner and Outer Harbor land management project to improve drainage near Texaco Road and Navigation Boulevard.
- E. Award a contract to Affolter Contracting Inc., the lowest and best bidder based on bids received on January 29, 2016, for the Savage Lane railroad drainage improvements project.
- F. Approve a Service Order with Freese and Nichols, under Professional Services Master Agreement No. 13-02, for engineering services associated with improvements to the Tule Lake Rail Yard.
- G. Approve Professional Services Master Agreement No. 16-01 and Service Order with LJA Engineering Inc. for design and project management services associated with fencing at the Bulk Terminal (Security Grant 15).
- H. Approve a Service Order with RVE Inc., dba LJA Engineering Inc., under Professional Services Master Agreement No. 13-06, for engineering and construction phase services for installation of additional cameras at the La Quinta and Gulf Intracoastal Waterway camera locations.
- I. Approve a Service Order with Apex TITAN Inc., a subsidiary of Apex Companies, under Professional Services Master Agreement No. 06-14, for additional environmental consulting services associated with investigation and assessment of PCCA property on the south side of the Channel and Navigation Boulevard.
- J. Approve Professional Services Master Agreement No. 08-16 and Service Order with Alan Plummer Associates Inc. for general environmental consulting services.
- 15. Receive report from the Executive Director on upcoming community events, PCCA events and activities of the following PCCA departments during the preceding month—Safety, Community Relations, Communications, Government Affairs, Business Development, Foreign Trade Zone, Ortiz Center, Human Resources, Security, Operations, Engineering Services, Finance, Real Estate, and Environmental.
- 16. Receive comments from Port Commissioners on any of the agenda items for this meeting, the PCCA's activities during the preceding month, upcoming PCCA events, and suggestions for future agenda items.
- 17. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the purchase and value of certain real property on the north side of the Ship Channel.

18. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the purchase and value of certain real property accessible to the north side of the Inner Harbor.
19. The Commission will go into executive session pursuant to §551.072 and §551.087 of the Texas Government Code to deliberate (i) leasing certain PCCA real property on the north side of the Inner Harbor, and (ii) offering financial or other incentives to a business prospect that PCCA seeks to have locate or expand on the north side of the Inner Harbor and with which PCCA is conducting economic development negotiations.
20. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the purchase and value of certain real property accessible to the north side of the Inner Harbor.
21. The Commission will go into executive session pursuant to §551.087 of the Texas Government Code to deliberate offering financial or other incentives to a business prospect that PCCA seeks to have locate or expand on the north side of the Inner Harbor and with which PCCA is conducting economic development negotiations.
22. The Commission will go into executive session pursuant to §551.087 of the Texas Government Code to deliberate offering financial or other incentives to a business prospect that PCCA seeks to have locate in San Patricio County and with which PCCA is conducting economic development negotiations.
23. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the purchase and value of certain real property in the vicinity of the La Quinta Channel.
24. The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to receive legal advice from PCCA's counsel on dealing with fraudulent wire requests.
25. Approve a Service Order with CH2M Hill Engineers Inc., under Professional Services Master Agreement No. 13-05, for engineering services associated with the design of the new Oil Dock 15.
26. Adjourn.

AGENDA ITEM NO. 1

Call Meeting to Order

NO ATTACHMENT

**OFFICIAL MINUTES OF PORT COMMISSION MEETING
JANUARY 19, 2016**

The Port Commissioners of the Port of Corpus Christi Authority convened at the Solomon P. Ortiz International Center, 402 Harbor Drive, Corpus Christi, Texas, on Tuesday, January 19, 2016, at 9:00 a.m., for the regular monthly meeting of the Port Commission.

Present: Ms. Judy Hawley (until Mr. Hoskins's swearing in)
Mr. Charles Zahn
Mr. Wayne Squires
Ms. Barbara Canales
Mr. David P. Engel
Mr. Richard Valls
Mr. Richard L. Bowers
Mr. Wes Hoskins

Present: Mr. John P. LaRue
Mr. Sean Strawbridge
Mr. Jarl Pedersen
Mr. Darrin Aldrich
Mr. Tony Alejandro
Ms. Patricia Cardenas
Ms. Rosie Collin
Mr. Dennis DeVries
Mr. Tyler Fuhrken
Ms. Sarah Garza
Mr. David Krams
Mr. Ruben Medina
Ms. Sandra Terrell-Davis
Ms. Nelda Olivo
Mr. John Pasch
Mr. Tom Mylett
Ms. Lynn Angerstein
Mr. Paul Carangelo
Ms. Audre Debler
Ms. Sherry DuBois
Mr. Brett Flint
Ms. Donna James-Spruce
Mr. Dan Koesema
Ms. Angela Leyva
Ms. Sonya Lopez
Mr. Dave Michaelson
Ms. Maggie Turner
Mr. Eddie Martinez
Mr. Bennie Benavides

Ms. Sonya Budilo
Ms. Natasha Fudge
Ms. Peggy Mettlen
Mr. Jesse Samu

Others Present:

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

Others Present:

Mr. Tom Moore
Consultant
Mr. Rick DuPriest
W.L. Bates Co.
Mr. Fred Dotts
Nancy Zuniga
MDR
Ms. Lillian Riojas
Capt. Joe Harrington
Valero
Ms. Doreen Harrell
Ms. Carol Scott
Kailo Communications
Mr. Terry Arnold
Capt. Louis Adams
Aransas/Pilots Assn.
Mayor Pete Perkins
City of Ingleside
Mr. Brent Moore
Ms. Chemaine Koester
HDR Engineering
Mr. Don Rodman
Rodman Co.
Mr. William Goldston
WFGCON
Mr. Wender Williams
Hillcrest Neighborhood
Mr. Lori Bible
CLS
Ms. Sandra Valls
Valls Intl.
Mr. Kerry Rile
CB Herald News
Mr. Mike Galloway
Mr. Don Toner
Ms. Carol Lusehen
Mr. Randall Grones
Mr. Steve W. Lowry
TxDOT

Mr. Slay Schlemeyer
Burns & McDonnell
Judge Terry Simpson
Commissioner Fred Nardini
San Patricio County
Mr. Joe Guzman
Robstown Area Development Corp.
Mr. Bob Paulison
Port Industries
Ms. Sue Zimmermann
52 Consulting
Mr. Dale Rankin
Island Moon Newspaper
Mr. Ztl Pickett
Mr. Tony Hahn
Mr. Keith Dickman
US Coast Guard
Mr. Sidney Faas
CH2M Hill
Ms. Rita Evans
Ms. Janie Hoskins
Ms. Betty Bomar

I.

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

II.

On motion made by Mr. Valls and seconded by Mr. Bowers, the Commission approved the minutes of December 15, 2016 Commission meeting in the form presented to the meeting.

III.

Nueces County Judge Loyd Neal administered the Oath of Office of Port Commissioner to Richard R Valls, Jr. and W. Wesley Hoskins.

IV.

Mr. Bowers moved that Charlie Zahn be elected Chair; Wayne Squires be elected Vice Chair; and Barbara Canales be elected Secretary of the Commission for 2016. Mr. Engel seconded the motion. There being no other nominations, Charlie Zahn was elected Chair, Wayne Squires was elected Vice Chair, and Barbara Canales was elected Secretary of the Commission for 2016 by acclamation.

V.

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

VI.

The Commission received a committee report from the Security Committee.

VII.

The Commission received staff reports on the following matters: a) Channel Improvement Project; b) Bulk Terminal; and c) Environmental.

VIII.

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

***RESOLUTION OF APPRECIATION
FOR
FOSTER EDWARDS***

WHEREAS, Foster Edwards served as President/CEO of the Corpus Christi Chamber of Commerce serving a total of eight years; and

WHEREAS, Foster Edwards, during his tenure and with his invaluable participation worked diligently alongside Senator Juan “Chuy” Hinojosa, Chairman Todd Hunter, Port Commissioner Charlie Zahn and the business community in shepherding the Texas windstorm reform and legislation that would positively impact the four county Coastal Bend region; and

WHEREAS, Foster Edward’s vision focused on enhancing opportunities for members of the Corpus Christi Chamber of Commerce through programs such as Leadership Corpus Christi, Lemonade Day, Conquer the Coast and Salute to the Military; and

WHEREAS, Foster Edwards, in a collaboration with Port Corpus Christi, Nueces and San Patricio Counties and the City of Corpus Christi reestablished the South Texas Military Facilities Task Force that continues to enhance and protect jobs, promote good relations with our military bases and raise awareness of the value of our military bases to the Coastal Bend region; and

WHEREAS, Foster Edwards, in addition to his service to the Corpus Christi Chamber of Commerce is the Former Chairman of the National Association of Realtors, Former Chairman of Corpus Christi Convention and Visitors Bureau, Founding Director of Our House, Inc. (non-profit operating a Ronald McDonald House in Corpus Christi) and Former President, Corpus Christi Industrial Foundation; and

WHEREAS, the Port Commission wants to publicly acknowledge Foster Edwards for his leadership and his honorable service to the community; and

NOW, THEREFORE BE IT RESOLVED, that the Port Commission of Port Corpus Christi Authority expresses its sincere gratitude to Foster Edwards for his eight years of service to the Coastal Bend region and for his collaborative efforts with Port Corpus Christi. The Commission further wishes to acknowledge its appreciation of him as a loyal friend and supporter.

BE IT FURTHER RESOLVED, that this resolution be made a part of the permanent minutes of this Port Commission and that a copy of the Resolution be furnished to Foster Edwards. Unanimously adopted this 19th day of January 2016.

IX.

On motion made by Mr. Bowers and seconded by Mr. Squires, the following resolution was adopted:

**RESOLUTION
IN MEMORY OF
WILLIAM "BILL" HENNINGS, III**

WHEREAS, Louis William "Bill" Hennings, III dedicated his life to serving others through his work in the community of Corpus Christi and to his country, until his death on December 10, 2015; and

WHEREAS, Bill Hennings started at the City of Corpus Christi in 1971 as a building official rising through the organization to become the City Manager in 1996 and retiring after 30 years in 1998; and

WHEREAS, Bill Hennings continued to work as a consultant in the community and served on the Metropolitan Planning Organization Committee after retiring from the City of Corpus Christi until his death; and

WHEREAS, Bill Hennings also chaired the Corpus Christi Air Quality Committee from 1995 to 2008, during which time the region came into attainment of the National Ambient Air Quality Standard for ozone through implementation of voluntary measures and remains in attainment of the current ozone standard due in large part to Bill Hennings leadership and collaborative vision; and

WHEREAS, Bill Hennings served in the Navy before starting his career at the City of Corpus Christi, as an Engineering Officer overseas and then back in the states overseeing Public Works at the Dallas Naval Air Station; and

WHEREAS, Bill Hennings was a valued partner of the Port of Corpus Christi Authority and the Port Commission wants to publicly acknowledge Bill Hennings commitment to Corpus Christi and the environment, specifically the air quality in our region;

NOW THEREFORE BE IT RESOLVED, by the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, that the Port Commission and Staff wish to acknowledge their deep appreciation of Bill Hennings as a hardworking, considerate and well-regarded individual and its sincere gratitude for the lifetime of service Bill Hennings gave to Corpus Christi, to the environment, and to his country.

BE IT FURTHER RESOLVED, that this Resolution be made a part of the permanent minutes of this Port Commission and that a copy of this Resolution be furnished to the family of Bill Hennings.

X.

The Commission received a presentation from Frank Brogan on the status of the City of Corpus Christi's desalinization project.

XI.

The Commission received a presentation on the Military Out-Load at Port Corpus Christi in November 2015.

XII.

On motion made by Mr. Bowers and seconded by Mr. Squires, the following resolution was adopted:

**A RESOLUTION PROHIBITING THE CARRYING OF HANDGUNS
INTO MEETING ROOMS DURING OPEN MEETINGS**

WHEREAS, during the 84th Texas Legislative Session, Senate Bill 273 and House Bill 910 were passed amending state law regarding the carrying of handguns; and

WHEREAS, Senate Bill 273 and House Bill 910 authorize governmental entities, such as the Port of Corpus Christi Authority ("PCCA"), to prohibit the carrying of handguns into meeting rooms during open meetings under the Texas Open Meetings Act; and

WHEREAS, the Port Commission wishes to prohibit the carrying of handguns into meeting rooms during open meetings in compliance with the newly revised state law;

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY AS FOLLOWS:

Section 1. In accordance with Sections 46.035(c), Texas Penal Code, effective January 1, 2016, carrying a concealed handgun by persons licensed under the authority of Subchapter H, Chapter 411, Government Code is prohibited in all rooms where an open meeting of the Port of Corpus Christi Authority is held subject to Chapter 551, Government Code, and notice of such prohibition shall be given in accordance with Section 30.06 (concealed carry), Texas Penal Code.

Section 2. In accordance with Sections 46.035(c), Texas Penal Code, effective January 1, 2016, openly carrying a handgun by persons licensed under the authority of Subchapter H, Chapter 411, Government Code is prohibited in all rooms where an open meeting of the Port of Corpus Christi Authority ("PCCA") is held subject to Chapter 551, Government Code, and notice of such prohibition shall be given in accordance with Section 30.07 (open carry), Texas Penal Code.

ADOPTED BY the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, at a public meeting of the Port Commission held on January 19, 2016.

XIII.

The Commission received a presentation from the Texas Department of Transportation on the Harbor Bridge Replacement project.

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

RESOLUTION AUTHORIZING PORT AUTHORITY STAFF TO ISSUE A REQUEST FOR PROPOSALS FROM CONSULTANTS INTERESTED IN ASSISTING THE PORT AUTHORITY IN CARRYING OUT ITS OBLIGATIONS UNDER A FOUR PARTY AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION (“*TxDOT*”), THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS (“*PORT AUTHORITY*”), THE CITY OF CORPUS CHRISTI, TEXAS (“*CITY*”), AND THE CORPUS CHRISTI HOUSING AUTHORITY (“*HOUSING AUTHORITY*”) CONCERNING THE HARBOR BRIDGE REPLACEMENT PROJECT, AND NAMING THE MEMBERS OF THE SELECTION COMMITTEE OR AUTHORIZING THE PORT COMMISSION CHAIR TO NAME THE MEMBERS OF THE SELECTION COMMITTEE

WHEREAS, the Federal Highway Administration (“*FHWA*”) and TxDOT have proposed the replacement of the current Harbor Bridge in Corpus Christi, Texas (the “*Project*”); and

WHEREAS, TxDOT, the Port Authority, the City, and the Housing Authority have entered into a Four Party Agreement (“*Four Party Agreement*”) that allocates responsibility among the parties for implementing certain Title VI mitigation actions in those parts of the Hillcrest and Washington-Coles neighborhoods north of I-37 and west of the proposed route of the new Harbor Bridge (collectively, the “*Neighborhood*”); and

WHEREAS, under the terms of the Four Party Agreement the Port Authority has agreed (1) to offer to purchase all of the residential and business property in the Neighborhood pursuant to the terms of the Neighborhood Acquisition Plan described in Exhibit C to the Four Party Agreement (the “*Neighborhood Acquisition Plan*”), and (2) to provide relocation benefits to displaced owners, tenants and businesses pursuant to the terms of the Relocation Program described in Exhibit C (the “*Relocation Program*”), all at a cost not to exceed \$20 million; and

WHEREAS, under the terms of the Four Party Agreement the Port Authority is also agreeing to offer to buy restrictive covenants and purchase options on the owner occupied residential property in the Neighborhood pursuant to the terms of the Voluntary Restrictive Covenant Program described in Exhibit C to the Four Party Agreement; and

WHEREAS, the Four Party Agreement provides that PCCA will engage an acquisition and relocation service provider (“*Acquisition/Relocation Consultant*”) to implement and administer the Neighborhood Acquisition Plan and the Relocation Program on the Port Authority’s behalf; and

WHEREAS, Section 60.454 of the Texas Water Code provides various methods for acquiring the services of the Acquisition/Relocation Consultant and authorizes the Port Commission to select the method that, in the opinion of the Commission, provides the best value for the Port Authority; and

WHEREAS, in the opinion of the Port Authority's staff the request for proposal method of selecting the Acquisition/Relocation Consultant provides the best value for the Port Authority;

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

Section 1. In the opinion of the Port Commission, the request for proposal method of selecting the Acquisition/Relocation Consultant provides the best value for the Port Authority.

Section 2. Port Authority staff is hereby authorized to issue a request for proposals from consultants seeking to serve as the Port Authority's Acquisition/Relocation Consultant for purposes of implementing and administering the Neighborhood Acquisition Plan and the Relocation Program on the Port Authority's behalf in accordance with the Four Party Agreement, the applicable portions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and other applicable federal and state law. The Acquisition/Relocation Consultant will also be responsible for implementing and administering the Voluntary Restrictive Covenant Program described in Exhibit C to the Four Party Agreement on behalf of the Port Authority in accordance with the Four Party Agreement.

Section 3. The Chair of the Port Commission is hereby authorized to appoint the members of the evaluation committee that will evaluate the responses to the RFP.

Section 4. At a subsequent meeting of the Port Commission, the Commission will select the consultant providing the best overall value and benefit to the Port Authority as the Acquisition/Relocation Consultant. The Commission also reserves the right to reject all of the proposals.

Section 5. The Port Commission hereby approves the use of the following TxDOT Manuals and Forms in connection with implementing the Neighborhood Acquisition Plan and the Relocations Program and adopts the policies and procedures in these TxDOT Manuals to the extent the Port Authority's counsel deems advisable:

- TxDOT Real Estate Acquisition Guide for Local Public Agencies
<http://onlinemanuals.txdot.gov/txdotmanuals/lpa/lpa.pdf>
- TX DOT Right of Way Acquisition Manual 2 -
<http://onlinemanuals.txdot.gov/txdotmanuals/acq/index.htm>

- TX DOT Relocation Assistance Manual 3 - <http://onlinemanuals.txdot.gov/txdotmanuals/rel/rel.pdf>
- TX DOT ROW Forms - <http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/row.html>
- Right of Way Appraisal & Review Manual -- <http://onlinemanuals.txdot.gov/txdotmanuals/apr/index.htm>

Ms. Canales indicated that she would like to serve on the evaluation committee for this project.

XIV.

On motion made by Wayne Squires and seconded by Mr. Bowers the Commission approved certain changes to Tariff 100-A, Item 667, "Stevedore and/or Freight Handling license and Application." These changes are included in **Attachment "A"** to the minutes of this meeting.

XV.

On motion made by Mr. Engel and seconded by Mr. Bowers, the Commission approved the following changes to PCCA's Liability Policies, with Ms. Canales voting no.

LIABILITY POLICY	CURRENT LIMIT	NEW LIMIT	CURRENT PREMIUM	ESTIMATED NEW PREMIUM	TOTAL PREMIUM SAVINGS
Marine Employers	\$1,000,000	Not renewed	\$10,491	0.00	\$10,491
Law Enforcement	\$5,000,000	\$3,000,000	\$13,910	\$12,696	\$1,214
Auto Liability	\$10,000,000	\$1,000,000	\$18,003	\$14,970	\$3,033
General Liability	\$20,000,000	\$10,000,000	\$81,957	\$69,207	\$12,750
Excess Protection & Indemnity	\$80,000,000	\$40,000,000	\$65,569	\$57,500	\$8,069
TOTAL ANNUAL SAVINGS					\$35,557

XVI.

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

- A.** Approve an increase in a Professional Services Contract with Will, Janney, Elstner Associates Inc. for engineering services associated with structural repairs to PCCA bridges.
- B.** Approve a Professional Services Contract with Training & Programming Services for Development and Maintenance of the Engineering Services Project Tracker Software.

After discussing Item **C** on the Consent Agenda, upon motion duly made and seconded, the Commission approved, in accordance with staff's recommendation presented to the meeting, a Farming Lease Agreement with Triple W Farms for a 105-acre tract of land located in San Patricio County.

After discussing Item **D** on the Consent Agenda, upon motion duly made and seconded, the Commission approved, in accordance with staff's recommendation presented to the meeting, a professional services Consulting Agreement with Citygate Associates, LLC, for assessment of PCCA's marine firefighting capabilities and related matters.

XVII.

The Executive Director reported on the following during his report: Preliminary 2015 tonnage figures; Updates on petroleum cargo trends; recognition of employee Sandra Davis for receiving the NAACP Presidential award; Update on Corps of Engineers visit; TPCO Tianjin visit; voestalpine representative visit; and RESTORE Act and Spending Bill passage.

XVIII.

Mr. Zahn asked for comments from Port Commissioners

At 11:03 a.m., Mr. Zahn announced that the Commission would go into executive session pursuant to §551.071, §551.072 and §551.087 of the Texas Government Code to deliberate agenda items 19, 20, 21, 22, and 23.

At 12:36 p.m. the Commission reconvened into open session.

XIX.

This item was for executive session only: Deliberate the purchase and value of certain real property on the north side of the Ship Channel.

XX.

The Commission deliberated the purchase and value of certain real property accessible to the north side of the Inner Harbor in executive session. In open session, on motion made by Mr. Hoskins and seconded by Mr. Valls, the Commission authorized the Executive Director to accept and close counter proposals made on PCCA's original offers to purchase the following lots in the Brooklyn addition of the City of Corpus Christi, from the Pope Trust "A" (held in trust by Frost Bank, San Antonio) and from Barnard Dodson:

Pope Trust A:

- Lots 2, 4, 6, 8 and 10, Block 101
- Lots 2, 4, 6, 8, 10 and 12, Block 130
- Lots 2, 4, 6, 8, 9 through 12, Block 131
- Lots 6 and 8, Block 128
- Lots 1, 2, 4, 6, 8, with two of lots 10 and 12, Block 129
- Lots 10 and 12, Block 103
- Lots 1, 3, 9 and 11, Block 127
- With 60' of Lots 10 and 12, Block 85

Barnard Dodson

- Lots 9 and 11, Block 130

XXI.

This item was for executive session only: Deliberate (i) leasing certain PCCA real property on the north side of the Inner Harbor, and (ii) offering financial or other incentives to a business prospect that PCCA seeks to have locate or expand on the north side of the Inner Harbor and with which PCCA is conducting economic development negotiations.

XXII.

The item was for executive session only: Deliberate offering financial or other incentives to a business prospect that PCCA seeks to have locate in San Patricio County and with which PCCA is conducting economic development negotiations.

XXIII.

This item was for executive session only: Receive legal advice from PCCA's counsel regarding the voluntary petition filed by Sherwin Alumina Company, LLC, under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas.

XXIV.

On motion made by Mr. Valls and seconded by Mr. Squires, the Commission authorized staff to enter into a Service Order with CH2M Hill Engineers Inc., under its Professional Services Master Agreement, for engineering services associated with the design of new Oil Dock 15 at a cost not to exceed \$150,000, subject to staff and Martin Operating Partnership, L.P., reaching an agreement on the terms and conditions for Martin's use of Oil Dock 15.

XXV.

There being no further business, the meeting adjourned at 12:38 p.m.

ATTACHMENT "A"

ITEM 667 (I) Effective: 1-19-16

STEVEDORE AND/OR FREIGHT HANDLING LICENSE

1. LICENSE REQUIRED

From January 1, 1991, no person, firm, corporation or other business entity shall operate as or carry on the business of a stevedore or freight handler at the Port of Corpus Christi unless and until there shall first have been obtained from the Port Authority a license authorizing such stevedoring or freight handling activity. As used in this Item, "stevedore" or "stevedoring" includes persons, firms, corporations or other business entities and their subsidiaries, engaged in the activity of loading and/or unloading commercial cargo vessels, excluding bulk liquid cargo; "freight handler" or "freight handling" includes persons, firms, corporations or other business entities and their subsidiaries, engaged in physically loading or unloading railcars or trucks or engaged in any other cargo handling operations, except bulk liquid cargo, in or on the Terminal Facility of the Authority. As used in this Item 667, "stevedore", "stevedoring", "freight handler", and "freight handling" shall not include loading or unloading cargo to or from a site situated within the jurisdiction of Authority, and leased by Authority to a lessee and the loading or unloading is done by lessee's employees.

2. APPLICATION FOR LICENSE

Application for (i) a stevedore and freight handling license, or (ii) a freight handling license, with accompanying fee shall be submitted to the Port Authority. Copies of the Application Form are available upon request. Licensing fees are specified in Paragraph 5 of this Item. Initial license and subsequent renewals shall be in effect for one calendar year from January 1 through December 31. New applications may be submitted and new licenses may be issued during a calendar year; however, fees shall not be prorated for part of a year and renewals shall be as provided in Paragraph 4 of this Item 667.

3. CONSIDERATION OF APPLICATION

The Port Authority shall review the application and may require additional information. If, after review of an application by the Port Authority, the applicant is found to be 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, the applicant will be so notified by the Port Authority and a license issued to the applicant. Applicants not found will be so notified.

4. ISSUANCE OF LICENSE AND RENEWAL

Issuance of a license shall be evidenced by the dated signature of a duly authorized Port Authority representative on the Application Form. Acceptance of a license shall signify consent of the licensee to comply with various tariffs of the Port Authority the Rules and Regulations of the Port Authority contained in Tariff 100-A.

Licenses will be issued for a period of one year from January 1 through December 31. The Port Authority will mail and/or electronically send notices of renewal, including invoices for the

Annual Renewal Fee, to all licensees, on or about December 1 of each year. The renewal period shall extend from the postmark or electronic date on which the renewal notice is mailed or electronically sent through the last day of January of the year of renewal. A license will automatically expire unless the Port Authority receives the application for renewal with renewal fee no later than the last day of January of the year of renewal. Failure to renew within the prescribed time will require the filing of a new original application including original application fee if the person, firm, corporation or other business entity desires to continue providing stevedoring or freight handling services at the Port of Corpus Christi.

A license may be revoked or renewal denied if the licensee fails to comply with the Authority's tariff, including but not limited to the Rules and Regulations of the Port Authority contained in Tariff 100-A, is no longer in business or has been inactive continuously for six months immediately preceding notice of revocation or denial of renewal, unless good cause is shown for inactivity. **No stevedoring or freight handling operations may be undertaken by a licensee while their license is expired, is suspended, or has been revoked, or while action is pending on a new original application.**

5. LICENSE FEES

Resident Stevedores and Freight Handlers (Notes 1,2,3,4)	ORIGINAL APPLICATION FEE \$5,000.00	ANNUAL RENEWAL \$1,000.00
Non-Resident Stevedores and Freight Handlers (Notes 2,3,4)	ORIGINAL APPLICATION FEE \$5,000.00	ANNUAL RENEWAL \$1,000.00
Resident Freight Handlers (Notes 1,2,3,4)	ORIGINAL APPLICATION FEE \$3,000.00	ANNUAL RENEWAL \$600.00
Non-Resident Freight Handlers (Notes 2,3,4)	ORIGINAL APPLICATION FEE \$3,000.00	ANNUAL RENEWAL \$600.00

Note 1: As used in this Item, "Resident Stevedores and Freight Handlers" include only those persons, firms, corporations or other business entities that operate as a stevedore or freight handler in or on the Terminal Facilities of the Port Authority on a regular, recurring basis, and maintain full time offices, staff and equipment in Corpus Christi, Texas.

Note 2: As used in this Item, "Non-Resident Stevedores and Freight Handlers" includes all other persons, firms, corporations or other business entities not defined in Note 1 above.

Note 3: Application fees are non-refundable and will not be prorated for fractional parts of a year, except as provided in Paragraph 6 of this Item.

Note 4: Non-Resident Stevedores and Freight Handlers are required to provide a local telephone number and a local representative who may be contacted while stevedoring or freight handling operations are being conducted. The name of the representative and

the phone number shall be provided to the Harbormaster's office prior to commencement of any stevedoring or freight handling operations.

6. LICENSES ARE NON-TRANSFERRABLE

A license may not be transferred, assigned or otherwise used by anyone other than the licensee named in the license without prior written approval of the Port Authority. Any person, firm, corporation or other business entity acquiring a going business from a licensee hereunder may qualify for a license upon written application to the Port Authority. If, after review of an application by the Port Authority, the applicant is found to be 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, the Port Authority may grant a transfer of license and in its sole discretion may waive the license application fee. Any attempt to transfer or assign a license contrary to this provision may be cause for revocation of the license.

7. STEVEDORE AND/OR FREIGHT HANDLER INSURANCE

Without limiting the indemnity obligations or liabilities of licensee, or its insurers, provided in ~~THIS~~ **this** Tariff 100-A, licensee agrees at all times its Stevedore and/or Freight Handlers license 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. If there is an exposure of injury to employees under the US Longshoreman's and Harbor Worker's Compensation Act, the Jones Act or under the laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.
- B. Commercial General Liability (CGL) coverage (including "contractually assumed liability" coverage) with policy limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate at the Leased Premises
- C. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000.00 (Combined Single Limit.)
- D. Umbrella liability coverage limits of not less than \$5,000,000.00 over and above the underlying primary coverage limits stated in subparagraph A, B and C in this Section.
- E. Dependent on the pollution potential of the proposed operation, a Pollution Legal Liability policy with a limit of not less than \$5,000,000.00 per occurrence may be required.

Further, Authority shall be furnished, to the attention of Authority's Director of Operations, prior to licensee being issued its license, as proof of the insurance required of licensee a certificate or certificates of insurance (and the endorsements required in this ~~p~~Paragraph 7- 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 Commissioners, officers, officials, employees and agents as an additional insured (b) provide that it will not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days' prior written notice to Authority, Attention: Director of Operations, 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 licensee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies

In addition, the Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm or organization shall automatically be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract." Licensee 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 issue the applicant's license, without any liability on the part of Authority to licensee. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If licensee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority may procure such insurance at licensee's expense, and Authority is entitled to reimbursement from licensee for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date licensee receives Authority's notice of payment until reimbursement.

WAIVER OF SUBROGATION. As a condition to the issuance of a license, licensee waives every claim which arises or may arise in its favor against Authority during the existence of licensee's license or any renewal or extension thereof for any and all claims against it, or for loss of, or damage to, any of its property 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 Tariff 100-A with respect to any loss of or damage to licensee's property. Licensee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this Item 667 of

Tariff 100-A written notice of the terms of the waiver set forth in this ~~p~~Paragraph 7- and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver; and licensee 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.

8. STEVEDORE AND/OR FREIGHT HANDLER ENVIRONMENTAL PERFORMANCE
 Licensee certifies that it currently has or will have in place an Environmental Management System (EMS) by December 31, 2016. Authority will provide assistance necessary for Licensee to develop and implement an EMS by December 2016 through workshops and training in person with Licensee's employees. After December 31, 2016, Licensee shall provide documentation of a fully implemented EMS program for all operations occurring at or on Authority property. Documentation at a minimum shall include a list of team members and an organizational chart to show roles and responsibilities within the organization, a description of the Plan-DoCheck-Act process, and documented procedures for legal and other requirements and compliance, setting environmental priorities and objectives and targets, document control and record management, training and competence, communication, emergency preparedness and response, management programs for set priorities including monitoring and measurement, internal audit, non-conformity, corrective and preventative actions, and management review. In lieu of providing EMS program documentation, Licensee at its own expense can obtain external certification of the EMS to the ISO 14001:2015 standard and provide documentation of certification to the Authority. A document with a summary of the annual management review which includes, but is not limited to, details on environmental improvements made during the previous calendar, listing of identified non conformances and associated corrective actions, results of the internal audit and/or external audit, and initiatives recommended by management for the coming year shall also be provided to the Authority prior to Dec 31 each year.

At a minimum, Licensee's EMS shall comply with Authority's EMS requirements which are outlined in the *EMS Compliance Requirements for Port Users Environmental Performance* located on the Authority website at www.portofcorpuschristi.com. Quarterly, the Licensee will be graded on the environmental performance at Authority public docks and laydown yards and leased properties. Performance will be rated using the Port Corpus Christi Environmental Performance Score Card. Licensee's right to use Authority public docks and laydown yards will be determined by Licensee's maintenance of a quarterly score of 80% or better and an overall annual average of at least 85%.

AGENDA ITEM NO. 3

Comments from the Public

NO ATTACHMENT

AGENDA ITEM NO. 4

Committees & Committee Members

NO ATTACHMENT

**RESOLUTION RELATED TO GOVERNANCE OF PORT COMMISSION OF THE
PORT OF CORPUS CHRISTI AUTHORITY**

WHEREAS, on January 27, 2015, the Port Commission (“Commission”) of the Port of Corpus Christi Authority (“PCCA”) met in Special Session at the Ruben Bonilla Center for Global Trade, located at 222 Power Street, Corpus Christi, Texas; and

WHEREAS, Agenda Item No. 8 included a workshop (“workshop”) to discuss the Commission’s governance practices, the Commission’s policymaking responsibilities, the management responsibilities of the Executive Director, the Commission Operating Rules, compliance with open meetings and open records laws, lobbying by vendors, and related matters; and

WHEREAS, the workshop included a presentation by Leigh | Fisher entitled “The Role of the Commission;” and

WHEREAS, the Commission agreed to adopt generally the recommendations and rationales contained in “The Role of the Commission” and to review the presentation, or an updated version, at future governance workshops;

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY AS FOLLOWS:

Section 1. The Commission hereby approves and adopts the “The Role of the Commission,” including the recommendations and rationales contained therein, in the form presented at the January 27, 2015, Special Session, and attached hereto as “Exhibit A.”

Section 2. The Commission will conduct governance workshops annually to review “The Role of the Commission,” or an updated version of it, as well as other matters pertaining to the Commission’s operations, including without limitation the Commission’s Operating Rules and open meetings and open records laws.

Section 3. This resolution is adopted by the Commission this 17th day of February, 2015.



Leigh|Fisher

The Role of the Commission

Prepared for
**Port of Corpus
Christi Authority**

January 27, 2015



Summary of Port Commission and Port Management Roles

The recommendations of the Organization Review assume distinct, separate and complementary roles for the Port Commission and Port management.

The Role of the Port Commission

The Port Commission is responsible to *govern* the Port by the *establishment* of broad policies, standards and regulations, and to *enable success* by the establishment of clear objectives.

Specifically, the role of the Commission should include three primary elements: *governance*, *policy* and *performance oversight* (further detail on following page).

The Role of Port Management

Port management is responsible to the Port Commission -- to *manage* the Port by *implementing* the broad policies, standards, regulations and objectives established by the Commission.

Relationship between Commission Role and Management Role

Typically, an effective Board or Commission recognizes and respects the distinction between “governance” and “management”. Boards and Commissions focus on *establishing* policies, goals and desired outcomes.

Management focuses on *implementing* policies and actions to achieve goals and desired outcomes. Boards and Commissions invariably become less effective as they become more involved in reviewing and participating in day-to-day management decision-making.

Management becomes less effective when boards become too involved in detail, and management’s focus is diverted to responding to board members, rather than implementing strategy and policy.

Rationale for Separation of Commission and Management Roles

Clear separation of the roles of Commission Members and management is fundamental to the success of an enterprise, for three practical reasons:

- **Objectivity** – Commissions exist to provide a source of objective, independent, long-range leadership for an enterprise. The more Commission Members become involved in management activities, the more they lose their ability to view issues objectively and independently
- **Authority** – Commissions set policy, and management executes policy. The more Commission Members become involved in day-to-day management activities, the more their authority is compromised, because they become “players” in events, rather than remaining separate from those events
- **Accountability** – Commissions cannot hold management accountable for the achievement of outcomes if Commission Members involve themselves in management – the interface between Commission and management becomes blurred, assignment of responsibility becomes confused and accountability for outcomes is fundamentally compromised.

Specific Roles of the Port Commission

The role of the Commission should include the following elements of governance, policy and performance oversight:

1. Governance

- Provision of vision, leadership and continuity
- Maintenance of accountability and transparency
- Establishment and adoption of by-laws, rules and regulations
- Appointment of Commission Committees
- Appointment of a Port Executive Director

2. Policy

- Establishment of standard policies to direct all aspects of Port operations
- Approval of contracts, in accordance with Port procurement policies
- Adoption of a Port strategic plan – definition of Port goals, objectives and performance targets
- Provision of adequate resources to enable achievement of the Port's goals and objectives
- Adoption of annual operating and capital budgets
- Adoption of an annual business plan
- Approval of management compensation, and staff pension, benefits and welfare programs

3. Performance Oversight

- Monitoring of Port performance in relation to Strategic Plan goals, objectives and performance targets
- Monitoring of Port performance against operating and capital budgets
- Support for management as required with business development and growth initiatives
- Ensuring Port compliance with federal, State and local laws, regulations and policies, through an independent audit program

Commission Members Do.....

Some of the key things that Commission Members should do include the following;

- Maintain an objective, “big-picture”, long-term view
- Think strategically, provide clear direction
- Consider the broad interests of the Community in strategy and policy formation
- Keep “current” on industry trends, regulations and issues
- Be an active and constructive contributor – add value
- Represent the enterprise positively and professionally
- Provide advice and counsel, in a supportive and friendly way
- Maintain confidentiality as appropriate (Section 3 – PCCA Board Operating Rules)
- Communicate with staff with Executive Director’s consent (Section 8 – PCCA Board Operating Rules)
- Refer all questions through the Executive Director (Section 8 – PCCA Board Operating Rules)
- Foster team spirit – support fellow Commission Members and Management
- Behave in a consistently civilized, polite and courteous manner
- Act as “exemplars” of the core values of the enterprise
- Act ethically and legally (see PCCA Code of Ethics)
- Avoid conflicts of interest
- Adhere to confidentiality policies per State and federal laws (Section 3 – PCCA Board Operating Rules)

Commission Members Do Not.....

Some of the key things that Commission Members should not do include the following:

- Try to run the operation – seek to become involved in daily operations
- Interfere with day-to-day routines
- Lobby staff directly
- Lecture management and staff – tell them what they should be doing
- Allow themselves to be lobbied directly by contractors or others seeking an advantage
- Become involved in personnel decisions and/or violate confidentiality with regard to personnel matters
- Speak aggressively or disrespectfully to other Commission Members or staff
- Foment conflict, show favoritism, pursue “witch-hunts”
- Use a Commission seat to advance personal agendas or ambitions unrelated to the enterprise
- Make demands of management or other Commission Members
- Disregard conflicts of interest
- Spend money frivolously on Commission activities, travel, entertainment, etc.

Specific Roles of Port Management

The role of Port management is to manage the Port by implementing the broad policies, standards, regulations and objectives established by the Commission. This role includes the following elements:

- Development and implementation of action plans to achieve the Port's Strategic Goals and Objectives
- Development of annual operating and capital budgets
- Management of Port financial affairs in relation to approved operating and capital budgets
- Implementation of policies and procedures approved by the Commission
- Recruitment, application and motivation of resources necessary to achieve the Port's goals and objectives
- Development of facilities to maximize the economic contribution of the Port, consistent with the Port Strategic Plan
- Ensuring safety and security in all aspects of Port operations
- Ensuring full compliance with all applicable local State and federal policies, regulations and standards

**OPERATING RULES OF THE PORT COMMISSION OF THE
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

Section 1. Officers; Terms of Office.

The officers of the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas ("PCCA") are Chair, Vice Chair and Secretary. The officers of the Port Commission will be elected by the Port Commission each calendar year at the first meeting of the Port Commission held during such calendar year. A vacancy in any office will be filled by a vote of the Port Commission. Election of officers and filling of vacancies will be by a vote of a majority of the Port Commissioners then serving. Each officer shall hold office until his or her successor has been elected, or until the officer is no longer a Port Commissioner.

Section 2. Meetings.

The Port Commission's regular monthly meeting will be on the third Tuesday of each month. The Chair may change the date of a regular Port Commission meeting for a particular month when circumstances necessitate a change of date.

The Chair or any four (4) Port Commissioners may schedule a special meeting or an emergency meeting of the Port Commission by providing the Executive Director with written instructions concerning the date, time, place and primary purpose of the meeting.

The Chair and the Executive Director will establish the agenda for each Port Commission meeting. Any two Port Commissioners may request in writing that a matter be placed on the agenda for a particular Port Commission meeting, and such request will be carried out by the Executive Director. The Executive Director will send a draft of the agenda for each Port Commission meeting to the Port Commissioners by the close of business on the sixth day before such meeting.

All meetings of the Port Commission shall be conducted in accordance with the statutes and laws of the State of Texas applicable to governmental bodies in Texas, and in particular the Texas Open Meetings Act as codified in Chapter 551, Texas Government Code.

Notice of and the agenda for all regular or specially called meetings of the Port Commission shall be posted in compliance with the Texas Open Meetings Act, and in the manner applicable to a district or political subdivision extending into fewer than four counties.

All materials, including but not limited to memorandums, agreements, financial information, recommendations and correspondence, provided by PCCA's staff or professional advisors to the members of the Port Commission to be used by the members of the Port Commission in addressing or taking action on an agenda item at a Port Commission meeting (collectively referred to herein as the "Supporting Materials") shall be provided to the members of the Port Commission electronically by the close of business on the fifth day prior to the day of the meeting at which the agenda item will be considered (the "Supporting Materials Deadline").

If the Supporting Materials for a posted agenda item are provided to the members of the Port Commission after the Supporting Materials Deadline for that agenda item, then, in that event, the agenda item shall be tabled for consideration at a subsequent regular or specially called meeting of the Port Commission.

Should the Supporting Materials for a properly posted agenda item be provided to the members of the Port Commission after the Supporting Materials Deadline for that agenda item, but PCCA's staff or professional advisors, advise the members of the Port Commission that consideration of the agenda item is an emergency, or that failure to act on the agenda item at that time will cause material harm to PCCA or its customers, then, in that event, with the approval of a at least five members of the Port Commission, the members of the Port Commission may consider and take action on the agenda item.

At or before the commencement of each Port Commission meeting, any Port Commissioner who intends to abstain from participating in the discussion of, and voting on, an agenda item in accordance with Section 1.04 of the Amended and Restated Code of Ethics of Port of Corpus Christi Authority of Nueces County, Texas ("PCCA Code of Ethics") shall file the required affidavit with PCCA's official record keeper and abstain from participating in, or voting on, such agenda item.

At any meeting of the Port Commission the presiding officer may permit the public to comment with respect to an agenda item during its consideration or during the Public Comment section of the agenda. Comments by the public are encouraged, but will be limited to three minutes per speaker. When there are several persons who wish to speak for or against a matter, the presiding officer may limit the total amount of time allocated to each side and the respective sides will decide who among them will speak.

At each meeting of the Port Commission a staff person designated by the Executive Director will provide a sign-in sheet near the main entrance to the meeting room for those members of the public wishing to speak at the meeting. Any person wishing to speak at a Port Commission meeting shall write the following information on the sign-in sheet: his or her name, address and the subject about which the person wishes to speak.

Section 3. Closed Meetings.

Closed meetings of the Port Commission shall be held in accordance with Subchapter E of Chapter 551 of the Texas Government Code, as amended. Closed meetings are confidential and it is the desire of the Port Commission that neither Port Commissioners, staff members nor any other person attending such meetings should reveal to others the nature or content of such meetings.

If a Port Commissioner determines that he or she has a conflict of interest with respect to any matter to be discussed at a closed meeting, the Commissioner shall announce that he or she has a conflict of interest with respect to such matter and shall excuse himself or herself from the meeting while that matter is being discussed.

Section 4. Port Commission Committees.

The Port Commission has two standing committees – the Audit Committee and the Security Committee. The Port Commission may establish additional standing committees from time to time by an amendment to these Operating Rules.

The functions of the Audit Committee are to review the financial affairs of PCCA, to make recommendations with respect to the selection of PCCA's auditors, to meet with PCCA's auditors to

review their annual audit report of PCCA's activities, and to act as a designated investment committee advising the investment officer of PCCA pursuant to Section 2256.0005(e), Texas Government Code, and PCCA's Investment Policy, as amended from time to time. The Audit Committee shall consist of three Port Commissioners.

The functions of the Security Committee are to periodically review and make recommendations regarding the security of PCCA and the Port of Corpus Christi and to consult with PCCA's Chief of Police on a regular basis concerning these matters. The Security Committee shall consist of three Port Commissioners.

The Chair may establish or abolish special committees from time to time in the Chair's sole discretion. The Chair will appoint the members and the chairperson of each standing or special committee as soon as practicable after the Chair's election or the establishment of such committee, as the case may be.

The Chair will also appoint PCCA's representatives on the governing boards or committees of any outside organizations to which PCCA has the right to appoint representatives. The Port Commission will elect the directors of PCCA's Industrial Development Corporation in accordance with the bylaws of the corporation.

Section 5. Duties and Authority of Officers.

The Chair will preside at all meetings of the Port Commission and decide the order in which the agenda items will be acted upon. The Chair will put to a vote all questions which are properly moved or necessarily arise in the course of the proceedings and announce the result of each vote. The Chair will decide all questions of parliamentary procedure, and there is no appeal from the decision of the Chair. Counsel for the Port Commission may advise the Chair on matters of parliamentary procedure.

If the office of Chair is vacant, the Vice Chair shall perform the duties and have the authority to exercise the powers of the Chair. The Vice Chair will act as the presiding officer of any Port Commission meeting at which the Chair is absent or whenever the Chair chooses not to act as the presiding officer.

The Secretary will review and sign the minutes of the meetings of the Port Commission and will, when appropriate, attest the execution of documents by PCCA's officers or the Executive Director.

The Chair, Vice Chair, Secretary, or Executive Director may execute agreements and other documents approved by the Port Commission and approved as to legal form by Counsel for the Port Commission.

Section 6. Quorum; Voting.

Four (4) Port Commissioners constitute a quorum for the purpose of conducting business at any meeting of the Port Commission. The affirmative vote of a majority of the Port Commissioners present and voting at any meeting at which a quorum is present, but not less than the affirmative vote of three Port Commissioners, is sufficient for the adoption of any motion or resolution except where a vote of greater than a majority of Port Commissioners present and voting at the meeting is required by law, statute or these rules. Each Port Commissioner present at a meeting shall be entitled to vote on any issue put to a vote of the Port Commission at such meeting, except as provided in PCCA's Code of Ethics, or Chapter 171 of the Texas Local Government Code. When a Port Commissioner present at a meeting abstains from voting on a matter taken up by the Port Commission, the record will reflect the Port Commissioner's abstention, and any certifications regarding the voting record on such matter shall reflect the Port Commissioner's abstention. If a Port Commissioner is absent from a meeting of the Port Commission, the minutes of the meeting shall reflect the Port Commissioner's absence.

Section 7. Robert's Rules of Order.

The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Port Commission in all cases to which they are applicable and in which they are not inconsistent with any law, statute, or rule of the Port Commission.

Section 8. Contact With Staff.

The Port Commissioners shall not give directives to any members of PCCA's staff other than the Executive Director.

Section 9. Amendments.

These Operating Rules may only be amended by a vote of two-thirds of all Port Commissioners.

ADOPTED BY THE PORT COMMISSION the 17th day of February, 2015, as a complete amendment and restatement of the prior Operating Rules of the Port Commission.

AGENDA ITEM NO. 6

Committee Reports

NO ATTACHMENT

AGENDA ITEM NO. 7

Staff Reports

NO ATTACHMENT

AGENDA ITEM NO. 8

Harbor Bridge & Hillcrest Update

NO ATTACHMENT

DATE: February 16, 2016
TO: Port Commission
FROM: John Pasch, Interim Director of Operations
Jpasch@pocca.com
885-6157

AGENDA ITEM NO. 9

Receive Presentation from the U.S. Navy on the Celebration of Naval Air Station Corpus Christi's 75th Anniversary

SUMMARY: Corpus Christi and Naval Air Station Corpus Christi have continued to foster a formidable relationship that enhances the entire local community. March 12, 2016 is the 75th anniversary of Naval Air Station Corpus Christi.

BACKGROUND: In November 1939, local officials recommended Corpus Christi as "home" to a new naval air training base, because of nearly ideal training weather, wide-open skies, and easy coordination with existing naval aviation training assets. Congress later passed a naval appropriations bill authorizing the construction of 12 naval air stations with the largest to be built in the Flour Bluff area of Corpus Christi. Corpus Christi's civic leaders gave the Navy an added incentive to build here – 640 acres of undeveloped city land in addition to what the government would purchase, plus \$2 million to help with the cost of construction. During the station's dedication on March 12, 1941, presiding official Navy Secretary Frank Knox said that the station was dedicated to peace – a special kind of peace, the peace of justice and righteousness. The first commanding officer of the U.S. Air Training Center at Corpus Christi, proclaimed the facility, "the University of the Air." And, during World War II, 35,000 men successfully completed flight training here.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: N/A

EMERGENCY: N/A

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: N/A

DEPARTMENTAL CLERARANCES: N/A

LIST OF SUPPORTING DOCUMENTS: Copy NAS Proclamation to the mayor and a copy of the media presentation.



Celebrating NAS Corpus Christi's 75th Anniversary





Before the Base - 1939

*Flour
Bluff*

PHOTOS COURTESY
MR. CHANDLER

*Ante
Navy*



above:picnickers where sea-
plane hangars now stand.
below:cattle pens were lo-
cated near phesent South
Gate.



below:in tradition-
al Flour Bluff
style, children
attended school
on horseback.



right:oil
well





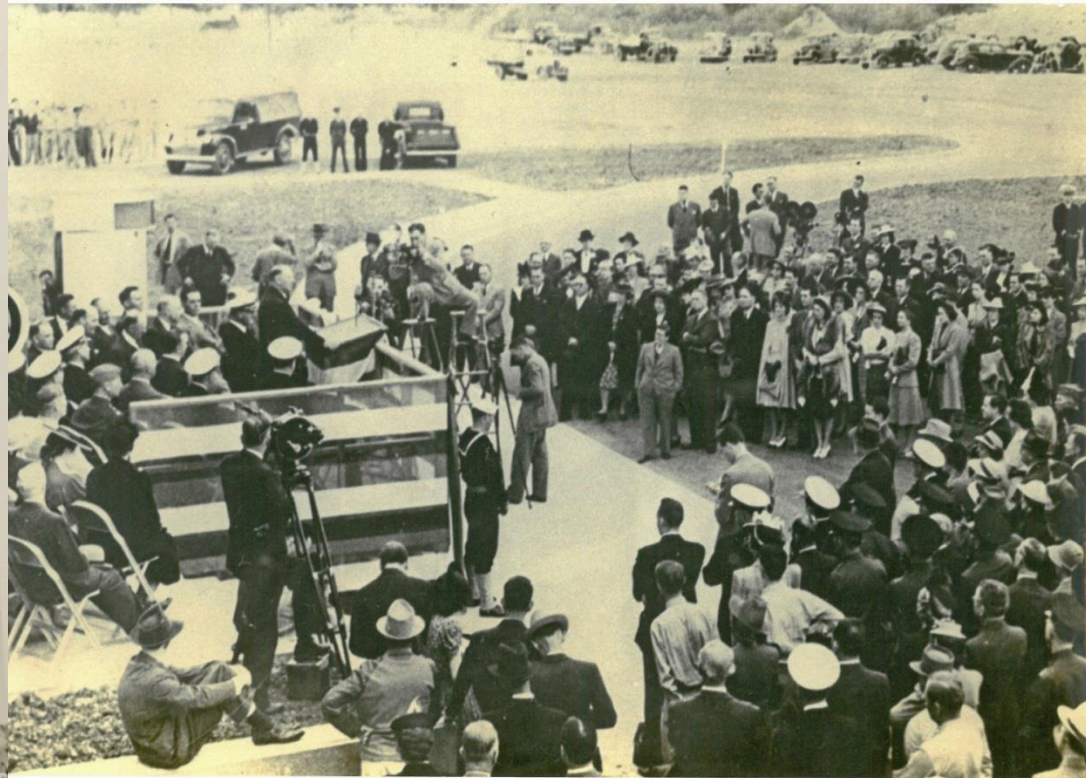
NAS Corpus Christi - 1941

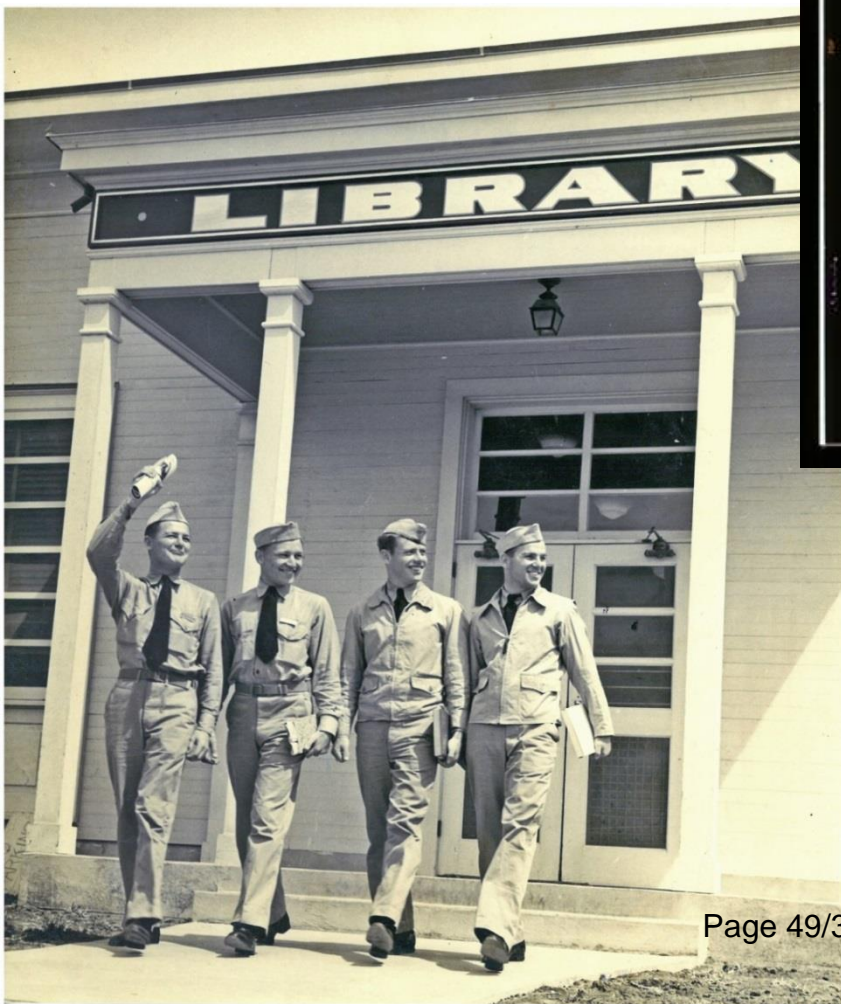


Naval Air Training Center Corpus Christi, August 1941.



Commissioning Ceremony 12 March 1941

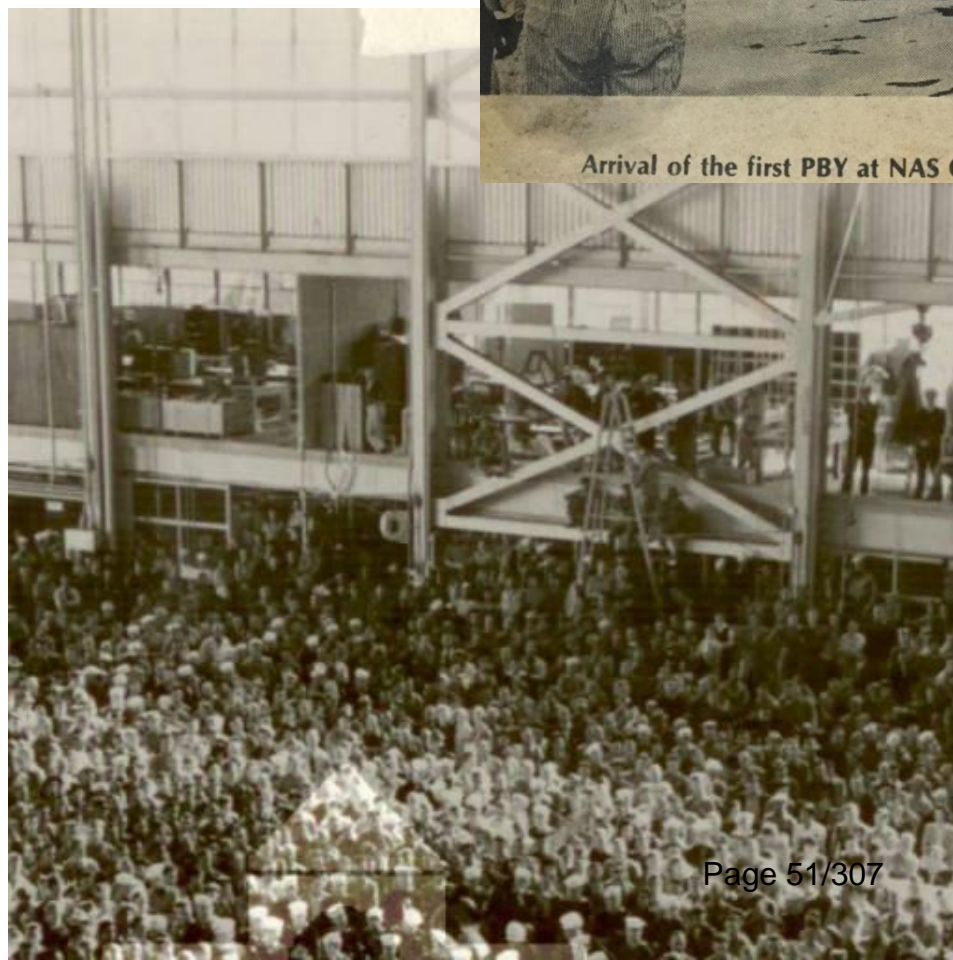








Arrival of the first PBV at NAS C



Aviation cadets at NAS Corpus Christi receive instructions, 1944. Source: *Naval Aviation News* 1944.



A Navy Flyer's Creed

I am a United States Navy flyer. ★ My countrymen built the best airplane in the world and entrusted it to me. They trained me to fly it. I will use it to the absolute limit of my power. ★ With my fellow pilots, air crews, and deck crews, my plane and I will do anything necessary to carry out our tremendous responsibilities. I will always remember we are part of an unbeatable combat team—the United States Navy. ★ When the going is fast and rough, I will not falter. I will be uncompromising in every blow I strike. I will be humble in victory. ★ I am a United States Navy flyer. I have dedicated myself to my country, with its many millions of all races, colors, and creeds. They and their way of life are worthy of my greatest protective effort. ★ I ask the help of God in making that effort great enough.





Celebrating the 75th Anniversary of Naval Air Station Corpus Christi

March 12, 2016



Free



Open to the Public

**11 a.m. - Official Ceremony, NASCC Building 1,
CNATRA Front Lawn**

**12 noon - Entertainment & Activities,
NASCC Seawall**

**There will be static displays, food, music,
NJROTC performances, base tours & more**

**5 to 7 p.m. -- Concert & Fireworks,
NASCC Seawall**



Naval Air Station
Corpus Christi

**Follow us on Facebook
or e-mail nascc-pao@navy.mil
for more information.**



NASCC Anniversary



Questions?

Base Population: 12,172

1,925 Military
7,021 Civ/Cntr
3,226 Dependents

Land (including
OLF's): 5,622 Acres
Plant Replacement
Value: \$1.14B
Family Housing
Units On Base: 272
Roads: 55 miles
Airfield Runways: 10



PROCLAMATION

WHEREAS,

In November 1939, local officials recommended Corpus Christi as “home” to a new naval air training base, because of nearly ideal training weather, wide-open skies, and easy coordination with existing naval aviation training assets; and

WHEREAS,

Congress later passed a naval appropriations bill authorizing the construction of 12 naval air stations with the largest to be built in the Flour Bluff area of Corpus Christi.

WHEREAS,

Corpus Christi’s civic leaders gave the Navy an added incentive to build here – 640 acres of undeveloped city land in addition to what the government would purchase, plus \$2 million to help with the cost of construction.

WHEREAS,

During the station’s dedication on March 12, 1941, presiding official Navy Secretary Frank Knox said that the station was dedicated to peace – a special kind of peace, the peace of justice and righteousness.

WHEREAS,

The first commanding officer of the U.S. Air Training Center at Corpus Christi, proclaimed the facility, “the University of the Air.” And, during World War II, 35,000 men successfully completed flight training here.

WHEREAS,

Corpus Christi and Naval Air Station Corpus Christi have continued to foster a formidable relationship that enhances the entire local community

NOW, therefore, pursuant to the powers vested in me as Mayor of the City of Corpus Christi, I do hereby proclaim

March 12, 2016

The 75th anniversary of Naval Air Station Corpus Christi

DATE: February 16, 2016

TO: Port Commission

FROM: Darrin Aldrich, Director of Real Estate
Darrin@pocca.com
(361) 885-6169

AGENDA ITEM NO. 10

**Approve a Three-Year Lease Agreement with WestStar Food Company, LLC,
for Use of the East Transfer Facility**

SUMMARY: Staff requests approval of a Lease Agreement with WestStar Food Company, LLC, for use of the 30,000-square-foot warehouse known as the East Transfer Facility located at 1134 Port Avenue.

BACKGROUND: For over 11 years, WestStar has leased the East and West Transfer Facilities located at 1134 Port Avenue to bag and ship beans and lentils. Over the course of the past few months, staff has worked with representatives of WestStar in negotiating a new three-year lease agreement. WestStar has determined that their operations can be consolidated utilizing only the East Transfer Shed shown on the attached Exhibit. WestStar has recently vacated the West Transfer Shed, and staff is currently seeking a tenant for that space.

ALTERNATIVES: Request WestStar to relocate its business in order to offer both warehouses to a single tenant.

CONFORMITY TO PORT POLICY: N/A

EMERGENCY: No.

FINANCIAL IMPACT: Annual base rent of \$144,000 to the PCCA and retain a tenant with a proven track record.

STAFF RECOMMENDATION: Staff recommends approval of the attached Lease Agreement with WestStar Food Company, LLC, for use of the East Transfer Facility for an annual rental fee of \$144,000.

DEPARTMENTAL CLEARANCES:

Originating Department	Real Estate
Reviewed & Approved	Darrin Aldrich
Legal	Mike Mahaffey
Senior Staff	Ruben Medina
	Jarl Pedersen

LIST OF SUPPORTING DOCUMENTS:

Location Map Exhibit
Lease Summary
Lease Agreement

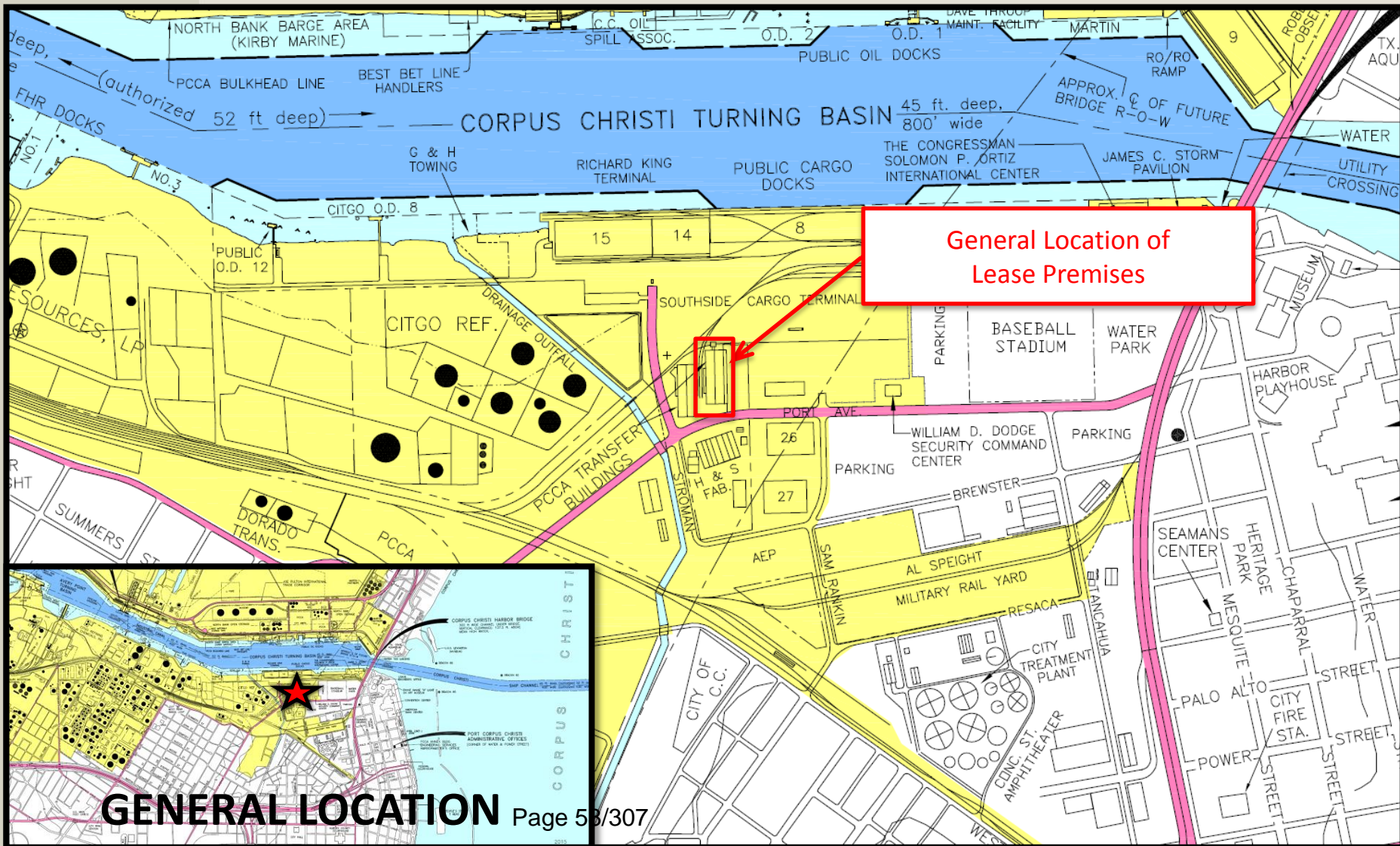


WESTSTAR FOOD COMPANY, LLC

EAST TRANSFER FACILITY WAREHOUSE

1134 EAST PORT AVENUE

AGENDA ITEM NO. 10



**PORT OF CORPUS CHRISTI AUTHORITY
LEASE TERM SHEET**

Lessee: WestStar Food Company, LLC
1134 East Port Avenue
Corpus Christi, Texas 78401

Leased Premises: Tract of land together with 30,000 square feet of improved warehouse space.
Lease premises is known as the East Transfer Facility Building.

Tenant will vacate the West Transfer Facility Building.

Use: Receiving, bagging, storing, and shipping food grade agricultural products
and other bulk products including non-hazardous resins.

Term: One (1) year primary term – February 16, 2016 – February 15, 2017

Options: Two (2) – One (1) year extensions

Start Date: February 16, 2016

Annual Rent: \$144,000.00, payable in monthly installments of \$12,000.00

Additional Rent: \$100.00 for each railcar loaded or unloaded during the month while spotted
on an Authority-owned spur track on the Leased Premises or an
Authority-owned sidetrack adjacent to the Leased Premises.

Adjustment of Rent: None.

Remarks: Either party may terminate lease agreement without cause upon 90 days
written notice.

LEASE AGREEMENT

This **LEASE AGREEMENT** is made this 16th day of February, 2016, by and between **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, pursuant to authorization by its Port Commissioners (hereinafter called "Authority"), and **WESTSTAR FOOD COMPANY, LLC**, a Texas limited liability corporation, whose principal address is 1134 East Port Avenue, Corpus Christi, Texas, 78401, (hereinafter called "Lessee").

ARTICLE I
LEASED PREMISES

A. Description and Term: Authority, in consideration of the rents to be paid and the terms, covenants, and conditions hereinafter set forth, hereby leases to Lessee a tract of land together with 30,000 square feet of improved warehouse space having an address at 1134 East Port Avenue, Corpus Christi, Nueces County, Texas, 78403, (and sometimes referred to as the East Transfer Facility Building) as depicted on **Exhibit A** attached hereto (hereinafter "Leased Premises"), **TO HAVE AND TO HOLD** the Leased Premises for a term (the "Term") of Twelve (12) months, beginning the 16th day of February, 2016 (the "Effective Date"), and ending the 15th day of February, 2017, unless sooner terminated.

B. Lessee has an option to extend the Term of this Lease for Two (2) additional periods of One (1) year each. To exercise an option, Lessee must give written notice thereof to Authority at least one hundred eighty (180) days prior to the end of the then effective Term, irrevocably exercising its option to extend the Term for an additional one year period. Notice of Lessee's intention to extend the Term under this Lease Agreement must, to be effective, be sent by certified mail to Authority at the address provided in Article X, Section B and must be postmarked no later than the latest date provided in this Section for Lessee's exercising the option. Notwithstanding anything to the contrary contained in this Lease, Lessee may not exercise such option if at the time of exercise an Event of Default has occurred. If Lessee properly exercises its option to extend the Term, then this Lease shall continue in full force and effect under all the terms and conditions set forth herein.

C. Holding Over: In the event of any holding over by Lessee beyond the Term (or any extension of the Term of this lease agreement agreed to in writing by Authority and Lessee) 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 2.0 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 insofar as the same are applicable to a tenant at sufferance.

D. Termination Without Cause: Either party hereto may terminate this lease agreement without cause upon ninety (90) days written notice to the other.

E. Assignment: Lessee may not assign this lease agreement in whole or in part or any interest therein nor sublet the Leased Premises or any part thereof nor grant any license, concession

or other right of occupancy of any portion of the Leased Premises without the prior written consent of Authority.

ARTICLE II

RENT AND UTILITIES

A. Annual Base Rent: Lessee agrees to pay to Authority at its offices in Corpus Christi, Nueces County, Texas, Annual Base Rent in the amount of One Hundred Fifty Three Thousand One Hundred Eighty Four 64/100 Dollars (\$153,184.64). The Annual Base Rent shall be paid in equal monthly installments of one-twelfth of the Annual Base Rent for the first Lease Year and shall be paid on or before the first day of each calendar month during the first Lease Year commencing on the Effective Date of this Lease. Rent for any fractional month at the beginning or end of the Term will be prorated on a per-day basis.. 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 greater, 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 or payments, the amount of such costs not being readily ascertainable. Any such late charge shall be in addition to all other rights and remedies available to Authority hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Authority's other 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 cashier's 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 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 unless provided for in this Lease Agreement or the financing, ownership, construction, reconstruction, maintenance, operation, or repair of the Leased Premises or the improvements thereon.

B. Rent for Railcar Use: As additional rent for the right to use the Leased Premises for loading and unloading of railcars, Lessee agrees to pay to Authority a monthly rent equal to the sum of One Hundred and 00/100 Dollars (\$100.00) for each railcar loaded or unloaded during such month while spotted on an Authority-owned spur track on the Leased Premises or an Authority-owned sidetrack adjacent to the Leased Premises.

The rent accrued for railcars loaded or unloaded at the Leased Premise in any one calendar month shall be paid on or before the first day of the following calendar month. Authority may

charge Lessee a penalty for late payment of monthly installments to be paid pursuant to this Article II, Section B, which penalty will be equal to 8% per annum on monthly installments of such rent that are more than thirty (30) days past due, calculated from the due date until paid.

Lessee must report in writing monthly to Authority the number of railcars loaded or unloaded during such month while spotted on an Authority-owned spur track on the Leased Premises or an Authority-owned sidetrack adjacent to the Leased Premises. Lessee shall maintain a complete and accurate set of books and records showing all of the foregoing information in order that the Authority may ascertain therefrom what rentals are due to the Authority from Lessee hereunder, and such books and records shall be subject to the inspection of the Authority, its agents and attorneys, at any and all reasonable times.

C. Utilities: In addition to the 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.

ARTICLE III **USE OF PREMISES**

A. 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:

Receiving, bagging, storing, and shipping food grade agricultural products and other bulk products including non-hazardous resins, and loading and unloading railcars subject to the conditions stated in Article II B of this lease agreement.

In its use of the Leased Premises, Lessee will not violate any restrictive covenant or deed restriction (recorded or otherwise) affecting the Leased Premises, or any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters.

B. Hazardous Use: No hazard may be created or allowed to continue on the Leased Premises that will increase the insurance rate of Authority or of other lessees of Authority properties adjacent to the Leased Premises.

Lessee's occupancy, operation and/or use of the Leased Premises shall not violate any applicable city, state or federal laws or regulations pertaining to the storage, disposal, use or release of environmentally hazardous substances ("Hazardous Materials") as defined by any applicable city, state or federal law or regulation, and must comply with 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.

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 applicable 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 least one time during the primary and any option term of this lease 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 and damage caused by the presence or release of any Hazardous Materials in, on, under, or about the Leased Premises during occupancy of the Leased Premises in conformance with the requirements of applicable law. 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 Materials, or upon receiving any notice from governmental agencies pertaining to Hazardous Materials which may affect the Leased Premises.

The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this lease.

C. Lessee shall not 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

ARTICLE IV

CONDITION OF PREMISES AND MAINTENANCE

A. **Lessee's Inspection:** 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.

B. **Authority's Inspection:** Authority's agents, representatives, or employees may enter 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 Leased Premises, or for the purpose of showing the Leased Premises to prospective lessees.

C. Maintenance: 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 the highest legal rate from the date of the notice until the date paid by Lessee to Authority.

At the expiration of the Term or any renewals or extensions thereof, or earlier termination or the lease, Lessee will surrender the Leased 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.

D. Alterations: All alterations or 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.

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.

Copies of all permits for work in navigable waters related to the Leased Premises issued to Grantee by the Department of Army or any other federal, state or other governmental agency shall be filed with Authority.

No approval of designs, site plans, plans, specifications or other matters may ever be construed as representing or implying that such 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 designs, site plans, plans, specifications or other matters relating to the Leased Premises.**

At the expiration or earlier termination of this lease agreement, all alterations, modifications or improvements upon the Leased Premises made by Lessee, shall, absent any agreement between Authority and Lessee to the contrary at the time of installation, or unless Authority otherwise elects, which election shall be made by giving a notice in writing (a) not less than fifteen (15) days prior to the expiration of this lease agreement, or (b) not more than fifteen (15) days following any termination of this lease agreement other than by expiration, become the property of Authority and shall remain upon and be surrendered with the Leased Premises as a part thereof at the end of the lease term. In the event Authority notifies Lessee to remove any or all of the alterations, additions or improvements made by Lessee, Lessee shall do so and shall repair any damage caused by such removal, all within thirty (30) days after the date of expiration or termination of this lease agreement. Trade fixtures, furnishings and equipment which are installed by Lessee, at its expense, may be removed by Lessee provided Lessee removes the same and repairs any damage caused by such removal within thirty (30) days after the date of expiration or termination of this lease agreement.

E. Signs: Lessee shall not place any signs at or on the Leased Premises, nor paint any signs on any building on the Leased Premises unless first approved by the Director of Engineering Services of Authority in writing.

ARTICLE V **INSURANCE**

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees to carry and maintain at its sole expense policies of insurance ("the Policies") of the types and in the minimum amounts as follows:

1. All Risk Property insurance coverage, including Wind, Named Storm, Flood and Earthquake/Tsunami on the buildings, improvements and betterments situated on the Leased Premises and in builder's risk completed value form during substantial construction of improvements (including malicious mischief and vandalism) in amounts sufficient of full replacement value of such buildings, improvements and betterments situated on the Lease Premises. Lessee is responsible for insuring its personal property on the Leased Premises. "Insurable Value" means full replacement cost;

2. For all its employees engaged in performing work, workers' compensation, and employer's liability insurance with policy limits of at least \$500,000.00 per accident, or such similar insurance which is in accordance with state and federal law and regulations applicable to said employees. The Workers' Compensation policy must provide a Waiver of Subrogation in favor of Authority; and

3. Commercial General Liability insurance coverage with policy limits, of at least \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate at this location, and endorsed to provide contractual liability coverage and Time Element Pollution coverage.

4. Business Auto Liability insurance coverage for all owned and non-owned vehicles, with a policy limit of \$1,000,000.00 (Combined Single Limit.); and

5. Umbrella liability insurance with limits of not less than \$5,000,000.00 (over and above the underlying primary CGL coverage) is required.

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 Attention: Risk Program Manager, prior to execution of the Lease Agreement, 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 insurance) name Authority, its Port Commissioners, officers, officials, employees and agents as an additional insured (b) provide that it will not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days' prior written notice to Authority, , and (c) provide that notwithstanding any language in any policy of insurance held by 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.

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 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.

Lessee waives every claim which arises or may arise in its favor against Authority during the term of this lease or any renewal or extension thereof for any and all claims against it, or for loss of, or damage to, any of its property located within or upon, or constituting a part of, the Leased Premises, covered by applicable insurance policies, to the extent that such claim, loss or damage is covered or recoverable under said insurance policies. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this lease agreement with respect to any loss of or damage to property of the parties hereto. Lessee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this lease agreement written notice of the terms of the waiver set forth in this Article, 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 VI
INDEMNITY AND WAIVER

A. As used in this Article VI, each of the following terms shall have the meanings set forth in this Article VIA:

(1) “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.

(2) “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.

(3) “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.

(4) “Indemnified Persons” means the Authority, its Port Commissioners, directors, managers, employees and agents.

(5) “Lessee Parties” means the Lessee, its agents, contractors, employees, owners, invitees, or licensees.

(6) “Waive” means to knowingly and voluntarily relinquish a right and/or to release another party from liability.

B. Subject to the terms of this Article VI, Lessee shall Defend and Indemnify the Indemnified Persons from and against all Claims resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the following matters (these Claims being referred to herein as the “Indemnified Claims”):

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

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

(3) any property loss or damage occurring in, on, or about the Leased Premises or relating to the condition, use or occupancy of the Leased Premises;

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

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

C. The Indemnities, Waivers and obligation to Defend in this Article VI shall be enforced to the fullest extent permitted by applicable law for the benefit of the applicable Indemnified Persons, regardless of any extraordinary shifting of risks, and even if the applicable Claim is caused by the joint, concurrent, or comparative negligence of such Indemnified Persons, and regardless of whether liability without fault or strict liability is imposed upon or alleged against such Indemnified Persons; provided, however, that an Indemnity will not be enforced to the extent that a court of competent jurisdiction holds in a final judgment that the applicable Claim against any of the Indemnified Persons was caused by the willful misconduct or sole negligence of such Indemnified Persons.

D. Notwithstanding anything to the contrary contained in this Article VI, 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 Persons by or for an employee of a Lessee Party, the Lessee's indemnification obligation under this Article VI 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 any Indemnified Persons 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 Persons or a settlement by the Indemnified Persons, Lessee expressly agrees to reimburse and hold harmless the Indemnified Persons for the damages based on such judgment or settlement as provided in this Article VI.

F. Except as otherwise expressly limited in this Article VI, 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 any exclusive

liability provision of the Texas Workers' Compensation Act. The indemnity contained in this Article VI applies, without limitation, to any violation of any law, rules or regulations referred to in Article III in effect during the Term of this Lease Agreement, and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the Term of this Lease Agreement, regardless of whether the act, omission, event or circumstance constituted a violation of any law, rules or regulations referred to in Article III at the time of its existence or occurrence.

G. If any action or proceeding is brought against any Indemnified Persons by reason of any Indemnified Claim described in this Article VI, the Indemnified Persons will be represented by their general counsel, or another attorney selected by the Indemnified Persons and approved by Lessee, which approval will not be unreasonably withheld.

H. If Lessee should fail or refuse, after written notice to Lessee that the Indemnified Persons intend to make a settlement of an Indemnified Claim, to participate in the settlement of such Indemnified Claim, then the Indemnified Persons may settle with the claimant without prejudice to the Indemnified Persons' 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 Persons, which settlement may later be apportioned between Indemnified Persons and Lessee.

I. Lessee agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage.

J. To the fullest extent provided by this Article VI, Lessee hereby Waives all Claims against the Indemnified Persons resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the Indemnified Claims.

ARTICLE VII

DEFAULT

If for ten (10) calendar days after service by mail or otherwise to Lessee by Authority of written notice of a breach or default by Lessee under any provision of this lease agreement, the Lessee does not or shall neglect or fail to comply with or remedy such breach or default, or if the said breach or default complained of shall be of such a nature that the same cannot be completely remedied or cured within such ten (10) day period, then such breach or default shall not be an enforceable breach or default against Lessee if Lessee shall have commenced curing such breach or default within such ten (10) day period, and shall with reasonable diligence and in good faith, proceed to remedy the default complained of; or if any proceedings concerning Lessee or the Leased Premises be had in bankruptcy, reorganization, arrangement or receivership, or if any assignment shall be attempted to be made of this lease agreement for the benefit of creditors; or if Lessee abandons or vacates a substantial portion of the Leased Premises for fourteen (14) consecutive days; then in any of said cases or in any similar case which, in the sole judgment of

Authority, evidences a serious financial insecurity of Lessee, Authority shall have the rights and remedies that may be provided at law or in equity and the following options:

A. Without terminating this lease agreement, Authority may terminate Lessee's right of possession of the Leased Premises under this lease agreement by giving Lessee three (3) calendar days' notice of termination of Lessee's right of possession and Lessee's right of possession shall thereupon cease and come to an end and Authority may reenter and take possession of the Leased Premises; provided, however, Authority shall not be required to give such notice prior to the filing of an action of forcible detainer or at common law upon default by Lessee in the payment of rent. Upon entering and taking possession of the Leased Premises, Authority may:

(1) Relet for the account of, or as agent for, Lessee the Leased Premises or any part thereof, to a tenant acceptable to Authority, without terminating this lease agreement or working a forfeiture of the rent to be paid, and after receiving the rent therefrom apply the same, first to the payment of all expense the Authority may be put to in recovering possession of the Leased Premises and in reletting same, including but not limited to the costs of renovating, altering and repairing for a new tenant and attorneys' and brokers' fees, and then to the payment of the rent and additional rent payable under this lease agreement and to the fulfillment of Lessee's covenants hereunder. Lessee shall be entitled to any balance remaining after subtracting such costs and debts. Authority may at any time after reletting terminate this lease agreement for the breach or default on account of which it reentered and relet.

(2) Accelerate the future rent and additional rent due under this lease agreement and seek recovery of such rent and additional rent and any other damages provided for in this lease agreement, at law or in equity. Authority is entitled to recover future rent and additional rent from Lessee based upon the present value of the rent and additional rent discounted to present value at the rate of 3% per annum for the remainder of the term of the lease reduced by the fair market rental value of the Leased Premises during that period.

B. Terminate this lease agreement.

C. Lessee pledges with Authority all of its rents and profits from the Leased Premises in addition to the other security for the performance of the lease; and in connection with such pledging of the rents, the Lessee covenants and agrees with Authority that if Authority, upon default of Lessee, elects to file a suit to enforce this lease agreement and protect Authority's rights thereunder, Authority may apply to any court having jurisdiction, for the appointment of a Receiver of all and singular the demised premises, the improvements and buildings located thereon, and the personal property located therein, and thereupon it is expressly covenanted and agreed that the court shall without notice forthwith appoint a Receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to Authority, and without reference to the adequacy or inadequacy of a remedy at law, the value of the property that is subject to Landlord's lien, or to the solvency or insolvency of Lessee; and without reference to the commission of waste.

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.

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 herein to the contrary, Authority shall in no event be charged with or liable for any consequential damages, including but not limited to loss of profits or lost business opportunity, 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 IX **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 Article 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 agreement. 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 X
GENERAL PROVISIONS

A. **No Waiver:** The waiver of any breach of any term or condition of this lease agreement does not waive any other breach of that term or condition or of any other term or condition.

B. **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, Attention: Patrick Wallesen, 1134 East Port Avenue, Corpus Christi, Texas, 78401 or at such other address as Lessee shall request in writing.

C. **Binding Agreement:** 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.

D. **Applicable Law:** This lease agreement must be construed and its performance enforced under Texas law. Venue of any action arising out of this lease agreement will be in Nueces County, Texas.

E. **Construction:** In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

F. **Amendment:** 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 writing that is signed by the party against whom it is sought to be enforced.

G. **Attorneys' Fees:** In the event Authority or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and substantially prevails, then the defaulting party agrees to pay the other party's reasonable attorneys' fees so incurred by such other party.

H. **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.

I. Force Majeure: In the event either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of *force majeure*, which includes strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (hereinafter "*force majeure*"), such party shall be excused for the period of time equivalent to the delay caused by such *force majeure*.

Notwithstanding the foregoing, any extension of time for *force majeure* shall be conditioned upon the party seeking an extension of time delivering written notice of such *force majeure* to the other party within 10 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 60 days.

J. 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.

K. 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.

L. 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.

(Signatures are on the next page.)

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"

WESTSTAR FOOD COMPANY, LLC

By: _____
Patrick Wallesen
Managing Partner

"Lessee"

STATE OF TEXAS §
 §
 COUNTY OF NUECES §

This instrument was acknowledged before me on the _____ day of _____, 20_____,
 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 4th day of February, 20 16,
 by Patrick Wallesen, Managing Partner and Vice President of WestStar Food Company, LLC a
 Texas limited liability corporation, on behalf of said corporation.



[Signature]
 NOTARY PUBLIC, STATE OF Texas



DATE: February 16, 2016

TO: Port Commission

FROM: Jarl Pedersen, Chief Commercial Officer
jarl@pocca.com
(361) 885-6698

AGENDA ITEM NO. 11

**Approve a Railcar Storage Agreement with M&G Resins USA, LLC,
for Hopper Railcars on Port Rail Tracks**

SUMMARY: Staff requests approval of a Railcar Storage Agreement with M&G Resins USA, LLC, to provide storage space for 400 guaranteed railcar storage spots on PCCA rail tracks. The term of the Storage Agreement will commence on July 1, 2016, and expire on June 30, 2021. M&G will pay the PCCA \$5.00 per day for each guaranteed railcar storage spot during the first and second years of the Agreement. During year three of the Agreement, M&G will pay the PCCA \$5.50 per day for each guaranteed railcar storage spot. Subsequently, M&G will pay the PCCA \$5.75 per day for each guaranteed railcar storage spot during the fourth year of the Agreement. In the fifth year of the Agreement, M&G will pay the PCCA \$6.00 per day for each guaranteed railcar storage spot.

BACKGROUND: This Railcar Storage Agreement will provide railcar storage spots close to the M&G facility and support successful startup and operation. The storage spots will be used to store empty hopper railcars as well as hopper railcars containing PTA/PET resin pellets.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: N/A

EMERGENCY: No.

FINANCIAL IMPACT: The PCCA will realize annual fees of \$730,000 for the first and second years of the Agreement; annual fees of \$830,000 for the third year of the Agreement; annual fees of \$830,950 for the fourth year of the Agreement; and annual fees of \$870,600 for the fifth year of the Agreement.

STAFF RECOMMENDATION: Staff recommends approval of a Railcar Storage Agreement with M&G Resins USA, LLC, for guaranteed railcar storage space on PCCA rail tracks.

DEPARTMENTAL CLEARANCES:

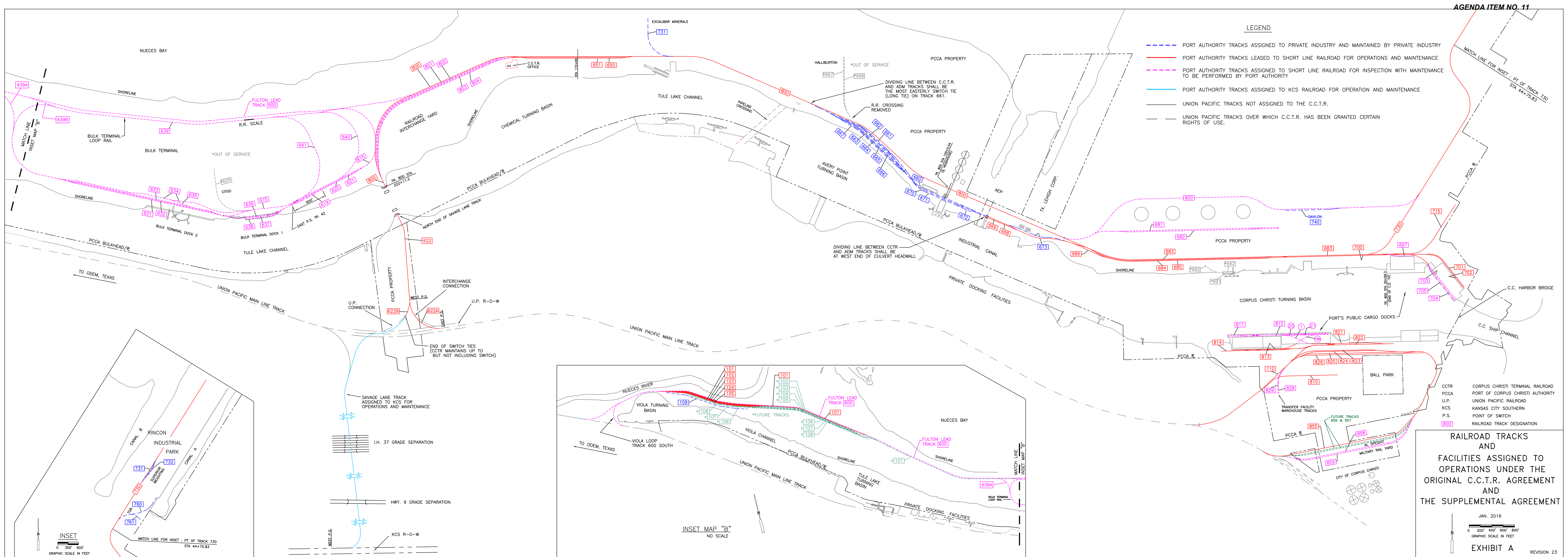
Originating Department:
Reviewed & Approved by
CCO Office
Legal
Operations

Senior Staff

Office of Chief Commercial Officer
Jarl Pedersen
Sonya Lopez-Sosa
Jimmy Welder
John Slubar
Rich Stroot
Jarl Pedersen

LIST OF SUPPORTING DOCUMENTS:

Railcar Storage Agreement



RAILCAR STORAGE AGREEMENT
(400 Guaranteed Railcar Storage Spots to M&G)

This Railcar Storage Agreement ("**Agreement**") is made effective as of the ____ day of February, 2016 (the "**Effective Date**"), by and between **M&G Resins USA, LLC**, a Delaware limited liability company ("**M&G**"), and the **Port of Corpus Christi Authority of Nueces County, Texas**, a political subdivision of the State of Texas ("**PCCA**"). M&G and PCCA shall each be referred to herein individually as a "**Party**" or jointly as the "**Parties**".

WITNESSETH:

Whereas, Corpus Christi Terminal Railroad, Inc. ("**CCPN**") is the short line freight railroad serving the Port of Corpus Christi; and

Whereas, PCCA owns railroad tracks on the north and south sides of the Inner Harbor of the Port of Corpus Christi which are not leased to CCPN ("**Port Tracks**"); and

Whereas, a map of the Port Tracks is attached hereto as **Exhibit A**; and

Whereas, M&G owns and operates a manufacturing facility ("**Plant**") at the west end of the north side of the Inner Harbor of the Port of Corpus Christi;

Whereas, M&G will manufacture Polyethylene Terephthalate ("**PET**") and Purified Terephthalic Acid ("**PTA**") at the Plant;

Whereas, M&G will require rail transportation for both PET and PTA to and from the Plant;

Whereas, M&G desires to store railcars loaded with PET and PTA as well as empty railcars on the Port Tracks; and

Whereas, PCCA is willing to provide such railcar storage on Port Tracks in accordance with the terms and conditions of this Agreement;

Now, therefore, in consideration of the premises and the mutual agreements herein contained, the Parties agree as follows:

Section 1. Storage Space.

a. Commencement Date. As described in this Agreement, PCCA shall provide railcar storage space on Port Tracks for a limited number of M&G's loaded and empty covered hopper railcars ("**M&G Railcars**") in exchange for M&G's payment for such storage. M&G Railcars stored pursuant to this Agreement must be covered hopper cars. Loaded M&G Railcars may contain either PET (STCC 2821156) or PTA (STCC 2818671), and no other commodities.

b. **Waiver.** To the extent not caused by PCCA's negligence, M&G agrees that PCCA shall have no liability or responsibility for any contamination, degradation, damage, or destruction that occurs to the PET or the PTA while it is being transported, transloaded, or held in storage in M&G Railcars on Port Tracks pursuant to this Agreement.

Section 2. Term.

a. **Commencement Date.** Although this Agreement is effective on the Effective Date, the term of this Agreement shall commence on July 1, 2016 ("**Commencement Date**"), and shall expire on June 30, 2021, unless sooner terminated pursuant to the provisions of this Agreement.

b. **Term.** The period from the Commencement Date to the date on which this Agreement terminates or expires is referred to herein as the "**Term**" or "**Term of this Agreement**." Termination or expiration of this Agreement shall not extinguish any obligation of a Party that arose prior to such termination or expiration, or that, by its nature, survives the Term of this Agreement.

Section 3. Railcar Storage Spots.

a. **Number of Guaranteed Railcar Storage Spots.** During the Term of this Agreement, PCCA shall continuously provide M&G with a total of four hundred (400) railcar storage spots for M&G Railcars on Port Tracks. The railcar storage spots provided to M&G under this Section 3a (whether used or not) are referred to herein as the "**Guaranteed Railcar Storage Spots**".

b. **Number of Additional Railcar Storage Spots.** If M&G needs more than the number of Guaranteed Railcar Storage Spots at any time during the Term of this Agreement, M&G may place a written request ("**Storage Spots Request**") with PCCA for additional railcar storage spots for M&G Railcars on Port Tracks ("**Additional Railcar Storage Spots**"). Each Storage Spots Request shall specify the number of Additional Railcar Storage Spots needed, when they are needed, and for how long they are needed. PCCA shall provide M&G with as many of the requested Additional Railcar Storage Spots as it deems appropriate in its sole discretion. PCCA does not guarantee that any Additional Railcar Storage Spots will be made available to M&G.

c. **Total Number of Railcar Storage Spots.** The total number of Guaranteed Railcar Storage Spots and Additional Railcar Storage Spots made available to M&G from time to time under this Agreement (whether used or not) are collectively referred to herein as the "**Railcar Storage Spots**."

d. **Failure of PCCA to Provide Guaranteed Railcar Storage Spots.** If at any time during the Term of this Agreement PCCA fails to provide M&G with all of the Guaranteed Railcar Storage Spots required under this Agreement for any reason other than *force majeure* condition (each such unprovided Railcar Storage spot being referred to herein as a "**Missing Storage Spot**"):

- (1) M&G shall provide PCCA with written notice of the number of Missing Storage Spots as soon as practicable;
- (2) PCCA shall immediately rebate or directly reimburse and pay to M&G any fees that M&G has previously paid to PCCA for the Missing Railcar Storage Spots pursuant to Section 5a (the "**Rebate Fees**"); and
- (3) M&G may elect to reduce the number of Guaranteed Railcar Storage Spots by the number of Missing Storage Spots for the remainder of the Term of this Agreement by giving PCCA written notice of such election within sixty (60) days after the date on which M&G first became aware of the Missing Storage Spots.

For example, if M&G discovers that there are 20 Missing Storage Spots on the 15th day of the 6th month of the second year of this Agreement and if M&G gives PCCA written notice on the 15th day of the following month of its election to reduce the number of Guaranteed Railcar Storage Spots by 20 spots, M&G would (i) request Rebate Fees of \$1,500 for the 6th month, (ii) pay PCCA a fee \$60,000 for 400 Guaranteed Railcar Storage Spots on or before the 1st day of the 7th month, (iii) request Rebate Fees of \$3,000 for the 7th month, and (iv) pay PCCA a fee of \$57,000 for 380 Guaranteed Railcar Storage Spots on or before the 1st day of the 8th month.

If PCCA fails to timely pay the Rebate Fees to M&G, then M&G may withhold the payment of any fees and Tariff due under this Agreement until such time as the Rebate Fees are fully paid and satisfied to the satisfaction of M&G.

Section 4. Location of Railcar Storage Spots. The specific location of the Railcar Storage Spots shall be selected by PCCA in its sole discretion and the location may vary from time to time; provided, however, that PCCA shall not permit any M&G Railcars to be stored adjacent to any loaded or residue railcars of petroleum coke, either on the same track or an adjacent parallel track.

Section 5. Storage Fees and Payment.

a. Fees for Guaranteed Railcar Storage Spots. M&G shall pay PCCA \$5.00 per day for each Guaranteed Railcar Storage Spot during the first and second years of this Agreement. M&G shall pay PCCA \$5.50 per day for each Guaranteed Railcar Storage Spot during the third year of this Agreement. M&G shall pay PCCA \$5.75 per day for each Guaranteed Railcar Storage Spot during the fourth year of this Agreement. M&G shall pay PCCA \$6.00 per day for each Guaranteed Railcar Storage Spot during the fifth year of this Agreement.

b. Fees for Additional Railcar Storage Spots. M&G shall pay PCCA \$10.00 per day for each Additional Railcar Storage Spot made available to M&G during the Term of this Agreement.

c. **Invoices and Payment Deadlines.** PCCA shall invoice M&G monthly (i) in advance for the storage fees due to be paid under this Agreement for the Guaranteed Railcar Storage Spots for the subsequent month, and (ii) in arrears for the storage fees due to be paid under this Agreement for the Additional Railcar Storage Spots for the prior month. M&G shall make payment of all undisputed storage fee charges within thirty (30) days after the receipt of invoice from PCCA.

Section 6. M&G Access to Stored Railcars. Any M&G employee, contractor, or agent (each, an “**M&G Representative**”) requiring access to any M&G Railcar stored under this Agreement to perform carload inspection and/or minor maintenance shall first provide PCCA’s Manager of Dock and Rail Operations (“**PCCA’s Representative**”) with a written access request (each, an “**Access Request**”) not less than forty-eight (48) hours prior to the time that access is requested. Each Access Request shall specify (i) the identification numbers and locations of the M&G Railcars to be inspected and/or maintained, (ii) the reason for the inspection/maintenance, (iii) the names of the persons who will be inspecting and/or maintaining the M&G Railcars, (iv) and the length of time the inspection/maintenance work is expected to take. Upon receipt of an Access Request, PCCA’s Representative shall give M&G’s Representative a written permit to perform the requested railcar inspection and/or minor maintenance (“**Access Permit**”). The Access Permit shall specify the names of the M&G Representatives covered by the Access Permit, the location and identification numbers of the M&G Railcars to be inspected/repared, the date and time of the inspections/repairs, and the length of time that the M&G Representatives may be on PCCA’s property. Access will only be permitted during daylight hours only. M&G shall require the M&G Representatives to adhere to proper and safe practices while on PCCA property.

Section 7. Transloading. Subject to the terms of this Agreement and Item 288 of the PCCA’s Tariff 100-A (the “**Tariff**”), upon written request from M&G, PCCA will provide M&G with suitable Transfer Facilities (as defined in the Tariff), if any are available without cost to PCCA, for transloading PET between trucks and M&G Railcars that are stored on Railcar Storage Spots pursuant to this Agreement. As soon as practicable after having received M&G’s request, PCCA’s Representative shall provide M&G’s Representative with written notification of the location of an available Transfer Facility (the “**Designated Transfer Facility**”) or written notification that there are no available Transfer Facilities. M&G will be responsible for moving the M&G Railcars to and from the Designated Transfer Facility, if any, and for handling the transloading operations. Transloading of PET is only permitted during daylight hours, and M&G shall require its employees, contractors, and agents to adhere to proper and safe practices while engaged in transloading operations on PCCA property. Upon completion of any transloading operation pursuant to this Agreement, M&G shall return the Transfer Facility to at least the same condition it was in before the transloading operation commenced, normal wear and tear excepted (“**Prior Condition**”). If M&G does not return the Transfer Facility to its Prior Condition, PCCA may do so and charge M&G for the cost PCCA incurs in returning the Transfer Facility to its Prior Condition plus twenty-percent. M&G will be charged a Facility Use Fee for any transloading operations in accordance with Item 288 of the Tariff, but will receive a credit against such Facility Use Fee for any amount that M&G previously paid to PCCA as variable

based rent on the PET being transloaded. PCCA is not responsible for, nor will it provide, any switching or transloading services.

Section 8. Insurance. During the Term of this Agreement, M&G shall purchase and maintain in full force and effect, from a company or companies lawfully authorized to do business in the State of Texas, the following policies of insurance (collectively, the “**Required Insurance**”):

- Special form property insurance with no exclusions, except the standard printed exclusions, covering all loss, damage or destruction to the PET or the PTA while it is being transported, transloaded, or held in storage in M&G Railcars on Port Tracks pursuant to this Agreement. With respect to losses to property, such policy limits shall be in an amount equal to or greater than 100% of the actual replacement cost of the PET or PTA being transported, transloaded, or held in storage in M&G Railcars on Port Tracks at any given time during the Term of this Agreement.
- Commercial General Liability (CGL) insurance coverage on a claims made basis, which shall cover or be endorsed to cover bodily injury, personal injury, broad form property damage, operations hazard, owner’s protective coverage, contractual liability, products and completed operations liability, and time element pollution coverage, with general aggregate limits of at least \$2,000,000, and endorsed to name PCCA as an additional insured, on a primary, non-contributory basis, with respect to liabilities arising out of the transportation, transloading or storage of PET or PTA pursuant to this Agreement.
- Pollution Legal Liability insurance covering bodily injury, property damage and other losses caused by pollution conditions occurring during the Term of this Agreement and arising out of the transportation, transloading or storage of PET or PTA pursuant to this Agreement, including pollution of any body of water, with limits of not less than \$5,000,000 per occurrence, and coverage shall include, but not be limited to, environmental cleanup, remediation and disposal.
- Workers compensation insurance as required by state law, and employers liability insurance with limits of at least \$500,000 each employee.

All insurance shall be placed with carriers with an AM best rating of not less than A-/VII. PCCA shall be named as an additional insured on the CGL policy and the Pollution Legal Liability policy. All of the Required Insurance must include a waiver of subrogation in favor of PCCA and any party acting by, through or under PCCA. All Required Insurance must be primary with any policies of PCCA being excess, secondary, and non-contributing. No cancellation, non-renewal or material modification of the Required Insurance shall occur without at least thirty (30) days prior written notice by a carrier to PCCA.

Section 9. Indemnification by M&G.

a. M&G shall defend, indemnify and hold harmless the Authority, its Port Commissioners, directors, managers, employees and agents (collectively, the “Authority

Parties”) from and against, and M&G shall be responsible for, any and all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys’ and experts’ fees and expenses), suits, settlements or judgments of any nature whatsoever (including claims for personal injury, bodily injury, real and personal property damage and economic loss) (collectively, the **“Claims”**) which may be brought or instituted or asserted against the Authority Parties based on or arising out of or relating to any of the following events (each being referred to herein as an **“Indemnified Event”**): (i) the failure on the part of the M&G or any of its owners, officers, managers, agents, invitees, guests, contractors, subcontractors or licensees (**“M&G Parties”**) to comply with the provisions of any laws applicable to the storage of M&G Railcars on Port Tracks, or storage of PET or PTA in M&G Railcars on Port Tracks, or release of PET or PTA from M&G Railcars on Port Tracks, or release of PET or PTA from M&G Railcars in connection with any transloading operation described in Section 7, or (ii) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property occurring on or in the vicinity of an M&G Railcar on Port Tracks, in each case arising out of or in connection with (1) the storage of M&G Railcars on Port Tracks pursuant to this Agreement, (2) the transloading of PET between trucks and M&G Railcars that are stored on Railcar Storage Spots pursuant to this Agreement, (3) carload inspection and/or minor maintenance of M&G Railcars stored on Railcar Storage Spots pursuant to this Agreement, (4) the condition, use, malfunction, defect, or explosion of any M&G Railcar(s), or (5) M&G’s exercising any of its rights under this Agreement.

b. Notwithstanding anything to the contrary contained in Section 9(a), it is expressly provided and agreed by and between the Parties that M&G shall not obligated to indemnify and hold harmless the Authority Parties from and against their own negligence.

c. Notwithstanding anything to the contrary contained in Section 9(a), M&G shall be relieved of its obligation of indemnity (but not its obligation to defend) with respect to any Claim to the extent, but only to the extent, of (1) the amount actually recovered from one or more insurance carriers and either paid to the Authority Parties or paid for benefit of the Authority Parties in reduction of such Claim, or (2) the percentage of responsibility attributed to the Authority Parties with respect to causing or contributing to cause the Indemnified Event for which the Claim was made.

d. M&G’s indemnity obligations under this Section 9 shall not be limited by a limitation on the amount or type of damages, compensation or benefits owed by M&G to any employee of M&G under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts.

e. The obligations of M&G under this Section 9 shall survive the expiration or any earlier termination of the term of this Agreement for a period of 2 years and thereafter automatically terminate and be null and void for all purposes.

10. Taxes. M&G shall be liable for and pay all federal, state, local, or other property taxes assessed or levied against the M&G Railcars, the contents of the M&G Railcars, or the Plant.

PCCA shall be liable for and pay all federal, state, local, or other taxes assessed or levied against the Port Tracks, PCCA's other property, or the income obtained by PCCA pursuant to this Agreement.

11. Default.

a. Events of Default. The occurrence of any of the following shall constitute an "*Event of Default*":

1. a Party fails to perform any of its material duties or obligations under this Agreement and such failure continues and is not cured within twenty (20) calendar days after written notice thereof is received from the non-defaulting Party;
2. a Party shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or any third party shall file an involuntary petition in bankruptcy against a Party and such petition is not dismissed, discharged or otherwise terminated with prejudice within thirty (30) calendar days of the original filing thereof;
3. a Party shall admit in writing its inability to pay its debts as they come due, its insolvency or pending insolvency, or a suspension or pending suspension of operations; or
4. there occurs any event which, under applicable laws, has an effect similar to the events described in (2) or (3).

b. Rights of the Non-defaulting Party. Upon the occurrence and during the continuation of any Event of Default, the non-defaulting Party may terminate this Agreement.

c. Notice; Effect of Termination. Notices of default and notices of termination shall be delivered by certified mail to the address of the defaulting Party and shall state with specificity the grounds of such default or termination. No termination of this Agreement shall release either Party from any obligations that may have accrued under this Agreement prior to such termination.

d. Force Majeure. In the event any Party is unable to meet its contractual obligations as a result of Acts of God, war, insurrection, strikes, or any like causes beyond its control, that Party's obligations affected by the *force majeure* condition shall be suspended for the duration of same, provided, however, that the Parties shall make all reasonable efforts to continue to meet their obligations, and fairly apportion the available services and resources during the duration of the *force majeure* condition and; provided, further, that the Party declaring *force majeure* shall notify the other Party promptly when the *force majeure* begins, the nature of the *force majeure* condition and when the condition is terminated. The suspension of any obligations owing to *force majeure* shall neither cause the Term of the Agreement to be extended nor affect any rights accrued under this Agreement prior to the *force majeure* condition.

12. Disputes. Each Party agrees that any dispute between the Parties relating to this Agreement will first be submitted in writing to a panel of two senior executives of PCCA and

M&G, who shall promptly meet and confer in an effort to resolve such dispute through good faith consultation and negotiation. Each Party's executive shall be identified by notice to the other Party, and may be changed at any time thereafter also by notice to the other. Any decisions of the executives will be final and binding on the Parties. In the event the executives are unable to resolve any dispute within thirty (30) days after submission to them, either Party may then refer such dispute to mediation.

If the Parties refer to mediation any controversy or claim arising out of or relating to this Agreement, whether during or after its Term, they shall select a mutually acceptable mediator within forty-five (45) days thereafter. Neither Party shall unreasonably withhold consent to the selection of a mediator. The Parties shall share equally the costs of mediation. If the Parties agree, they may substitute other forms of alternative dispute resolution. Any mediation shall not extend beyond thirty (30) days after the appointment of the mediator, and should the Parties fail to resolve any dispute by mediation within such 30-day period, the Parties shall have all rights available at law or in equity.

13. No Hazardous Materials. M&G Railcars stored pursuant to this Agreement shall not contain any hazardous materials.

14. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, except that no such consent shall be required where assignment is to a parent, affiliate, or to a successor in interest of all or a majority of the assets of such Party by way of merger or acquisition.

15. Compliance with Law. Each Party shall comply with all applicable laws and regulations in performing its duties under this Agreement. In addition, M&G agrees to comply with PCCA's Environmental Management System Program, but if there is any conflict between the Environmental Management System Program and the terms of this Agreement, the terms of this Agreement shall control.

16. Retention of Title. M&G (or its designee(s)) shall retain absolute title to and ownership of all M&G Railcars, PET, and/or PTA stored pursuant to this Agreement ("***M&G Property***").

17. No Joint Venture. Nothing in this Agreement is intended to create any joint venture, employment, or agency relationship between M&G and PCCA.

18. Notice. Except as otherwise provided herein, any notices under this Agreement shall be in writing, and (i) if sent by first class mail, return receipt requested, notice shall be deemed received upon the date noted as received on the receipt; (ii) if sent by overnight delivery, notice shall be deemed received on the next business day; or (iii) if sent by electronic mail, notice shall be deemed received on the date that electronic confirmation thereof is sent.

Any notice for M&G shall be sent to:

Melba M. Aguilar
M&G Resins USA, LLC
450 Gears Road, Suite 240
Houston, TX 77067
Melba.M.Aguilar@gruppomgus.com

Any notice for PCCA shall be sent to:

Manager of Dock and Rail Operations
Port of Corpus Christi
222 Power Street
Corpus Christi, TX 78401
jslubar@pocca.com

Any notice of an especially time-sensitive nature may be provided via telephone to the appropriate person, with written confirmation to follow by electronic mail or personal delivery of written instructions. Notice by electronic transmission is written notice. Either Party may change the address or email address for notice by giving the other Party written notice as provided in this Section. PCCA may also change PCCA's Representative and contact information by giving M&G written notice as provided in this Section.

19. Entire Agreement; No Waiver. This Agreement constitutes the entire agreement between M&G and PCCA with respect to the subject matter of the Agreement. Services or other matters not specifically addressed in, or superseded by this Agreement, shall continue to be governed by and paid for in accordance with the applicable agreements or tariffs. To the extent the provisions of any such agreement or tariff are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern. No amendment, alteration, or change of this Agreement shall occur except by written agreement signed by the Parties. No waiver of any provision of this Agreement shall be effective unless the same shall be in writing, signed by both Parties and then such waiver shall be effective only in the specific instance and for the purpose for which it was given.

20. Governing Law. This Agreement shall be interpreted under and performance shall be governed by the laws of the State of Texas. Any dispute arising out of or relating to this Agreement shall be resolved (whether by judicial or alternative means) in Texas.

21. Severability. If any term or provision of this Agreement is 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.

22. Headings. The headings that have been used to designate the various Sections and Sub-Sections hereof are solely for ease of reference and shall not be construed as interpretative or limiting the interpretation of the same.

23. Survival. Termination or expiration of this Agreement shall not affect any obligations of the Parties that arose prior to such termination or expiration. In addition, the indemnity obligations of the Parties shall survive the termination of this Agreement.

24. No Third Party Beneficiaries. This Agreement is intended for the sole benefit of the Parties hereto and their respective successors and assigns. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the Parties, their permitted successors and permitted assigns, and their affiliates, any legal or equitable right, remedy, or claim under this Agreement.

25. Construction. This Agreement is the product of arms-length negotiations, and the language and all parts of this Agreement shall be construed as a whole, according to its meaning, and not strictly for or against any Party.

26. Confidentiality. The terms of this Agreement shall be kept confidential by the Parties. Neither Party shall disclose such terms to any person without the prior written consent of the other Party; provided, however, that: (a) such information may be disclosed without prior written consent if required by operation of law, by court order, or as required by securities reporting requirements; (b) disclosure is permissible if required to enforce rights under this Agreement; and (c) either Party may disclose the terms and conditions of this Agreement to the extent reasonably necessary, on a confidential basis, to its accountants, attorneys, lenders, and financial advisors. Notwithstanding anything to the contrary contained in this Section 26, PCCA 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 PCCA 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, M&G 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 PCCA as required by the Texas Open Meetings Act, Texas Public Information Act or any other law will not expose PCCA (or any party acting by, through or under PCCA) to any claim, liability or action by M&G. PCCA shall provide immediate notice to M&G of any open records request and allow M&G to seek a protective order within the statutory time limits.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which taken together shall constitute one and the same instrument. This Agreement shall be deemed fully executed when one or more counterparts hereof, individually or taken together, bears the signature of all of the Parties reflected herein as signatories. Copies may be

exchanged electronically and signatures received via electronic means shall be deemed to be originals.

28. Railcar Switching. PCCA is not providing any railcar switching services under this Agreement. M&G or its contractor will be responsible for moving M&G Railcars to and from the Railcar Storage Spots.

29. Additions to Port Tracks. PCCA is in the process of constructing Phase 2 of the Nueces River Rail Yard Project. When this construction has been completed this trackage will be added to the Port Tracks available for Railcar Storage Spots, and PCCA will provide M&G with a revised **Exhibit A** to this Agreement which will include these additional Port Tracks.

[Signature page follows this page]

IN WITNESS WHEREOF, the Parties have executed or caused this Agreement to be executed by their duly authorized representatives as the Effective Date.

M&G Resins USA, LLC

Port of Corpus Christi Authority

signature

John P. LaRue

Executive Director

printed name

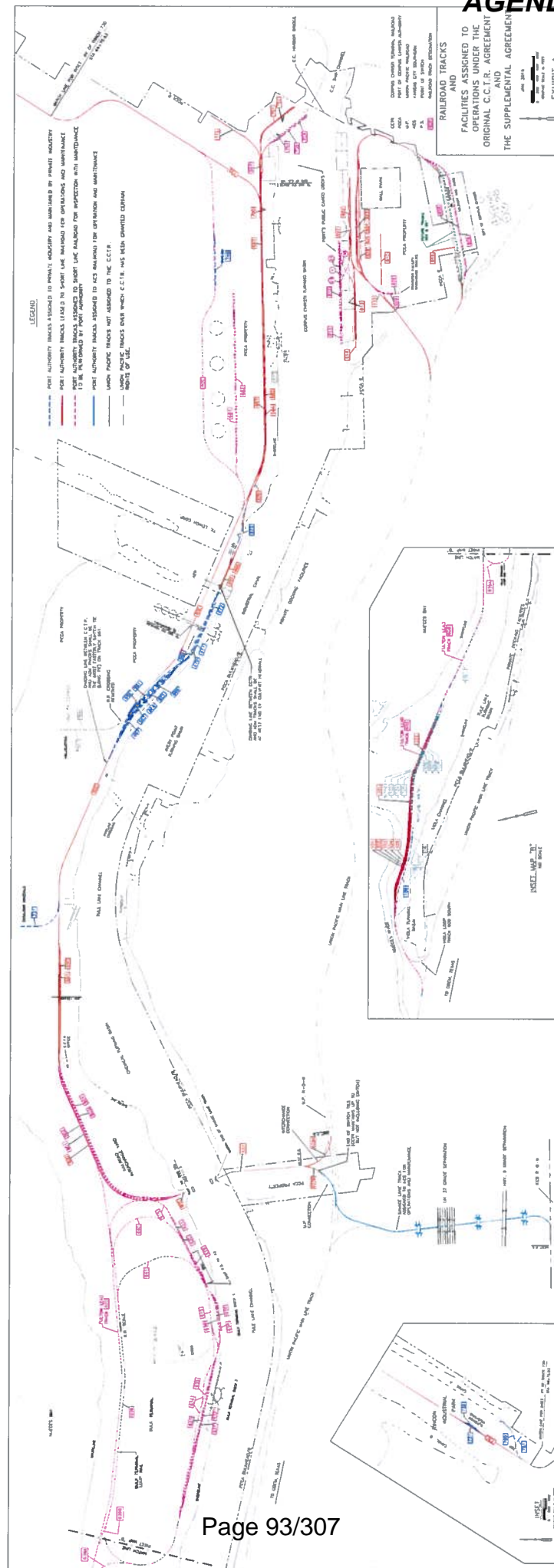
Date: _____

Title: _____

Date: _____

**EXHIBIT A
MAP OF PORT TRACKS**

See Attached Map



**EXHIBIT B
EXCERPTS FROM PCCA'S TARIFF 100-A**

TRANSFER FACILITIES – Any trackage, land and/or roadways that the Port Authority provides to a User for Transferring cargo.

ITEM 288 FACILITY USE FEE Upon request by a User, the Port Authority will attempt to provide the User with suitable Transfer and/or storage Facilities for cargos arriving by rail or truck, if any are available, which is not guaranteed,. The Rail Company User may enter into a non-exclusive track use agreement with the Authority before using the Authority's Transfer Facilities; this agreement may include a track use fee and a short-term storage option. A Facility User Fee will equal the quantity of the transferred cargo multiplied by the Authority's then current wharfage rate for the type of cargo. Authority is not responsible for, nor will it provide, any transfer services.

DATE: February 16, 2016

TO: Port Commission

FROM: Sarah L. Garza, Director of Environmental Planning & Compliance
sarah@pocca.com
(361) 885-6163

AGENDA ITEM NO. 12

Authorize Staff to Submit RESTORE Act Grant Application

SUMMARY: Staff is requesting approval to submit an application for construction of the proposed La Quinta Dock and Terminal and the Buffer Zone to include the hike and bike trails. Additionally, staff is requesting approval to also submit a joint application with the City of Corpus Christi for a project to include the upgrades to the downtown SEA district levee system on PCCA property and improvement of water quality in Salt Flats Ditch.

The La Quinta Dock and Terminal and Buffer Zone project are not currently budgeted but the contribution that PCCA would make in the joint application with the City of Corpus Christi is included in the 2016 budget at an amount of \$250,000. The La Quinta Dock and Terminal is estimated at \$80 million and the application would be leveraging as much funding as possible towards the total project cost. The cost of the project with the City of Corpus Christi has not yet been fully defined, however, the Port would only be required to contribute to the improvement of water quality in Salt Flats ditch for an amount of \$250,000 for the installation of a floatables skimmer which is estimated at \$1.25 million. Additionally costs associated with the upgrades to the Salt Flats Ditch levee system would be contributed by the City of Corpus Christi. There is no required match to the grant funding, however, the grant is a reimbursement grant and PCCA (and the City of Corpus Christi) would have to expend the funds first.

BACKGROUND: Applications for Texas projects for grant funding under the Direct Component or Bucket 1 of the federal RESTORE Act are currently being accepted for consideration. Applications will be accepted until April 15, 2016. The total amount available for funding under this request for applications is \$56 million. Projects submitted for funding must support projects that restore and protect natural habitats; mitigate damage to fish and wildlife; improve state parks in coastal areas; protect against coastal floods; promote tourism and/or consumption of Gulf Coast seafood; or develop the workforce and create jobs in the coastal region.

The selection process is a competitive process and an initial list of selected projects will be posted for a 45-day comment period. The final list of selected projects will be included in the Multi-year Implementation Plan required by the U.S. Treasury to secure

grant funds. Phasing the project will better leverage funds as they become available from the different settlements that are involved in providing the funds through the RESTORE Act and increases the odds for overall funding of the project. Additionally, preliminary work already completed on a project increases the odds of selection.

The La Quinta Dock and Terminal project, including the Buffer Zone, meets many of the criteria under the Priorities Document and benefits the region long term with new industry opportunities, creating new jobs in the coastal region. Additionally, the benefits of the Buffer Zone restore and protect natural habitats and promotes eco-tourism opportunities.

The project with the City of Corpus Christi to upgrade the levee system for the downtown SEA district protects against flooding and the installation of the trash skimmer in the Salt Flats Ditch that is associated with the levee system significantly improves water quality protecting natural habitat and mitigates damage to fish and wildlife. The Salt Flats Ditch is a considerable source of floatables pollution into the South Texas Bay system.

ALTERNATIVES: Alternative projects considered for inclusion were elements of the Channel Improvement Project. However, due to the funding availability, it was determined that submitting both the Channel Improvement Project and the La Quinta Dock and Terminal project would limit PCCA project funding considerations.

CONFORMITY TO PORT POLICY: This project conforms to the Strategic Plan, the ports financial plan to leverage additional funding where appropriate, and the land-use plan.

EMERGENCY: No.

FINANCIAL IMPACT: This project would impact the Port financially in that it is a reimbursement grant and the funds would have to be expended first to get reimbursement. Additionally, the La Quinta Dock and Terminal project is not currently funded in the budget. However, the leveraging of funds to construct the project would immediately increase opportunities for increased revenues.

STAFF RECOMMENDATION: Staff recommends approval of two applications for RESTORE Act grant funding: 1) La Quinta Dock and Terminal project including the Buffer Zone and 2) a joint application with the City of Corpus Christi to improve the Salt Flats Ditch levee system and improve water quality in the ditch.

DEPARTMENTAL CLEARANCES:

Originating Department	Environmental Planning & Compliance
Reviewed By	Sarah Garza
	Danielle Converse
	Nelda Olivo
	Leslie Ruta
	Dan Koesema
	Paul Carangelo
Legal	Jimmy Welder
Sr Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS: None.



DATE: February 16, 2016

TO: Port Commission

FROM: Sarah L. Garza, Director of Environmental Planning & Compliance
sarah@pocca.com
(361) 885-6163

AGENDA ITEM NO. 13

Approve Port of Corpus Christi Authority Environmental Policy

SUMMARY: Staff requests approval of the attached Environmental Policy to replace the existing policy that was approved by the Port Commission on December 9, 2004.

BACKGROUND: One of the requirements of an ISO 14001 certified Environmental Management System (EMS) is to develop and implement an environmental policy, so during the implementation of the EMS from 2004-2005 staff developed an environmental policy that was approved by the Port Commission. The policy has not been revised since that time. With the implementation of the strategic plan, it is necessary to revise the existing policy to implement the environmental action plan. Additionally, the ISO 14001 standard was updated in September 2015 further warranting changes to the existing policy.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: Conforms to the PCCA's strategic plan.

EMERGENCY: No.

FINANCIAL IMPACT: There are no direct financial impacts to the PCCA with approval of the policy but is likely to increase some project costs in the short-term where environmental planning has not previously been incorporated.

STAFF RECOMMENDATION: Staff recommends approval of the attached Environmental Policy to replace the existing policy.

DEPARTMENTAL CLEARANCES:

Originating Department	Environmental Planning & Compliance
Reviewed By	EMS Steering Committee & Senior Staff
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Port of Corpus Christi Authority Environmental Policy



Port of Corpus Christi Authority
Environmental Policy
January 2016

The Port of Corpus Christi Authority (“*Port*”) Commission formally adopts a set of guidelines designed to further demonstrate Environmental Leadership in the South Texas Coastal Bend region.

In its commitment to be “*An Environmental Leader*,” the Port of Corpus Christi Authority in collaboration with stakeholders will strive to exceed what is required as a minimum by applicable rules and regulations to mitigate environmental impacts, prevent pollution, and employ continuous improvement policies and environmental stewardship initiatives that promote the following five (5) key precepts:

- **Air Quality** in attainment of national air quality standards and in support of the Corpus Christi region's efforts to stay in attainment through voluntary actions;
- **Water Quality** that maintains or improves the health of the coastal bend ecosystems;
- **Soils & Sediments** protective of human health and the environment;
- **Wildlife Habitat** development, improvements, and replacement when modification to existing habitat is necessary; and
- **Environmental Sustainability** in the development of port facilities and in ongoing port operations.

The Port’s Environmental Policy is the formalization of many existing environmental programs that address soil, sediment, wildlife, air and water quality impacts. Together, these programs have already realized tremendous positive impacts in the surrounding communities and estuaries. The Port also intends to use legislative channels, where appropriate, to help meet its environmental agenda.

The Environmental Policy is one of the strategic imperatives that will be considered and integrated into decisions related to the development of infrastructure or the operations of Port facilities, supporting the Port of Corpus Christi’s vision *To Be the Energy Port of the Americas* and its mission of *Leveraging Commerce to Drive Prosperity* for the Port, its stakeholders, and the Community, Region, State, and Nation.

DATE: February 16, 2016

TO: Port Commission

FROM: Darrin Aldrich, Director of Real Estate
Darrin@pocca.com
(361) 885-6169

AGENDA ITEM NO. 14-A

**Approve a Lease Agreement with the U.S. Coast Guard for
Maritime Navigational Aids for the Tule Lake Channel**

SUMMARY: Staff requests approval of a Lease Agreement with the U.S. Coast Guard for 50 square feet of waterfront property to locate and operate a maritime navigational aid on the Tule Lake Channel. The term of the Lease Agreement will be one year with five options for one-year renewals. No rental fee is assessed for this Lease Agreement since the range marker serves the benefit of the general public.

BACKGROUND: The United States Coast Guard (USCG) maintains and operates one range marker, which aids in the navigation of the Tule Lake Channel, as depicted on the attached exhibit. The range marker has been in place for many years, and the lease agreement has been renewed or extended on an annual basis running concurrent with the U.S. government's fiscal year. The arrangement is beneficial to both parties in that, the range marker aids in the navigation of Tule Lake and serves as a navigational aid for the benefit of the general public.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: N/A

EMERGENCY: No.

FINANCIAL IMPACT: No rental fee is assessed. Navigational aid is for the benefit of the general public.

STAFF RECOMMENDATION: Staff recommends approval of a Lease Agreement with the U.S. Coast Guard for a navigational range marker on the Tule Lake Channel.

DEPARTMENTAL CLEARANCES:

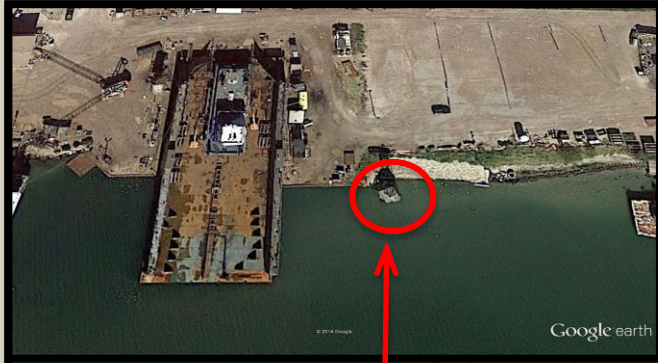
Originating Department	Real Estate
Reviewed & Approved	Darrin Aldrich
Legal	Mike Mahaffey
Senior Staff	Sean Strawbridge
	Jarl Pederson
	Dennis Devries

LIST OF SUPPORTING DOCUMENTS:

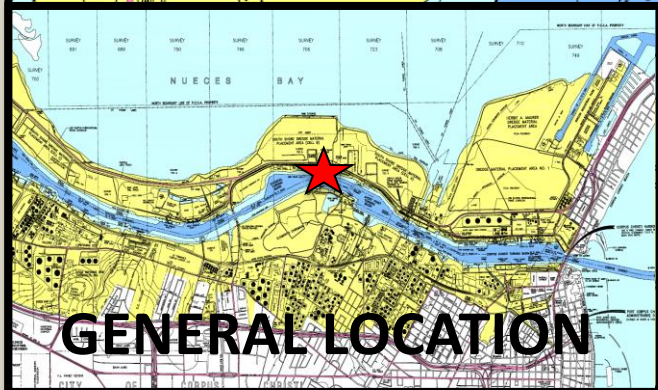
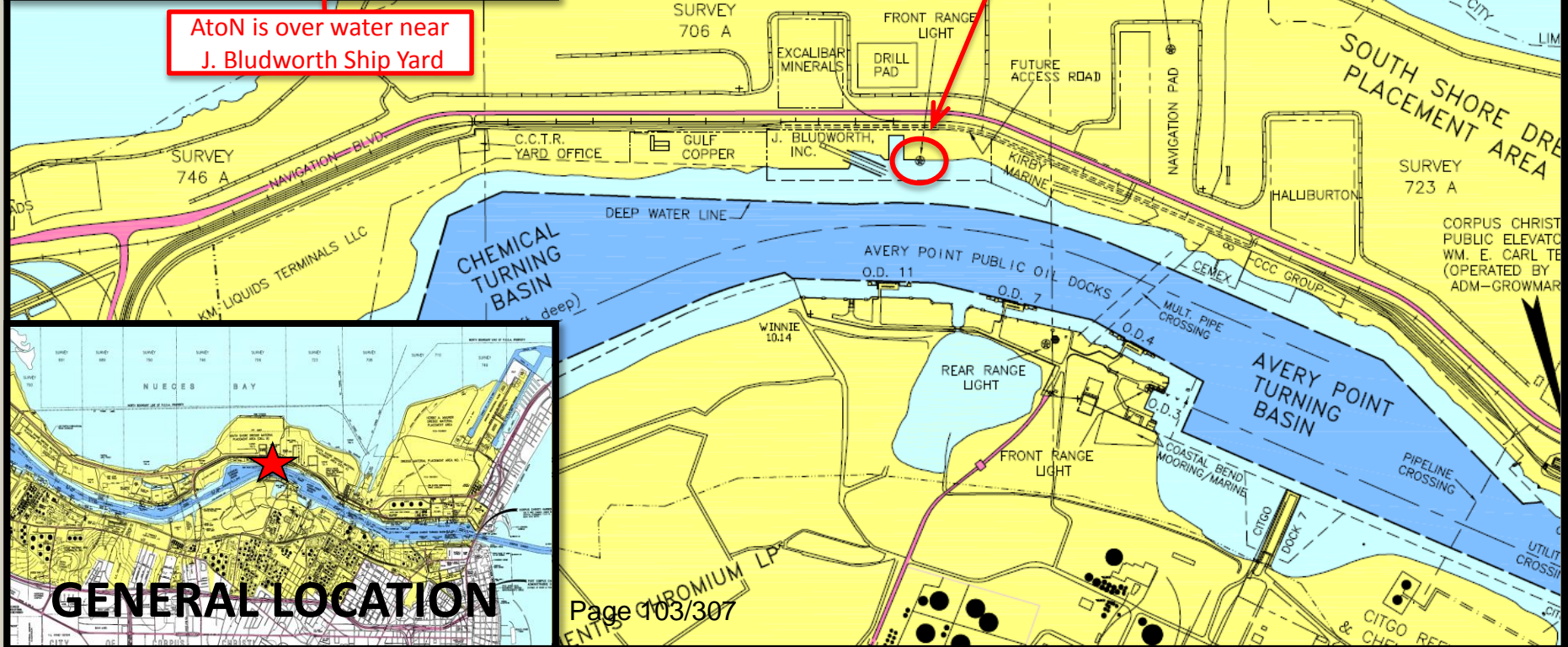
Location Map Exhibit
Lease Summary
Lease Agreement

UNITED STATES COAST GUARD

Tule Lake Channel Aid to Navigation (AtoN)



AtoN is over water near
J. Bludworth Ship Yard



**U.S.C.G.
LEASE SUMMARY**

Lessee: UNITED STATES OF AMERICA, acting by and through a duly authorized official of the Department of Homeland Security and the United States Coast Guard

Premises: Ground space located at the following coordinates:

Front Light: 27-49-29.792'' N 097-26-15.164'' W approximately fifty (50) square feet of ground space.

Use: Maritime navigational aid for Tule Lake

Term: One (1) year

Options: Five (5), annual renewal

Start Date: February 16, 2016

Annual Rent: \$0

Tenant Business: Federal Government - ensure the common good and general welfare of the public

Tenant Contact: Paul R. Hewitt
Realty Specialist
U.S. Coast Guard
Civil Engineering Unit Miami
15608 S.W. 117 AVE
Miami, FL. 33177-1630
FAX: 305-278-6704
Paul.R.Hewitt@uscg.mil

Remarks: The consideration for this lease shall be the operation and maintenance of this property for use of navigational aids for the benefit of the general public.

STANDARD FORM 2
FEBRUARY 1965
EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1-16.601

U.S. GOVERNMENT LEASE FOR REAL PROPERTY

DATE OF LEASE Date of Execution

LEASE No. HSCG82-16-1-0006

Site name: Tule Lake Range Front "A" LT

THIS LEASE is made and entered into by and between Port of Corpus Christi Authority of Nueces County, Texas (hereinafter called the "Lessor"), whose address is P.O. Box 1541, Corpus Christi TX 78469, and whose interest in the property hereinafter described is that of an owner in fee simple, and by the authority of 14 U.S.C. § 672, the UNITED STATES OF AMERICA, acting by and through a duly authorized official of the Department of Homeland Security, United States Coast Guard (hereinafter called the "Government")

WITNESSETH: The parties, hereto for the consideration hereinafter mentioned, covenant and agree as follows:

1. **PREMISES.** The Lessor hereby leases to the Government the following described premises, hereinafter referred to as the "Premises".

Tule Lake Range Front "A" Light LLNR 28835; Position: 27-49-29.729N, 097-26-15.164W , occupying approximately 50 square feet located on the bank.

See Exhibit A and B attached and made part hereof.

2. **TO HAVE AND TO HOLD** the said premises with their appurtenances for the term beginning on February 16, 2016 through February 15, 2017 subject to termination and renewal rights as may be hereinafter set forth. Subject to continued needs, this Lease may, at the option of the Government, be renewed annually through February 15, 2021. The Government's option shall be deemed exercised and the lease renewed each year for one (1) year to a maximum time of five (5) years; all other terms and conditions of this lease agreement shall remain the same during the renewal term unless otherwise agreed to by all the parties with a signed modification to this lease agreement.

3. **CONSIDERATION.** The Consideration for this lease shall be the operation and maintenance of this Premises to be used by Aids to Navigation (ATON) equipment for the benefit of the general public in accordance with the terms and conditions hereinafter Set forth.

4. **TERMINATION.** The Government shall have the option to terminate this Lease, without cause, at any time by giving at least thirty (30) -days notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be executed by the Government's Contracting Officer and sent by certified mail or other comparable service. Said notice shall be computed commencing with the day after the date of mailing.

5. **NOTICE.** This lease will continue with the same terms and conditions, unless and until the Government shall give notice of termination in accordance with paragraph 4.

6. **Name of Lessor:** Port of Corpus Christi Authority of Nueces County, Texas
Telephone Number: (361) 855 - 6140

7. **COMPLIANCE WITH APPLICABLE LAW.** The Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the Premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease agreement shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

8. **MAILING.** Mailing refers to Certified Mail with a return receipt and the date of acceptance being the start date.

9. **CHANGE OF OWNERSHIP NOTIFICATION.** Lessor will notify Government within thirty (30) days of any transfer of ownership of the described property; or change in payment mailing address.

10. **SUCCESSORS BOUND.** The Lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, and successors.

11. **INDEMNIFICATION.** The Government, in the manner and to the extent provided by the Federal Tort Claims Act (28 U.S.C. §

AGENDA ITEM NO. 14-A

Lease Site Number: HSCG82-16-1-0006

Lease Site Name: Tule Lake Range Front "A" LT

2671-2680), as amended), shall be liable for claims for damage or loss of property, personal injury or death caused by the acts or omissions of the Government, its officers, employees and agents in the use of the Premises.

12. **INGRESS/EGRESS.** Lessor hereby grants to the Government, its contractors and other duly assigned personnel, the right of ingress and egress (both vehicular and pedestrian) necessary or convenient for the installation, use, maintenance, repair, Operation, and replacement of Government-owned equipment across Lessor's property.

13. **GOVERNMENT INSPECTION.** The Government reserves the right, at any time after the lease agreement is signed and during the term of the lease, to inspect the Premises and all other areas to which access is necessary to ensure a safe and healthy work environment for the Government and the Lessor's performance under this lease agreement.

14. **TENABLE CONDITION.** The Lessor shall maintain the Premises in good repair and tenable condition under the terms of this lease agreement.. Upon request of the U.S.C.G. Contracting Officer, the Lessor shall provide written documentation that the Premises have been maintained, tested, and are operational under the terms of this lease agreement.

15. **PERFORMANCE FAILURE.** If Lessor fails to cure or remedy any failure to perform any service, to provide any item, required under the terms of this lease agreement within thirty (30) days of Government's written notice to Lessor, Government may deduct any cost incurred for the service or item, including administrative costs, from rental payments or Government may perform the service, provide the item, or meet the requirement, either directly or through a contract.

16. **DESTRUCTION OF LEASE SPACE.** . If the leased area is partially or totally destroyed by fire or other casualty so that leased space is untenable, as determined by the Government, the Government may vacate the space and terminate the Lease without notice. During this period, no lease charge is to be incurred by the Government. Any such payments in process made by the Government to the Lessor will be promptly returned to the agency listed in paragraph 6.

17. **ANTI-DEFICIENCY ACT (31 U.S.C. § 1341, as amended).** Nothing in this lease shall constitute an obligation of funds of the United States in advance of an appropriation thereof.

18. **INSURANCE.** The Government is a self-insured entity.

19. **TAXES AND ASSESSMENTS.** The Government is not responsible or liable for any real property or personal property taxes, personal taxes, nor assessments levied or assessed upon or against the leased premises.

20. **CONDITIONS OF USE.** The Government is responsible for meeting all applicable Federal, State and local safety and other codes, and for obtaining all applicable Federal, State, and local permits, licenses, or other authorization required for operation of its equipment. .

21. **EQUIPMENT INSTALLATIONS, MAINTENANCE, INTERFERENCE, AND REMOVAL.** The Government is solely responsible for all costs connected with the installation and maintenance of all Government-owned equipment located on the Premises. Installation and operation of Government equipment shall be done according to applicable government codes and accepted industry standards.

22. **WARRANTY.** Lessor makes no warranty, express or implied, as to the suitability of the leased premises for the Government's intended use or purpose and expressly disclaims any such warranty.

23. **SUBLETTING/ASSIGNMENT.** Government may not sublet or assign the leased premises.

24. **SEVERABILITY.** If any term or provision of this lease agreement is held invalid or unenforceable, the remainder of this lease agreement shall not be affected thereby and each term and/or provision hereof shall be valid and enforced to the fullest extent permitted by law.

25. **DISPUTES (DEC 1998).** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. § 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

a. "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (b)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

b. (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

AGENDA ITEM NO. 14-A

Lease Site Number: HSCG82-16-1-0006

Lease Site Name: Tule Lake Range Front "A" LT

Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

c. For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

d. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

e. If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative disputes resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

f. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required), or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.21, interest shall be paid from the date that the Contracting officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided for in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

28 LEASE ADMINISTRATION AND POINTS OF CONTACT. Administration of subject lease will be accomplished by: Commanding Officer, U. S. Coast Guard, Civil Engineering Unit Miami, C/O Mr. Paul Hewitt, Real Property Division, 15608 SW 117th Avenue, Miami, FL 33177 Phone (305) 278-6717. Point of contact for the Lessor: Port of Corpus Christi Authority , C/O Mr. Sam Esquivel, 222 Power Street, 78401, P.O. Box 15141, Corpus Christi, Texas 78403

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Lease Site Number: HSCG82-16-1-0006

Lease Site Name: Tule Lake Range Front "A" LT

27. GENERAL CLAUSES. This lease agreement incorporates by reference the applicable clauses in GSA Form 3517B ("General Clauses"), with the same force and affect as if they were given in full text. Upon request, the Government will make the full text available or the full text may be found at <http://www.gsa.gov/leasingform>.

28. MISCELLANEOUS. This lease succeeds Lease No. 08-12-61.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

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

BY _____
(Signature) (Official title)

IN PRESENCE OF:

(Witness Signature) (Address)

UNITED STATES OF AMERICA DEPARTMENT OF HOMELAND SECURITY UNITED STATES COAST GUARD

BY  Paul Hewitt, Real Property Contracting Officer
(Signature) (Official title)

STANDARD FORM 2
FEBRUARY 1965 EDITION
WI: 298150

USCG Integrated ATONIS

EXHIBIT A

Integrated Aids to Navigation Information System

Federal Aid Information Document Legacy AAPS 5.5 Format

Aid Number: 200100416975 LLNR: 28835
 Aid Name: Tule Lake Channel A Range Front Light

Dist Rev. Date: 12/16/2013
 Unit Rev. Date: 12/16/2013

General

Aid Type : RF
 Environment : SM
 Waterway: Tule Lake Channel
 Waterway No: 67319

Operation : PERM
 DRF1 : 36

Positioning

AP Latitude : 27-49-29.729N
 AP Longitude : 097-26-15.164W
 River : Mile : Bank :

Aid Availability Category: 2 - Important

Authorized Hull:

Onscene Hull:

Hull ID:

Color:

Lamp Type: LEDBullet 4

Lantern Type: RL-14

Power Setting:

Flasher Type: NSTD

Changer Type: N/A

Lt Nom Range:

Focal Plane: 45

Lt Char: Oc G 4s

Flash Length

(CCT):

Racon Morse Char:

RBN Frequency:

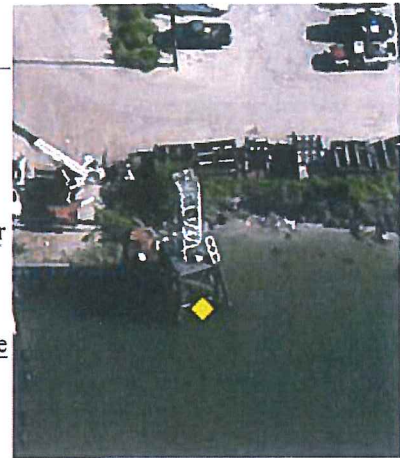
Sound Char:

Sound Emitter Type:

Sound Emitter Model:

Type	Size	Qty	Dir
Dayboard: KRW	4	1	

Color	Begin	End	Range
Lt Sector:			



STI

Mooring Information

Chain	Size	Length	Chafe	Date
-------	------	--------	-------	------

Sinker Type	Weight	Swivel Type	Number
-------------	--------	-------------	--------

Bottom : MUD

Depth : 2 ft

Bridge :

Structure Information

Tower Type :

Tower Height :

Structure Type : ST

Foundation : PW

Piling Count :

Historical :

Constructed :

Rebuilt :

Monitored : PUBLIC

Type : N/A

Fog Detector :

Charts : 1 : 11311

Power Systems

Power Type : Main SOLAR

Battery Type : DELCO S2000

Solar Panels: Type: 40 W Qty: 1

Battery Quantity: 2

Battery Serial Number(s):

Backup

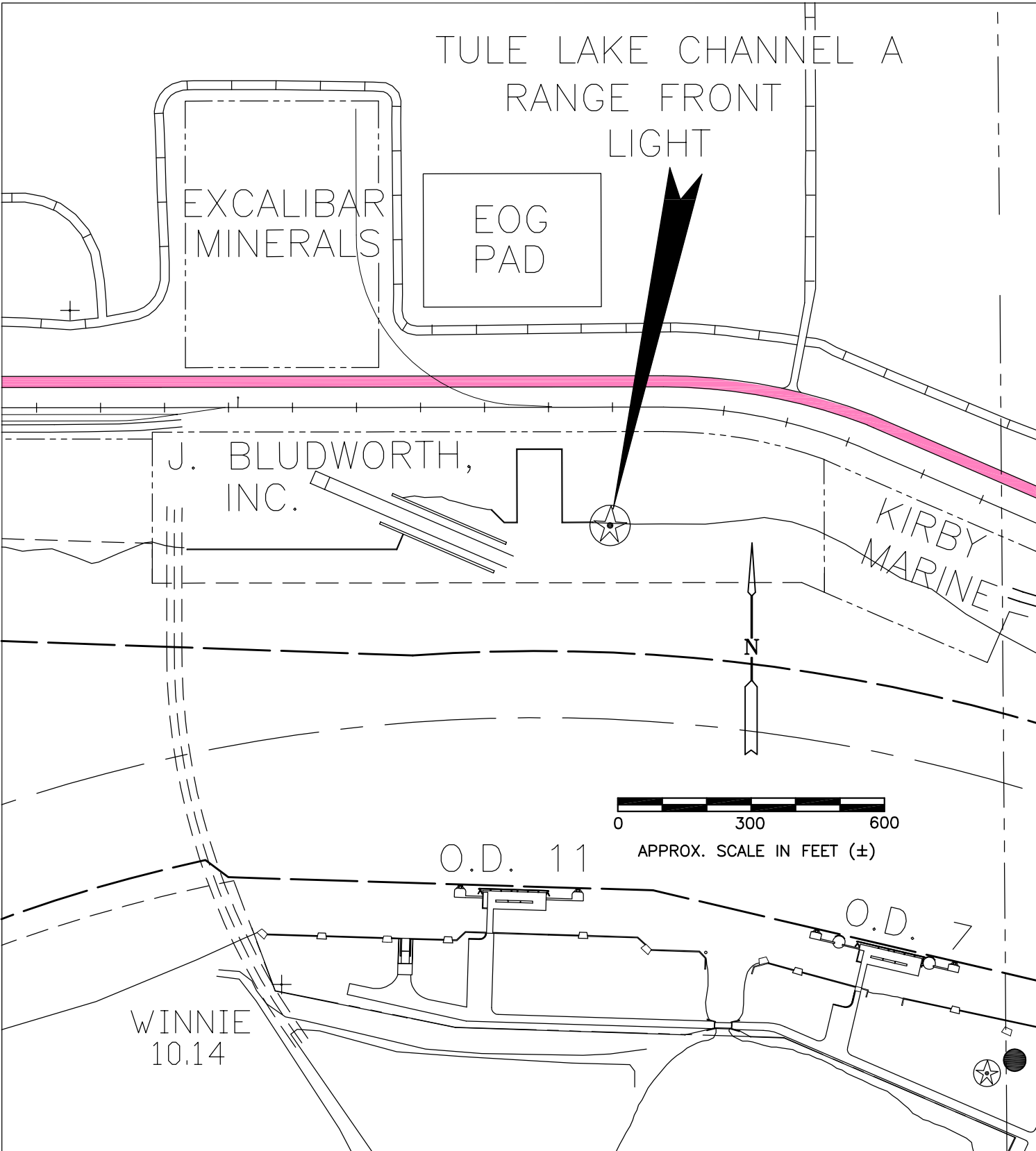
Sound Power :

Sound Type :

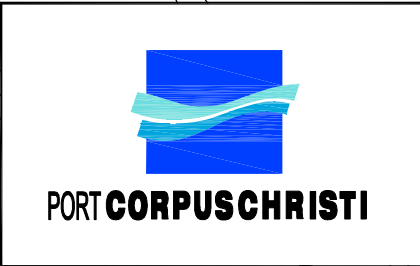
	Aid Inspection	Mooring	Recharge	Hull Relief
Current Services :	05/08/2013		05/08/2013	
Interval Services :	36		72	
Projected Services :	05/08/2016		05/08/2019	

Reason for visit : DISC

Sec. Equipment



NO.	DATE	REVISION



PORT OF CORPUS CHRISTI AUTHORITY		
TULE LAKE CHANNEL A RANGE FRONT LIGHT		
SCALE: AS SHOWN DWN. BY: RALPH	EXHIBIT B	DATE: FEB. 2016



DATE: February 16, 2016
TO: Port Commission
FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-B

Terminate Contract Awarded to SATX CCTV, LLC, for the Purchase of Camera System under Security Grant 14 – Security Equipment Maintenance and Upkeep Project

SUMMARY: Staff request authority to terminate a contract with SATX, CCTV, LLC, for lack of performance to provide one MOOG QPT-501C pan/tilt platform and one FLIR Ranger III LR thermal camera with associated software, documents, cables and connectors.

BACKGROUND: As part of the Security Grant 14 Security Equipment Upkeep project, the PCCA prepared a bid package to purchase security camera equipment. On May 29, 2015, we received three competitive bids with SATX CCTV, LLC submitting the lowest and apparent best bid. Per the bid, SATX would deliver the equipment within 58 calendar days of the Notice to Proceed. This contract was for the purchase of equipment only; PCCA staff would install the camera at a Vessel Tracking Information System tower located at the PCCA's La Quinta property. The Commission awarded the purchase contract at the June 16, 2015 Commission meeting, and the Notice of Proceed was issued on June 25, 2015. Delivery of the camera and platform was due by August 16, 2015. Staff continued working with SATX after the due date, and SATX assured staff that they were resolving company issues and would fulfill the requirements of the purchase contract. On December 23, 2015, the PCCA issued a 30-day notice that termination of the contract would be recommended to the Port Commission if delivery was not received by January 22, 2016.

ALTERNATIVES: The PCCA can continue to wait for SATX to resolve its non-performance issues, or the PCCA can cancel the contract with SATX and seek an alternate company to provide the equipment.

CONFORMITY TO PORT POLICY: N/A

EMERGENCY: No.

FINANCIAL IMPACT: There are no liquidated damages for equipment purchases. However, under the terms of Security Grant 14, the PCCA has until August 2016 to

expend these funds. If action is delayed much longer, the PCCA may lose the remaining Security Grant funds.

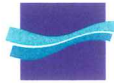
STAFF RECOMMENDATION: Staff recommends terminating the contract with SATX CCTV, LLC, in the amount of \$75,827 and that staff be allowed to rebid the purchase or purchase directly utilizing the DIR list.

DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Letter to SATX CCTV, LLC dated December 23, 2015



PORTCORPUS CHRISTI

Project No. 14-060B

December 23, 2015

CERTIFIED MAIL RETURN RECEIPT #7014 3490 0002 2434 6467

Mr. Mark Dunn
Partner/Manager
SATX CCTV, LLC
4518 Sterlingford Place
San Antonio, TX 78217

Subject: Extension of Time for the Security Grant 14 – Purchase of Camera System

Dear Mr. Dunn:

In reference to the contract in the amount of \$75,827 awarded to SATX CCTV, LLC (SATX) by the Port of Corpus Christi Authority (PCCA) Commission on June 16, 2015, Agreement dated June 16, 2015, and Notice to Proceed dated June 25, 2015 (copies attached) for the purchase of one (1) MOOG7-6100B-MWS QPT-501 pan/tilt platform and one (1) FLIR Ranger III LR thermal camera with associated accessories, all purchase items were to be received within 52 calendar days, that is, by August 16, 2015.

Over the course of the past several months, PCCA staff, primarily Bruce Forbes, Security Hardware Administrator, has reportedly been communicating diligently and patiently with you regarding various reasons for SATX's delay in providing the camera and related equipment. Then on December 17, 2015, PCCA Chief Engineer David Michaelson, P.E., discussed and agreed with you by phone that SATX would provide all contract items within 30 days that is by January 22, 2016.

This is your formal extension of time until January 22, 2016 to provide the equipment. If the items are not received by this date, PCCA staff will likely recommend the PCCA Commission take action to terminate the Agreement due to SATX's inability to meet the terms of the Agreement.

Sincerely,

David L. Krams, P.E.
Director of Engineering Services

DLM/mmm

cc: Sean Strawbridge
David Michaelson
Tom Mylett
Bruce Forbes
Accounting

DATE: February 16, 2016

TO: Port Commission

FROM: David Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-C

Award a Construction Contract to Garrett Construction Company, the lowest and best bidder, based on bids received on January 25, 2016 for the Resurfacing of South Side Open Storage Area Project.

SUMMARY: Staff requests that a construction contract be awarded to Garrett Construction Company for resurfacing of the southside open storage area. On January 25, 2016, we received four responses to our Notice to Bidders (see attached Bid Tabulation). Garrett Construction Company submitted the lowest and best bid for a total of \$628,670.00.

BACKGROUND: The PCCA owns and operates several acres of laydown yard on the south side of the ship channel. This yard is heavily used to store various large cargoes, including wind turbine components, and is in need of maintenance and repair. The Southside Yard was originally constructed in the early- to mid-1990s with no major resurfacing maintenance project performed to date. A contract was designed by the PCCA Engineering Department that divided the yard into sections to provide flexibility in scheduling the work, ensuring that portions of the yard can continue to be utilized during the term of the contract. The majority of the yard repairs consist of a two-course surface treatment matching the original design of the yard. A two-course surface treatment provides a lower cost operating surface to maintain and protects the yard from multiple cargo transfers and storage than a traditional hot mix asphalt cement (HMAC) pavement surface. One portion of the yard, however, was designed with a HMAC pavement section due to the excessive damage that has occurred in that particular location.

ALTERNATIVES: The bid documents consisted of a lump sum Base Bid with two lump sum Additive Bid Items and two unit cost Additive Bid Items. The Base Bid and Additive Bid Item 1 will cover the majority of the area with a two course surface treatment. The Base Bid also included the removal of an abandoned truck scale and repairs around existing rail road tracks. Additive Bid Item 2 will replace the existing section of paving behind Cargo Dock 15 with a HMAC pavement.

CONFORMITY TO PORT POLICY: This project supports Strategic Goal 2 to provide facilities and services to meet customer needs.

EMERGENCY: No.

FINANCIAL IMPACT: This project is part of the \$1,125,000 budgeted in 2016 for general maintenance of property and buildings. The recommended award includes the Base Bid in the amount of \$171,632.50, Additive Bid Item 1 in the amount of \$101,757.50, and Additive Bid Item 2 in the amount of \$355,280.00, for a total amount of \$628,670.00. In addition, staff recommends award of Additive Bid Item 3 at \$50.00/CY for additional select fill and Additive Bid Item 4 at \$70.00/CY for additional Flexible Base should they be required during the project, and that an allowance of \$50,000 be granted for these Items.

STAFF RECOMMENDATION: Staff recommends the award of a contract to Garrett Construction Company in the amount of \$628,670.00 for the Base Bid, Additive Bid Items 1 and 2, and Additive Bid Items 3 and 4. Garrett Construction Company is a local contractor and has performed numerous projects for the PCCA over the years. Staff further recommends that the Director of Engineering Services be granted \$50,000 for Additive Bid Items 3 and 4 in addition to a 4% contingency in accordance with the PCCA's standard contingency guidelines for general construction projects.

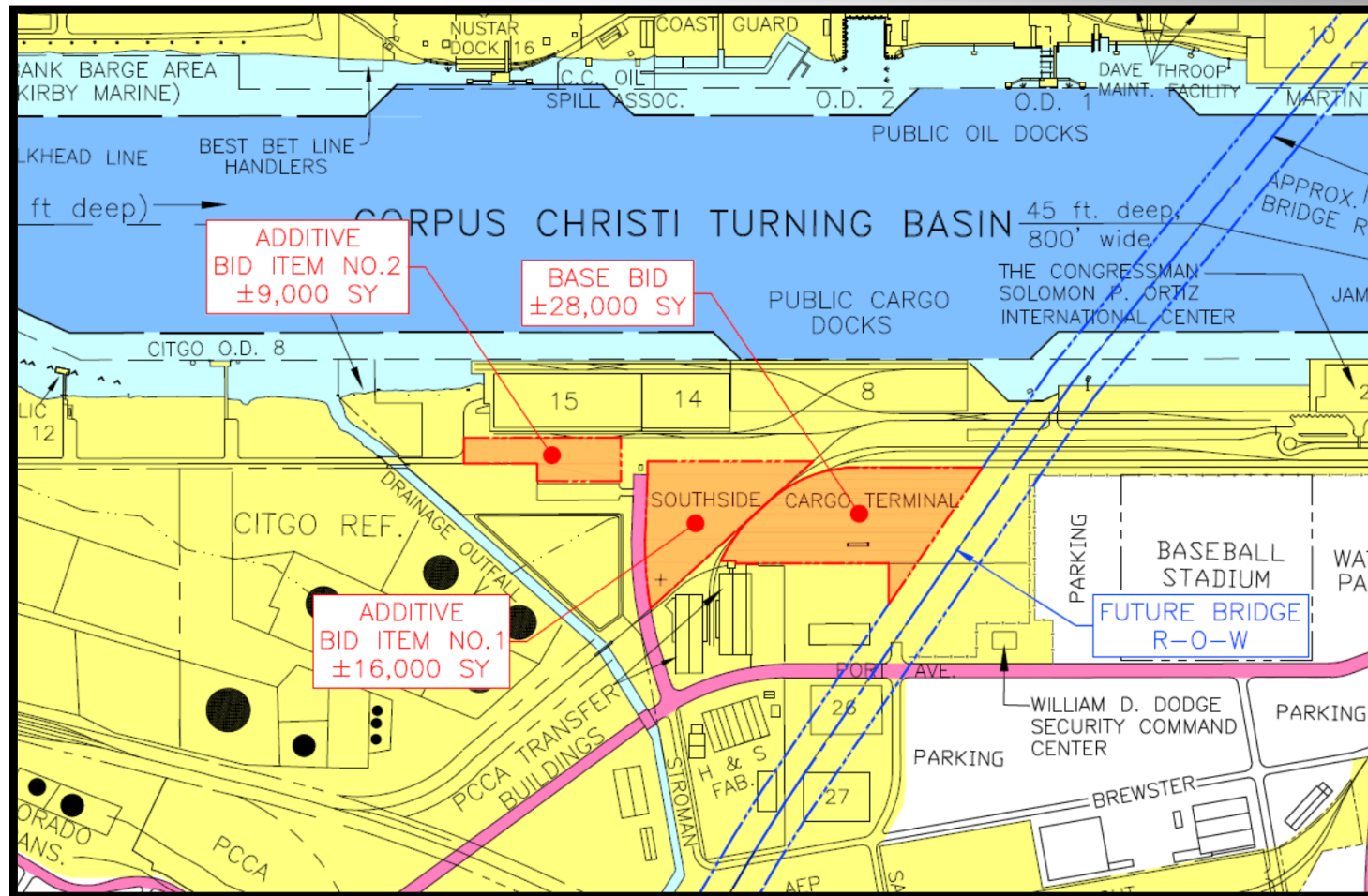
DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Bid Tabulation
Map Exhibit

Resurfacing of the South Side Open Storage Area



Resurfacing of the South Side Open Storage Area



CURRENT CONDITIONS





**BID TABULATION FOR
RESURFACE SOUTHSIDE STORAGE YARD
PROJECT NO. 15-038A
Bid Opening: January 25, 2016 at 3:30 p.m.**

Company Name	Bid Bond or Check	Base Bid ^A	Additive Bid Item 1 ^B	Additional Calendar Days for Additive Bid Item 1	Additive Bid Item 2 ^C	Additional Calendar Days for Additive Bid Item 2	Additive Bid Item 3 ^D	Additive/Deductive Bid Item 1 ^E	Contractor Conversion From Tons/CY (compacted)	Staff's Recommended Award: Base Bid + Add Bid Item 1 + Add Bid Item 2	Time of Delivery*	Addenda No. 1	Addenda No. 2
Garrett Construction Company	5%	\$171,632.50	\$101,757.50	20	\$355,280.00	60	\$50.00	\$70.00	2/1	\$628,670.00	45	X	X
Rexco Construction Services, Inc.	5%	\$339,401.09	\$174,551.96	90	\$341,520.00	90	\$41.50	\$93.15	2:1	\$855,473.05	270	X	X
Berry Contracting, LP dba Bay, Ltd.	5%	\$358,640.00	\$122,670.00	15	\$348,260.00	45	\$50.00	\$73.00	1.9	\$829,570.00	40	X	X
J Carroll Weaver, Inc.	5%	\$478,919.09	\$150,973.15	15	\$449,405.15	40	\$35.00	\$72.00	2.0	\$1,079,297.39	70	X	X

*In calendar days

^A BASE BID: The scope of work includes reclaiming top 4" of existing flexible base and surfacing material, recompact, and providing additional base material as required to reset the flow lines and grades and applying a two course surface treatment for approximately 28,000 SY of storage area located at the Southside Storage Yard in Zones 1, 2, and 3 as shown on the plans. In addition, demolition and removal of existing truck scale and adjacent concrete foundation, regrading of elevations surrounding existing rail, noted on plans, as well as all required storm water protection for the drop inlets. This is a Lump Sum bid item.

^B ADDITIVE BID ITEM 1: The scope of work includes reclaiming top 4" of existing flexible base and surfacing material, recompact, and provide additional base material as required to reset the flow lines and grades and applying a two course surface treatment to approximately 16,000 SY of storage area located at the Southside Storage Yard in Zones 4 and 5 as shown on the plans. As well as regrading of elevations surrounding existing rail, noted on plans, as well as all required storm water protection for the drop inlets. This is a Lump Sum bid item.

^C ADDITIVE BID ITEM 2: The scope of work generally includes the reconstruction of approximately 9,000 SY of pavement located in the Southside Storage Yard in Zones 6 and 7 as shown on the plans. Work includes excavation and removal of approximately 2" of existing asphalt layer, excavation of 12" of flexible base and soil, proof rolling subgrade, setting new layer of Type II Geogrid, resetting existing flexible base, with additional flexible base as needed to achieve 12" base course with 2" HMA. This is a Lump Sum bid item.

^D ADDITIVE BID ITEM 3: – SELECT FILL UNIT COST: Unit cost price to excavate, add fill and recompact to sub-grade elevations. Use if "soft" subgrades are encountered in Additive Bid Area 2 (Zones 6 and 7). Soft subgrade to be excavated and replaced with subgrade select fill, per PCCA direction. This is a Unit Price bid item per cubic yard of compacted select fill.

^E ADDITIVE/DEDUCTIVE BID ITEM 1 –FLEXIBLE BASE UNIT COST: Unit cost price for flexible base placed in Additive Bid Item No. 2 (Zones 6 and 7) above or below 1,500 CY as needed to achieve 12" layer of flexible base. This is a Unit Price bid item per cubic yard of compacted flexible base. Bid Item is applicable to Additive Bid Item No. 2 Area in work Zones 6 and 7.

Read By: Eileen Mink, EIT

Tabulated By: David L. Krams, P.E.

Checked & Prepared By: Melinda Maldonado

Date: January 25, 2016

DATE: February 16, 2016

TO: Port Commission

FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-D

Award a Construction Contract to T & T Construction, the Lowest and Best Bidder Based on Bids Received on January 29, 2016, for the Inner and Outer Harbor Land Management Project to Improve Drainage near Texaco Road at Navigation Boulevard

SUMMARY: On January 29, 2016, we received nine responses to our Notice to Bidders for grading and drainage improvements near the corner of Navigation Boulevard and Texaco Road as part of the Inner and Outer Harbor Land Management project. (See attached Bid Tabulation). T&T Construction was the apparent low bidder in the amount of \$152,082.85 for these improvements.

BACKGROUND: As a result of construction activities, several areas around the port hold water during extended periods of wet weather and could, over time, form “wetlands” which could potentially trigger and/or delay the permitting process and project development of the PCCA’s undeveloped lands. Adding fill material and creating or improving drainage solves this issue.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: This project is in line with Strategic Goal 2 to provide facilities and services to meet customer needs.

EMERGENCY: No.

FINANCIAL IMPACT: This project is part of the \$1,125,000 budgeted in 2016 for general maintenance of property and buildings.

STAFF RECOMMENDATION: Staff recommends a contract be awarded to T&T Construction for the Base Bid in the amount of \$152,082.85. Staff further recommends that the Director of Engineering Services be granted a 7% contingency in accordance with the PCCA’s standard contingency guidelines for general construction projects.

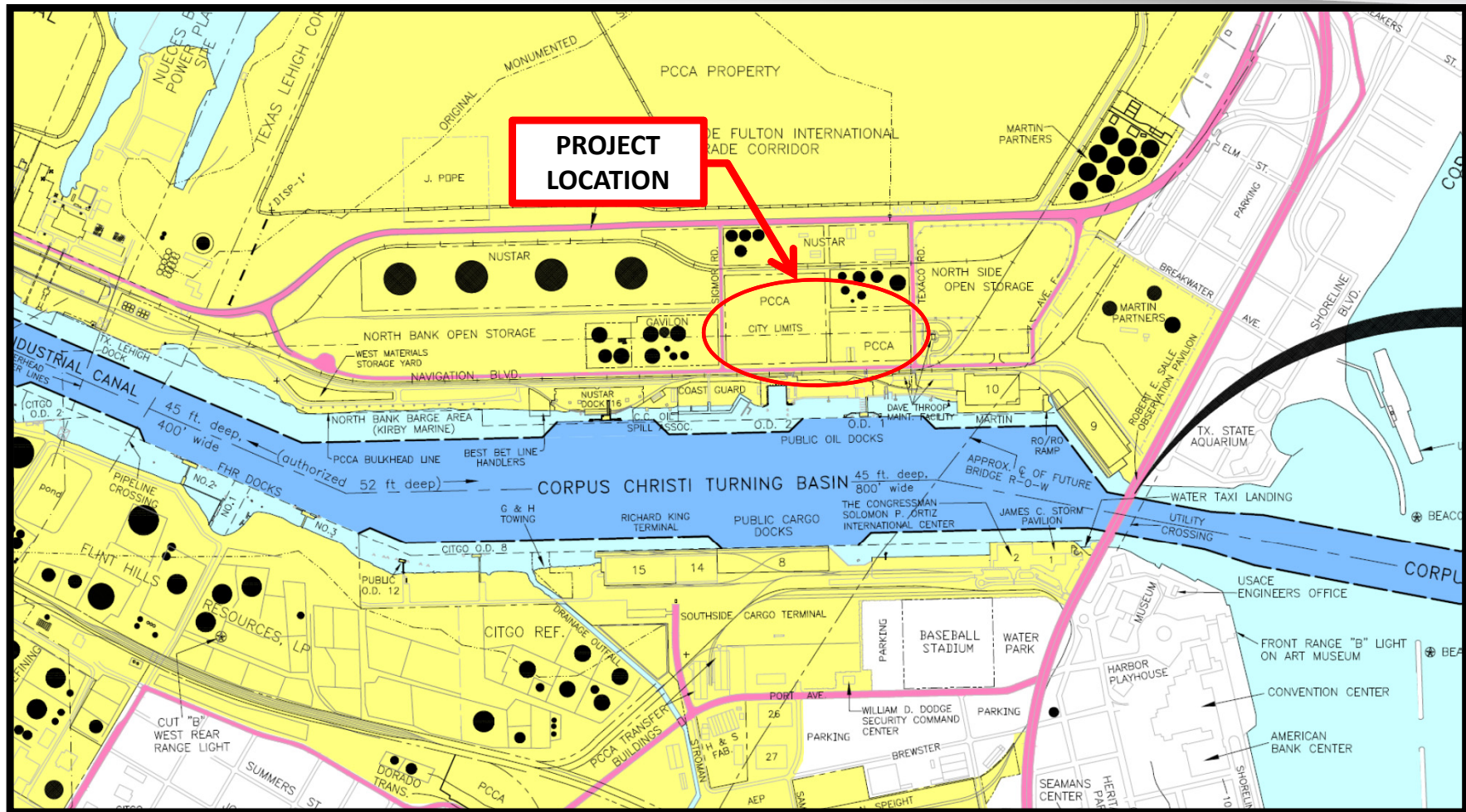
DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Location Map
Bid Tabulation

AGENDA ITEM NO. 14-D Inner & Outer Harbor Land Management





**BID TABULATION FOR
INNER AND OUTER HARBOR LAND MANAGEMENT (2015)
PROJECT NO. 15-019A
Bid Opening: January 29, 2016 at 2:00 p.m.**

Company Name	Bid Bond or Check	Base Bid ^A	Time of Completion*
T & T Construction	Cashiers Check \$7,604.15	\$152,082.85	45
Ram-Bro Contracting, Inc.	5% Bid Bond	\$190,087.00	60
JE Construction Services	5% Bid Bond	\$245,924.00	90
J.M. Davidson, Ltd.	5% Bid Bond	\$247,181.71	120
Garrett Construction Company	5% Bid Bond	\$259,780.80	45
Rexco Construction Services, Inc.	5% Bid Bond	\$268,404.42	120
Intercoastal Contractors, Inc.	5% Bid Bond	\$269,510.16	126
Affolter Contracting Company, Inc.	5% Bid Bond	\$269,261.00	90
Hynes Services, Inc.	5% Bid Bond	\$327,897.12	126

*In calendar days

^A BASE BID: The scope of work includes filling a low lying area located at the corner of Navigation Boulevard and Texaco Road with Contractor supplied select fill to the lines and grades indicated on the drawings. Work will also include site dewatering, storm water best management practices, top soil and seeding. This is a Lump Sum bid item.

Read By: David L Krams, P.E.

Tabulated By: Bert Perez, P.E.

Checked & Prepared By: Melinda Maldonado

Date: January 29, 2016



DATE: February 16, 2016
TO: Port Commission
FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-E

Award a Construction Contract to Affolter Contracting Company, Inc., lowest and best bidder based on bids received on January 29, 2016, for the Savage Lane Railroad Drainage Improvements

SUMMARY: Staff requests award of a construction contract to Affolter Contracting Company Inc. to perform slope and drainage repairs along the Savage Lane Railroad. On January 29, 2016, we received four responses to our Notice to Bidders (see attached Bid Tabulation). Affolter Contracting Company Inc. submitted the lowest and apparent best bid in a total amount of \$110,877.75.

BACKGROUND: The PCCA owns the right-of-way along the Savage Lane railroad line extending from Up River Road to Highway 44. Areas of severe erosion caused primarily from water draining from adjacent property is evident along portions of this right-of-way. This erosion causes sediment to deposit within the drainage ditches on the side of the railroad track, blocking drainage and, in the past, has covered the railroad tracks with mud and water. Drainage improvements and bank stabilization are required to prevent further washouts. Work on this project was initiated in 1992, and the right-of-way is maintained with recurring follow-up maintenance projects performed typically every two years.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: This project is in line with Strategic Goal 2 to provide facilities and services to meet customer needs.

EMERGENCY: No.

FINANCIAL IMPACT: The 2016 budget included \$130,000.00 for this maintenance project.

STAFF RECOMMENDATION: Staff recommends a contract be awarded to Affolter Contracting Company Inc. for the Base Bid of \$101,952.75 and Additive Bid Item 1 of \$8,925.00, for a total of \$110,877.75. Staff further recommends that the Director of

Engineering Services be granted a 7% contingency in accordance with the PCCA's standard contingency guidelines for general construction projects.

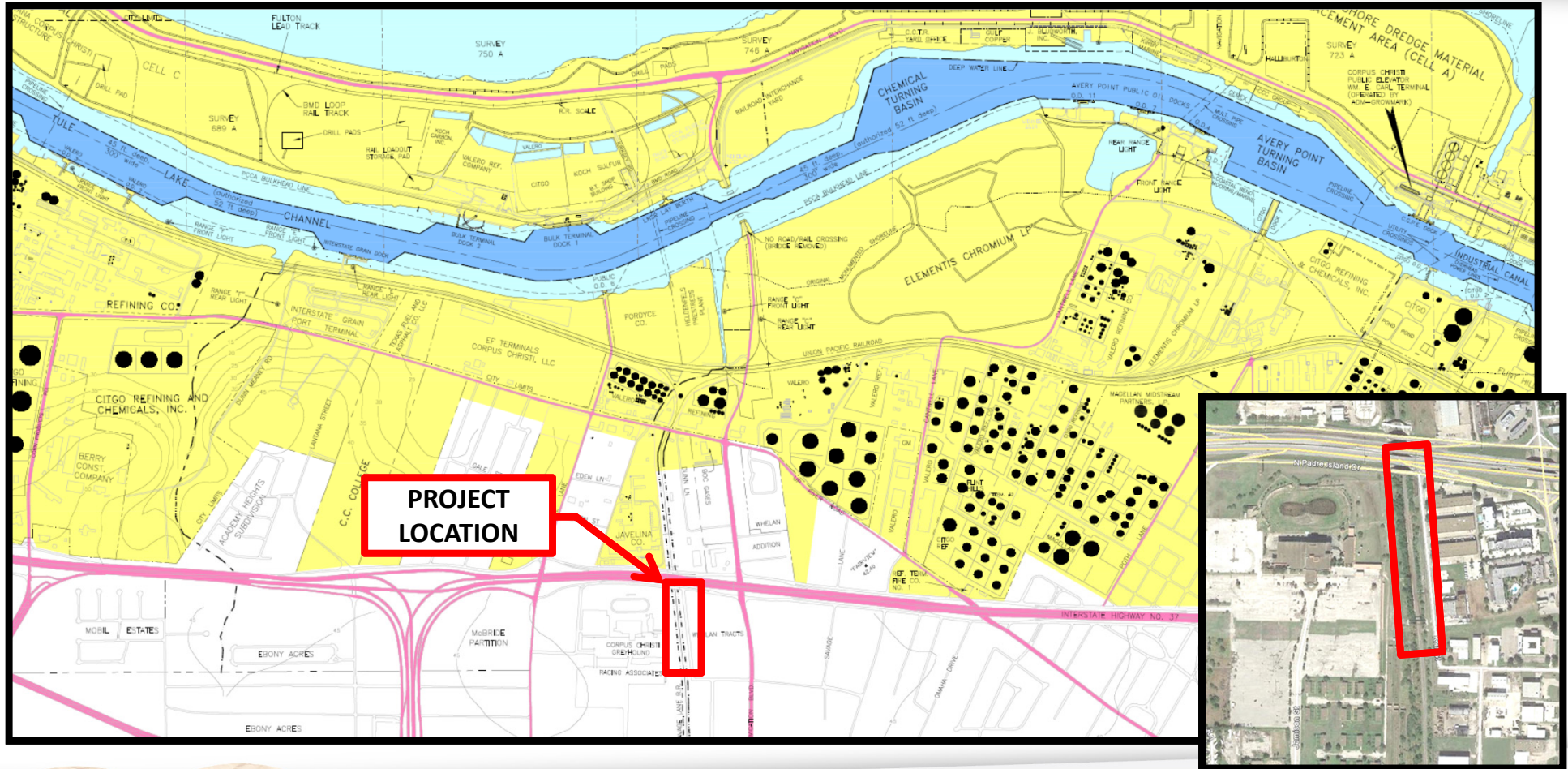
DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Location Map
Bid Tabulation Sheet

AGENDA ITEM NO. 14-E Savage Lane Railroad Drainage Improvements





**BID TABULATION FOR
SAVAGE LANE RAILROAD DRAINAGE IMPROVEMENTS
PROJECT NO. 15-022A**

Bid Opening: January 29, 2016 at 2:30 p.m.

Company Name	Bid Bond or Check	Base Bid ^A	Additive Bid Item 1 ^B	Time of Completion*	Addendum No 1	Staff's Recommended Award: Base Bid + Add Bid Item 1
Affolter Contracting Company, Inc.	5% Bid Bond	\$101,952.75	\$8,925.00	90	X	\$110,877.75
T & T Construction	Cashiers Check \$7,231.38	\$136,585.63	\$8,042.00	45	X	\$144,627.63
Garrett Construction Company	5% Bid Bond	\$163,362.95	\$17,190.00	45	X	\$180,552.95
Mahan Foundation & Contractors, LLC	5% Bid Bond	\$235,000.00	\$5,000.00	90	X	\$240,000.00

*In calendar days

^A BASE BID: The scope of work for the Savage Lane Railroad drainage ditch improvements includes grading, drainage improvements and slope protection in select areas. This is a Lump Sum bid item.

^B ADDITIVE BID ITEM 1: The scope of work includes the repair of an additional wash out area approximately 45 feet wide by 60 feet long with a typical slope of other repairs. Work will also include the furnishing and installation of approximately 50 cubic yards of select fill, 300 square yards of PYRAMAT turf reinforcement and hydroseeding in accordance with the technical specifications. This is a

Read By: David L. Krams, P.E.

Tabulated By: Bert Perez, P.E.

Checked & Prepared By: Melinda Maldonado

Date: January 29, 2016



DATE: February 16, 2016
TO: Port Commission
FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-F

Approve a Service Order with Freese and Nichols, Inc., under Professional Services Master Agreement No. 13-02, for Engineering Services Associated with the Tule Lake Rail Yard

SUMMARY: Staff requests approval of a Service Order with Freese and Nichols Inc., under its existing Professional Services Master Agreement, in an amount not to exceed \$399,041.00 to provide professional design services to modify and upgrade railroad tracks associated with the Tule Lake Rail Yard to improve rail traffic and rail service on the north side of the Inner Harbor. The scope of work includes \$50,765.00 for alternative evaluation and concept development, \$35,860 for geotechnical site work and design recommendations, \$25,733.00 for survey report, and \$286,683.00 for preliminary and final design, including preparation of Issued for Bid and Issued for Construction contract documents. This capital project is included in the 2016 budget with an estimated project cost of \$10 million and is one of the identified projects to be funded under the current bond issue.

BACKGROUND: With the completion of the Nueces River Railroad Yard (NRRY) Phase I and the ongoing construction of NRRY Phase II, the PCCA's primary railcar interchange activity is moving to the new rail yard. The existing Tule Lake Rail Yard, located east of the Bulk Terminal, can be repurposed to more efficiently use existing track to support future rail and bulk terminal operations. This project will include connecting the Tule Lake Rail Yard to the NRRY Phase II project with a second track to allow two-way rail traffic along the Inner Harbor, connecting existing Tule Lake Rail Yard tracks with the Bulk Terminal rail system to improve rail access and storage associated with Bulk Terminal operations, and other rail modifications and upgrades to improve general rail car logistics at the port.

ALTERNATIVES: The scope of work under the proposed Service Order will also include the review and assessment of alternatives for the Tule Lake Rail Yard and associated railroad tracks that have been developed by the PCCA in the past. Input from Bulk Terminal and Operations staff will be used in the evaluation and selection of the preferred alternative. Additional alternatives may be developed and included in the assessment.

CONFORMITY TO PORT POLICY: The proposed work is consistent with the current Port Strategic Plan and the Railroad Master Plan with regards to anticipated updates and improvements to PCCA-owned railroad track and anticipated rail service needs.

EMERGENCY: No.

FINANCIAL IMPACT: This project is not directly associated with a specific port customer or tenant. However, as the M&G Resins USA, LLC plant, currently under construction on the north side of the Viola Channel, transitions to operational later in 2016, the amount of rail traffic on the north side of the channel will significantly increase. The proposed project will allow more efficient and cost effective management of the anticipated increased rail traffic to better serve PCCA customers located in the Inner Harbor.

STAFF RECOMMENDATION: Staff recommends approval of a Service Order with a not-to-exceed amount of \$399,041.00 with Freese and Nichols, Inc. to provide professional engineering and design services for the Tule Lake Rail Yard Improvement project. In addition, Staff further recommends that the Director of Engineering Services be granted a 5 percent contingency (\$19,952.05) should it be required for any changes in the scope of work during the project.

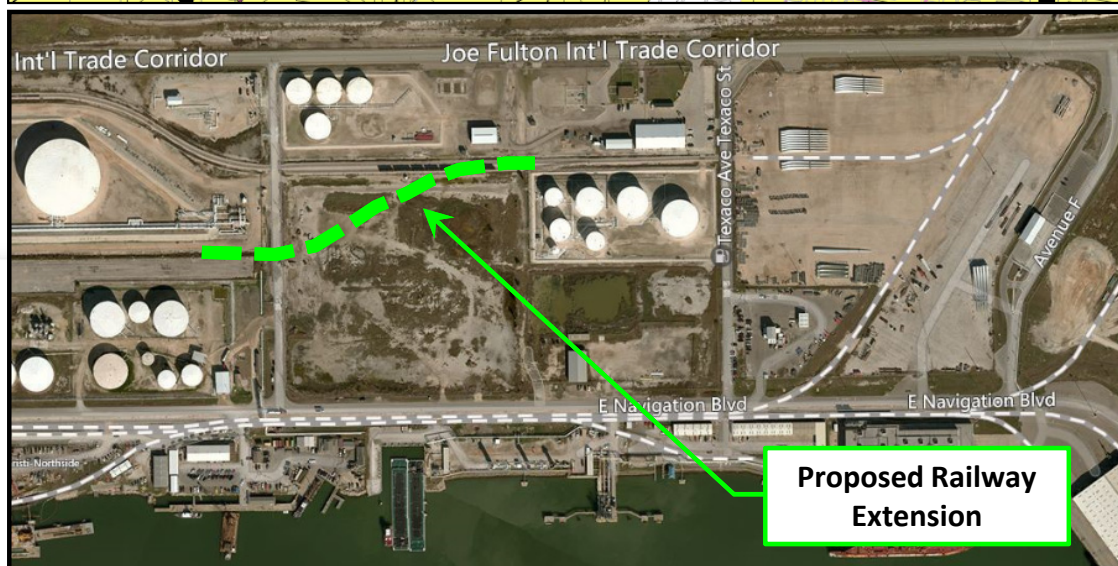
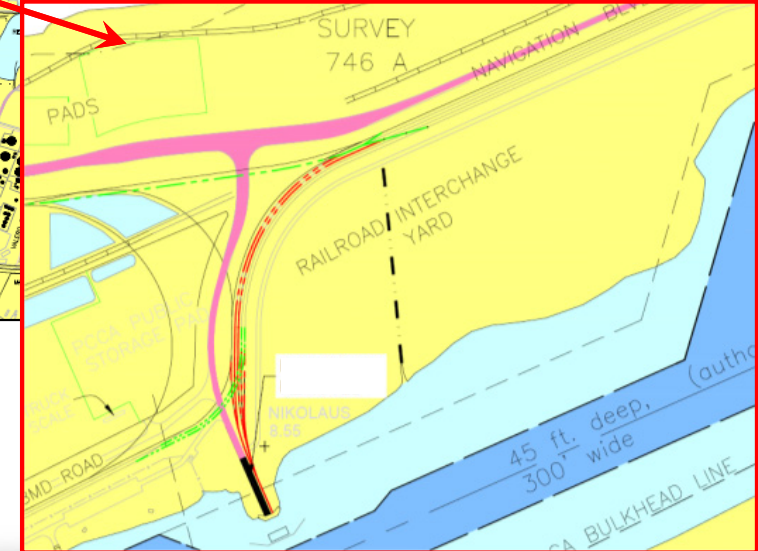
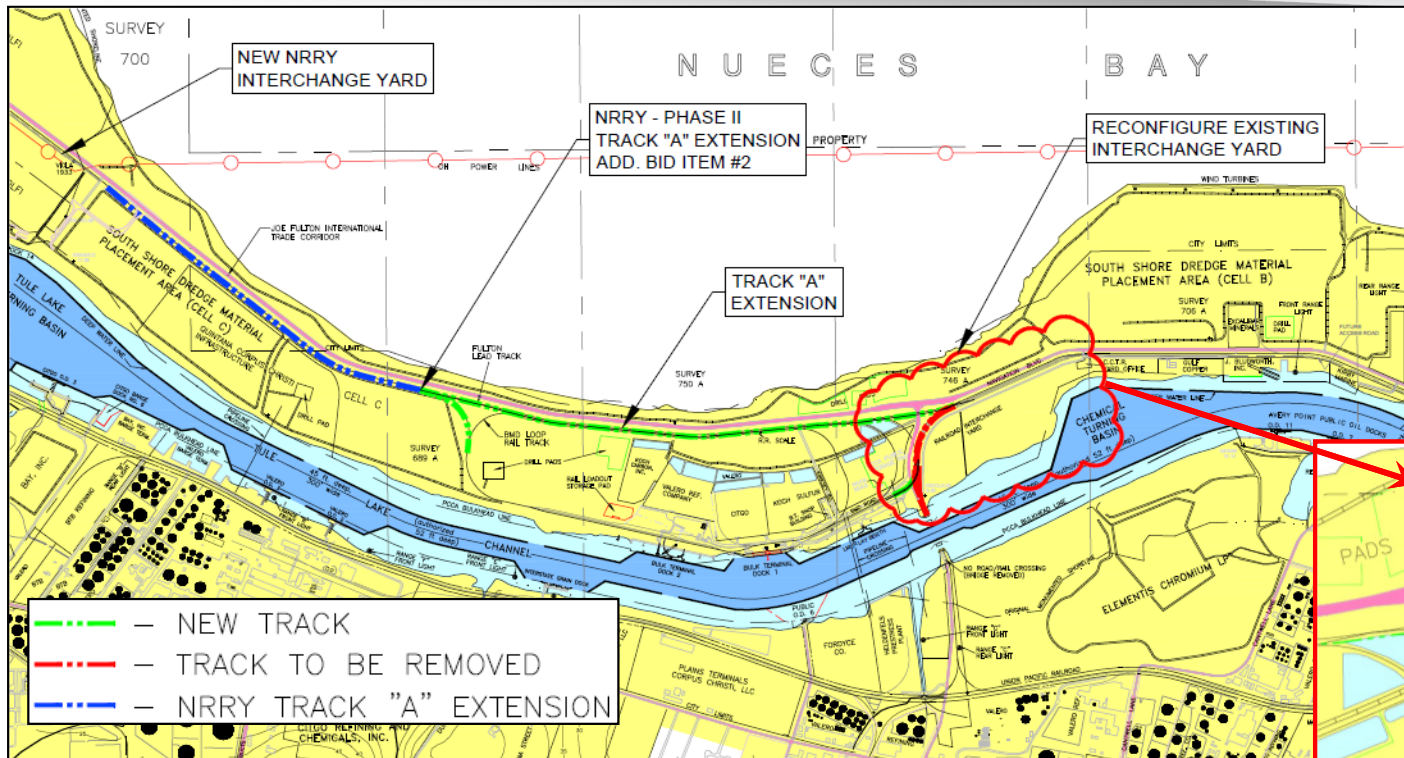
DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Brett Flint
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Map Exhibit of Project Location
Service Order

Tule Lake Rail Yard Upgrades and Modifications



PORT CORPUS CHRISTI™

DATE: February 16, 2016

TO: Port Commission

FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-G

**Approve Professional Services Master Agreement No. 16-01 and
Service Order 1 with LJA Engineering Inc. for Design and Project Management
Services Associated with Fencing at the Bulk Terminal (Security Grant 15)**

SUMMARY: Staff requests approval of Professional Services Master Agreement with LJA Engineering, Inc. and a Service Order in the amount of \$82,800 for design and project management services for a fencing project at the Bulk Terminal funded by Security Grant 15.

BACKGROUND: One of the three approved Security Grant 15 projects is the installation of gates and perimeter fencing around the Bulk Terminal facility (see attached exhibit). Both Bulk Dock 1 and Bulk Dock 2 are TWIC secure and restricted areas. This fencing project, the first under Security Grant 15, will provide controlled access into the Bulk Terminal facility and allow the security guard gate to be the primary checkpoint, with various perimeter gates for alternate ingress/egress points.

RVE Inc. has been the PCCA's security engineer since 2002 when they were selected through the RFQ selection process. Since 2013, RVE Inc. has been working with the PCCA under a Professional Services Master Agreement, which includes numerous service orders associated with security grant projects. In April 2015, LJA Engineering Inc. (LJA) acquired RVE Inc. The majority of RVE's personnel familiar with the PCCA's security infrastructure and systems has stayed with LJA in the transition from RVE to LJA. For projects such as these that involve the use, access, and development of security systems and sensitive information, once a primary engineering firm is selected, that firm is allowed to continue to provide similar services throughout the grant program. This practice limits the number of vendors who have access to the highly sensitive security systems that have been developed over the years. Therefore, the PCCA has continued to use LJA for these reasons, as well as LJA's successful past performance and support on the security projects.

Though still working under RVE's Master Services Agreement on a few projects, staff has negotiated a new Professional Services Master Agreement with LJA. Attached is

the Agreement and first Service Order for engineering services and project management for the Bulk Terminal Fencing project.

ALTERNATIVES: Staff could develop a Request for Proposals to search for a new security design engineer, but the PCCA would lose the continuity of the current program.

CONFORMITY TO PORT POLICY: Yes. This project will ensure that the PCCA will continue to comply with 33CFR105 regulations to provide appropriate maritime security along navigational channels. This project also supports the PCCA's Strategic Goal 2 to provide facilities and services to meet customer needs.

EMERGENCY: No.

FINANCIAL IMPACT: The 2016 capital budget includes \$634,800 (\$158,700 PCCA funds and \$476,100 or 75% of Federal Grant reimbursable funds) for this project.

STAFF RECOMMENDATION: Staff recommends approval of the attached Professional Services Master Agreement with LJA Engineering Inc. and an initial Service Order with a not-to-exceed amount of \$82,800 to provide design and project management services for the Security Grant 15 Bulk Terminal Fencing project.

DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Map location of the Bulk Terminal fencing routes
Professional Services Master Agreement with LJA Engineering, Inc.
Service Order with LJA Engineering, Inc.

Security Grant 15 – Bulk Terminal Fencing

**Alternate Fencing Alignments
Currently Under Consideration**



**MASTER AGREEMENT
BETWEEN
PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS,
AND ENGINEER
FOR
PROFESSIONAL SERVICES
SERVICE ORDER BASIS**



LJA ENGINEERING, INC.

MASTER AGREEMENT NO. 16-01

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**MASTER AGREEMENT
BETWEEN
PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS, AND ENGINEER
FOR PROFESSIONAL SERVICES
SERVICE ORDER BASIS**

THIS IS AN AGREEMENT made effective as of the 16th day of February 2016 ("Effective Date") between Port of Corpus Christi Authority of Nueces County, Texas, ("PCCA") and LJA Engineering, Inc. ("ENGINEER"), and ending at 5:00 p.m. on the 15th day of February 2017. ENGINEER intends to provide Professional Services to PCCA pursuant to Service Orders that may be issued by PCCA to ENGINEER from time to time as a part of this Agreement. In addition, PCCA has the option to renew the term of this Agreement for two (2) additional option periods of one (1) year each, beginning on the first day after the expiration of the primary term and each option term thereof. The right to renew will be exercised by PCCA giving to ENGINEER notice in writing of such exercise at least thirty (30) days prior to the expiration of the primary term or any option term of this Agreement. Notice of an intention to exercise an option under this Agreement must, to be effective, be hand delivered by reputable courier or sent by certified mail or facsimile transmission to ENGINEER at the address provided in the section in this Agreement entitled, "Notices," and must be postmarked no later than the latest date provided in this paragraph for PCCA's exercising the option. If either party wishes to change its address for notices, then that party will submit the address change in writing to the other party in the same manner set forth in this paragraph. Each Service Order issued by PCCA to ENGINEER will be for a separate Project ("Project"). This Agreement is referred to in any Service Order issued pursuant hereto as "Master Agreement No. 16-01." PCCA and ENGINEER in consideration of their mutual covenants as set forth herein further agree as follows:

**ARTICLE 1
SERVICES OF ENGINEER**

1.01 Scope and Project Description

A. ENGINEER will provide the Basic and Additional Services set forth herein and in Exhibit A. The Service Order may add or delete certain Basic or Additional Services provided for in this Agreement or provide certain terms that are different from terms provided in this Agreement. In such instances, PCCA and ENGINEER will provide in the Service Order reference by paragraph number or numbers those terms in this Agreement that are deleted or changed by the terms in the Service Order. In the event of a conflict between terms in this Agreement and the Service Order, the terms stated in the Service Order will control this Agreement. **Services pursuant to this Agreement will be required on an irregular and as needed basis during the term of this Agreement, and PCCA has not made nor does it make any representation of any kind or guarantee regarding the amount of Services PCCA will require from ENGINEER under this Agreement.**

B. During the term of this Agreement, PCCA may request that ENGINEER perform certain tasks described in this Agreement and in Exhibit A, subject to the issuance by PCCA of a Service Order, a sample of which is attached hereto and incorporated herein by reference for all purposes as Exhibit M. A Service Order for each separate Project issued pursuant to this Agreement will be attached to this Agreement, and each Service Order attached to this Agreement is hereby incorporated herein by reference for all purposes. Multiple Service Orders may be issued during the term of this Agreement. All Service Orders must be in writing, signed by an authorized representative of PCCA and ENGINEER, and include, if not described in this Agreement, a Scope of Services, a Basis of Payment, a list of tasks to be performed by ENGINEER, a time schedule, a list of deliverables, if any, and such other information or special conditions as may be necessary for the Services required. Upon execution by the parties to this Agreement, each Service Order will become an attachment to this Agreement, and this Agreement with any attached Service Orders thereafter will be referred to as the "Agreement." **Nothing, however, contained in the foregoing provision for the issuance of a Service Order or Service Orders constitutes a representation or a guarantee that PCCA will issue any Service Order to ENGINEER for any of the Services of ENGINEER described in this Agreement.**

C. Upon execution of this Master Agreement No. 16-01 and issuance of a Service Order, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A and each Service Order.

D. ENGINEER will perform his Services in accordance with the latest version of the PCCA Project Manual issued prior to the date of the Service Order.

ARTICLE 2
PCCA'S RESPONSIBILITIES

2.01 General

PCCA has the responsibilities set forth herein and in Exhibit B.

ARTICLE 3
TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's Services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of each Project through completion. Unless specific periods of time or specific dates for providing Services are specified in each Service Order attached to this Agreement, ENGINEER's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.

B. If, in each Service Order attached to this Agreement, specific periods of time for rendering Services are set forth or specific dates by which Services are to be completed are provided and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein will be subject to equitable adjustment. If PCCA has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's Services will be adjusted equitably.

C. For purposes of this Agreement, the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If PCCA fails to give prompt written authorization to proceed with any phase of Services after completion of the immediately preceding phase, or if ENGINEER's Services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to PCCA, suspend Services under this Agreement.

B. If ENGINEER's Services are delayed or suspended in whole or in part by PCCA or if ENGINEER's Services are extended by PCCA or its Contractor's actions or inactions for more than 90 days from the date of the beginning of the delay or suspension through no fault of ENGINEER, ENGINEER will be entitled to an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4
PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* PCCA will pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, for each Service Order as set forth in Exhibit C.

B. *For Additional Services.* PCCA will pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, for each Service Order as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, PCCA will pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted monthly to PCCA by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C. A brief monthly report will be submitted with each invoice that lists the tasks performed, amounts invoiced for each task, and an estimated percent completion for each task.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If PCCA fails to make any payment due ENGINEER for Services and Reimbursable Expenses within 30 days after receipt of ENGINEER's invoice, the amounts due ENGINEER will be increased at the rate of six percent (6%) per annum from said 30th day. In addition, ENGINEER may, after giving seven days written notice to PCCA, suspend Services under this Agreement until ENGINEER has been paid in full all amounts due for Services, Reimbursable Expenses, and other relevant charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment. Any undisputed portion will be paid. PCCA will promptly notify ENGINEER of any disputed item and request either clarification of the disputed item or that remedial action be taken against the disputed item. Once a disputed item has been settled, ENGINEER will include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

D. Payments Upon Termination.

1. In the event of termination under paragraph 6.06, ENGINEER will be entitled to invoice PCCA and will be paid in accordance with Exhibit C for all Services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by PCCA for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, will be entitled to invoice PCCA and will be paid a reasonable amount for Services and Reimbursable Expenses directly attributable to termination, both before and after the effective date of termination, such as costs of terminating contracts with ENGINEER's Consultants and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

3. Notwithstanding anything in this Agreement herein to the contrary, neither party will be charged with or liable for any consequential damages including, but not limited to, loss of profits or loss of business opportunities suffered by the other party as a result of either party's breach of this Agreement or failure to perform any of its obligations under this Agreement.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs and hourly rates pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon PCCA's timely request, PCCA or PCCA's Representative may review ENGINEER's records of time-based and reimbursable costs at ENGINEER's office during business hours and copy any such records at PCCA's expense; or if PCCA is not allowed to review and copy ENGINEER's records in ENGINEER's office, then ENGINEER will provide a copy of all such records to PCCA at ENGINEER's cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that imposes taxes, fees, or costs on ENGINEER's Services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs will be invoiced to and paid by PCCA as a Reimbursable Expense to which a factor of 1.0 will be applied. Should such taxes, fees, or costs be imposed, they will be in addition to ENGINEER's estimated total compensation.

ARTICLE 5
OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, Bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If PCCA wishes greater assurance as to probable Construction Cost, PCCA may employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

If a Construction Cost Limit is established between PCCA and ENGINEER, such Construction Cost Limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement and attached to the Service Order.

5.03 Opinions of Total Project Costs

ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6
GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related Services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality.

B. ENGINEER is responsible for the technical accuracy of its Services and documents resulting therefrom, and PCCA is not responsible for discovering deficiencies therein. ENGINEER will correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in PCCA-furnished information.

C. ENGINEER will perform or furnish professional engineering and related Services in all phases of the Project to which this Agreement applies. ENGINEER will serve as PCCA's prime professional for the design of the Project. ENGINEER may employ such Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the Services. ENGINEER is not required to employ any Consultant unacceptable to ENGINEER. ENGINEER must provide to PCCA for inclusion in the Service Order the names and addresses of all Consultants that ENGINEER will use on the Project.

D. ENGINEER and PCCA will comply with applicable Laws or Regulations and PCCA-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to PCCA's responsibilities or to ENGINEER's Scope of Services, times of performance, or compensation.

E. PCCA is responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by PCCA to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing Services under this Agreement.

F. PCCA will make decisions and carry out its other responsibilities in a timely manner and bear all costs incident thereto so as not to delay the Services of ENGINEER.

G. ENGINEER is not required to sign any document, no matter by whom requested, that would result in ENGINEER's having to certify, guarantee, or warrant the existence of conditions whose existence ENGINEER cannot ascertain. PCCA agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to ENGINEER in any way contingent upon ENGINEER's signing any such certification.

H. During the construction phase, ENGINEER will not supervise, direct, or have control over Contractor's Work, nor will ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor; for safety precautions and programs incident to Contractor's Work in progress; nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. ENGINEER is not responsible for the acts or omissions of any Contractor(s), subcontractor(s) or supplier(s), or of any of Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of Contractor's Work; or for any decision made on interpretations or clarifications of the Contract Documents given by PCCA without consultation and advice of ENGINEER.

K. All construction Contract Documents prepared hereunder must include the PCCA "General Conditions."

6.02 Authorized Project Representative

Contemporaneous with the execution of each Service Order, ENGINEER and PCCA will designate specific individuals to act on behalf of ENGINEER and PCCA with respect to the Services to be performed or furnished by ENGINEER and responsibilities of PCCA under such Service Order. Such individuals will have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design Without Construction Phase Services

A. Should PCCA provide construction phase services with either PCCA's Representative or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, review of Contractor's performance, or any other construction phase services, and that such services will be provided by PCCA, then PCCA assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claim against ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. Upon payment of all fees owed for each Service Order, all Documents relative to each corresponding Service Order are the property of PCCA.

B. Copies of PCCA-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by PCCA to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by PCCA are limited to the printed copies (also known as hard copies) that are signed or sealed by ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to PCCA are only for convenience of PCCA. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party will be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER is not responsible to maintain documents stored in electronic media format after acceptance by PCCA.

E. When transferring documents in electronic media format, neither PCCA nor ENGINEER make any representation to the other as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by PCCA or ENGINEER at the beginning of this Project.

F. Documents provided by ENGINEER are not intended or represented to be suitable for reuse by PCCA or others on extensions of the Project or on any other project. PCCA may, however, reuse such documents without any payment to ENGINEER. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at PCCA's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents by ENGINEER for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by PCCA and ENGINEER.

6.05 Insurance

A. At ENGINEER's expense, ENGINEER will procure and maintain and keep in force minimum insurance as set forth in Exhibit G, "Insurance," as will protect ENGINEER from claims which may arise out of or result from ENGINEER's Services pursuant to this Agreement, whether such operations be by ENGINEER, by any subcontractor of ENGINEER, by anyone directly or indirectly employed by ENGINEER or ENGINEER's subcontractor, or by anyone for whose acts ENGINEER or ENGINEER's subcontractor may be liable. All required insurance coverages must be purchased from insurance carriers with an A. M. Best rating of A:VI or better.

B. ENGINEER will deliver to PCCA certificates of insurance evidencing the coverages indicated in Exhibit G, "Insurance." Such certificates will be furnished prior to commencement of ENGINEER's Services and at renewals or changes of insurance companies thereafter during the life of the Agreement. Any such certificates must be executed by an authorized representative of the company issuing the insurance policy and contain a provision that coverage afforded under the policies will not be cancelled until at least 30 days prior written notice has been given to PCCA. ENGINEER's Consultants will be named as "additional insureds" on each liability (excluding Workers' Compensation and Professional Liability policies) or property policy of insurance purchased and maintained by ENGINEER for the Project.

C. At any time, PCCA may request that ENGINEER, at PCCA's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G, "Insurance." If so requested by PCCA, with the concurrence of ENGINEER, and if commercially available, ENGINEER will obtain and will require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by PCCA, and Exhibit G and the Service Order will be amended to incorporate these requirements.

D. Under all applicable coverages, except professional liability coverage, ENGINEER will provide a Waiver of Subrogation endorsement in favor of PCCA. The endorsement will additionally provide that ENGINEER

releases PCCA from liability for any claims ENGINEER may have against PCCA that are or should have been covered by the insurance for which the Waiver of Subrogation is made.

E. Under all applicable coverages, except professional liability coverage, ENGINEER will cause the policies of insurance for all applicable coverages to be endorsed to include PCCA as a "named additional insured" when permitted by law and provide that, notwithstanding any language in any policy of insurance held by PCCA ("PCCA Insurance") to the effect that the PCCA Insurance is primary, the policies of insurance held by ENGINEER are primary coverage, and the PCCA Insurance is non-contributory so that PCCA Insurance will not share with the policies held by ENGINEER. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to PCCA and may not exceed \$50,000.00. If requested, ENGINEER will provide PCCA a true copy of each of the Policies required in this Agreement, including all endorsements on each policy.

F. ENGINEER will not commence Services under this Agreement until ENGINEER has obtained all insurance required hereunder and certificates of such insurance in a form that is on file with and that has been approved by the Texas Department of Insurance and with insurers acceptable to PCCA. Approval of the insurance by PCCA will not relieve, decrease, or otherwise affect the liability of ENGINEER.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For Cause.* Either party, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, may terminate this Agreement upon 30 days written notice.

a. If ENGINEER believes that ENGINEER is being requested by PCCA to furnish or perform Services contrary to ENGINEER's responsibilities as a licensed professional or if ENGINEER's Services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control, ENGINEER may terminate this Agreement upon seven days written notice to PCCA.

b. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of such notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of such notice.

2. *For Convenience.* PCCA may terminate this Agreement effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

C. ENGINEER will be paid for all Services performed and Reimbursable Expenses incurred prior to the effective date of termination. Upon payment of all amounts rightfully owed by PCCA to ENGINEER, PCCA will take ownership of the documents pursuant to Section 6.04 herein.

6.07 Controlling Law

This Agreement is governed by the laws of the state of Texas. Venue of any action will be in Nueces County, Texas. In the event of a conflict between the wording of this Agreement, including any Service Order or Service Orders attached to it and any Purchase Order issued by PCCA in connection with this Agreement, the wording of this Agreement, including any Service Order or Service Orders attached to it, will control the interpretation of this Agreement.

6.08 Successors, Assigns, and Beneficiaries

A. PCCA and ENGINEER each is hereby bound and the partners, successors, executors, administrators, and legal representatives of PCCA and ENGINEER and, to the extent permitted by paragraph 6.08.B, the assigns of PCCA and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither PCCA nor ENGINEER may assign, sublet, or transfer any rights under or interest in this Agreement (including, but without limitation, claims arising out of this Agreement or moneys that are due or may become due) without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by PCCA or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of PCCA and ENGINEER and not for the benefit of any other party, person, or entity.

6.09 Dispute Resolution

A. PCCA and ENGINEER agree to negotiate all disputes between them in good faith (including, if agreed, the use of a mediator) for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that PCCA and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit H, "Dispute Resolution."

C. In the event PCCA requests that ENGINEER perform Services that, in ENGINEER's opinion, are not included under the Basic Services described in Exhibit A and PCCA believes that it is included, ENGINEER will proceed with the Services without delay and perform them to the satisfaction of PCCA. At the conclusion of the Project, or in no event longer than six months, ENGINEER may request that the issue of payment for this work be submitted to mediation (if both parties agree) or to arbitration as outlined in Exhibit H.

D. In the event PCCA and ENGINEER cannot agree on the price of Additional Services requested by PCCA, ENGINEER will proceed with the Services without delay and perform them to the satisfaction of PCCA. At the conclusion of the Project, or in no event longer than six months, ENGINEER may request that the disputed price for any Additional Services be submitted to mediation (if both parties agree) or to arbitration as outlined in Exhibit H.

6.10 Hazardous Environmental Conditions

A. PCCA, to the best of its knowledge, will disclose to ENGINEER the existence of all Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material located at the Site, including type, quantity and location.

B. To the extent known by ENGINEER or ENGINEER's employees and Consultants, if a Hazardous Environmental Condition is encountered or alleged, ENGINEER has the obligation to notify PCCA and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

C. It is acknowledged by both parties that ENGINEER's Scope of Services does not include any Services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until PCCA: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

D. PCCA acknowledges that ENGINEER is performing Professional Services for PCCA and that ENGINEER is not and will not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

E. If ENGINEER's Services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition will justify ENGINEER's terminating this Agreement for cause upon 30 days notice.

6.11 Allocation of Risks

Indemnification: See Exhibit I.

6.12 Notices

Any notice required under this Agreement must be submitted in writing, addressed to the appropriate party at its address on the signature page or on the written change of address as outlined in paragraph one on page one of this Agreement, and sent by registered or certified mail postage prepaid, by facsimile transmission, or by a reputable commercial courier service. All notices will be effective upon the date of receipt.

6.13 Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon PCCA and ENGINEER, who agree that the Agreement will be revised to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

Non-enforcement of any provision by either party will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

6.17 Public Meetings/Records

PCCA is a political subdivision of the state of Texas 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, PCCA 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, ENGINEER 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 PCCA as required by the Texas Open Meetings Act, Texas Public Information Act, or any other law will not expose PCCA (or any party acting by, through or under PCCA) to any claim, liability, or action by ENGINEER.

6.18 Confidentiality

ENGINEER will keep confidential all information in whatever form produced, prepared, observed or received from PCCA to the extent that such information is: (a) confidential by law; (b) marked or designated "Confidential" or words to that effect; or (c) information that ENGINEER is otherwise required to keep confidential by this Agreement. Notwithstanding the above, ENGINEER will be permitted to disclose any information required by law or court order.

6.19 Relationship of the Parties

ENGINEER is associated with PCCA only for the purposes and to the extent specified in this Agreement and in respect of the contracted Services pursuant to this Agreement. ENGINEER is and will be an independent contractor and, subject only to the terms of this Agreement, will have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement is deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for PCCA whatsoever with respect to the indebtedness, liabilities or obligations of ENGINEER or any other party. ENGINEER will be solely responsible for, and PCCA has no obligation with respect to:

- A. Withholding of income taxes, FICA, or any other taxes or fees;
- B. Industrial or Workers Compensation insurance coverage;
- C. Participation in any group insurance plans available to employees of ENGINEER;
- D. Accumulation of vacation leave or sick leave; or
- E. Unemployment compensation coverage provided by the State of Texas.

ARTICLE 7
DEFINITIONS

7.01 Defined Terms

Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*. Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the Bid Documents.

2. *Additional Services.* The Services to be performed for or furnished to PCCA by ENGINEER in accordance with Exhibit A, Part 2, and the corresponding Service Order attached to this Agreement.

3. *Agreement.* This "Master Agreement between PCCA and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof and any Service Orders that may be attached to and incorporated in this Agreement by reference for all purposes.

4. *Application for Payment to Contractor.* The form acceptable to PCCA and agreed upon by ENGINEER that is to be used by Contractor in requesting progress or final payments for the completion of the Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos.* Any material that contains more than one percent (1%) Asbestos and is friable or is releasing Asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services.* The Services to be performed for or furnished to PCCA by ENGINEER in accordance with Exhibit A, Part 1, and the corresponding Service Order attached to this Agreement.

7. *Bid.* The offer or proposal of the bidder submitted on the PCCA-prescribed form setting forth the prices for the Work to be performed.

8. *Bid Documents.* The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the bid bond, if any, the Contract Documents, and all Addenda, if any.

9. *Change Order.* A document recommended by ENGINEER, which is signed by Contractor and PCCA, to authorize an addition to, deletion from, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement.* The entire and integrated written agreement between PCCA and Contractor concerning the Work.

11. *Construction Cost.* The cost to PCCA of those portions of the entire Project designed or specified by ENGINEER. The Construction Cost does not include costs of Services of ENGINEER or other design professionals and Consultants; costs of land, rights-of-way, or compensation for damages to properties; or PCCA's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project; or the costs of services to be provided to PCCA by others pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

12. *Contract Documents.* The documents described in the Construction Agreement between PCCA and Contractor as the Contract Documents. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price.* The moneys payable by PCCA to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

14. *Contract Times.* The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *Contractor.* An individual or entity with which PCCA enters into a Construction Agreement.

16. *Correction Period.* The time after Substantial Completion during which Contractor must correct, at no cost to PCCA, any Defective Work; normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

17. *Defective.* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents; does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or has been damaged prior to ENGINEER's recommendation of final payment.

18. *Documents.* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to PCCA pursuant to this Agreement.

19. *Drawings.* That part of the Contract Documents prepared or approved by ENGINEER that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop drawings are not Drawings as so defined.

20. *Effective Date of the Construction Agreement.* The date indicated in the Construction Agreement on which it becomes effective; but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

21. *Effective Date of the Agreement.* The date indicated in this Agreement on which it becomes effective; but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *ENGINEER's Consultants.* Individuals or entities having a contract with ENGINEER to furnish Services with respect to any Project pursuant to this Agreement as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

23. *Field Order.* A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

24. *Final Acceptance.* That point in the Project wherein ENGINEER considers the Project complete and PCCA issues a Certificate of Final Acceptance.

25. *General Conditions.* That part of the Contract Documents that sets forth the terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition.* The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste.* The term Hazardous Waste will have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations.* Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCBs.* Polychlorinated biphenyls.

30. *PCCA's Representative.* The PCCA's Representative is David L. Krams, P.E., Director of Engineering Services for the Port of Corpus Christi Authority of Nueces County, Texas, or his duly authorized representative.

31. *Petroleum.* Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60° Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other Non-Hazardous Waste and crude oils.

32. *Project.* The Project consists of the design, construction, and management of the Work.
33. *Radioactive Materials.* Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 *et seq*) as amended from time to time.
34. *Record Drawings.* The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information that ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.
35. *Reimbursable Expenses.* The expenses incurred directly by ENGINEER in connection with performing or furnishing Basic and Additional Services for the Project for which PCCA will pay ENGINEER as indicated in Exhibit C.
36. *Samples.* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Services.* Professional engineering provided by ENGINEER as described in this Agreement and each Service Order attached to this Agreement.
38. *Service Order.* The Service Order is the document that describes the Project (see Exhibit M) and defines the Scope of Services, Service Schedule, deliverables, and compensation to be paid to ENGINEER.
39. *Shop Drawings.* All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.
40. *Site.* Lands or areas indicated in this Agreement or the Drawings as being furnished by PCCA upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by PCCA that are designated for use by Contractor.
41. *Specifications.* That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
42. *Substantial Completion.* That point in the Project wherein ENGINEER recommends and PCCA determines that the Project is suitable for use or occupancy for its intended purpose but may still require minor miscellaneous work or adjustment.
43. *Special Conditions.* That part of the Contract Documents which amends or supplements the General Conditions.
44. *Total Project Costs.* The sum of the Construction Cost; allowances for contingencies; the total costs of Services of ENGINEER or other design professionals and Consultants; costs of land, rights-of-way, or compensation for damages to properties; PCCA's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project; and the cost of services to be provided to PCCA by others pursuant to Exhibit B of this Agreement.
45. *Work.* The entire completed construction or the various separately identifiable parts thereof required to be provided by Contractor pursuant to the Contract Documents in the Construction Agreement for construction with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

to, deletion from, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiation by the parties as to its effect, if any, on the Contract Price or Contract Times.

47. *Written Amendment.* A written amendment of the Contract Documents signed by PCCA and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8
EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- | | | |
|----|---|-------------------------|
| A. | Exhibit A, "ENGINEER's Services and Responsibilities." | (Consisting of 9 Pages) |
| B. | Exhibit B, "PCCA's Responsibilities." | (Consisting of 3 Pages) |
| C. | Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses." | (Consisting of 3 Pages) |
| | Appendix 1, "Reimbursable Expenses Schedule." | (Consisting of 2 Pages) |
| | Appendix 2, "Standard Hourly Rates Schedule." | (Consisting of 2 Pages) |
| | Appendix 3, "Application/Certification for Payment." | (Consisting of 2 Pages) |
| D. | Exhibit D, "Duties, Responsibilities, and Limitations of Authority of Resident Project Representative." | (Consisting of 4 Pages) |
| E. | Exhibit E, "Notice of Acceptability of Work." | (Consisting of 2 Pages) |
| F. | Exhibit F, "Construction Cost Limit." | (Consisting of 1 Page) |
| G. | Exhibit G, "Insurance." | (Consisting of 1 Page) |
| | Appendix 1, "PCCA Certificate of Insurance." | (Consisting of 1 Page) |
| H. | Exhibit H, "Dispute Resolution." | (Consisting of 1 Page) |
| I. | Exhibit I, "Allocation of Risks." | (Consisting of 2 Pages) |
| J. | Exhibit J, "Special Provisions." | (Consisting of 2 Pages) |
| K. | Exhibit K, "Civil Rights Compliance." | (Consisting of 1 Page) |
| L. | Exhibit L, "Child Support Statement for Contracts or Grants." | (Consisting of 1 Page) |
| M. | Exhibit M, "Service Order Form." | (Consisting of 3 Pages) |

8.02 Total Agreement

This Agreement (consisting of pages 1 to 59 inclusive, together with the Exhibits identified above) constitutes the entire Agreement between PCCA and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

PCCA:

ENGINEER:

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

LJA Engineering, Inc.

By: _____

By: _____

Name: John P. LaRue

Name: _____

Title: Executive Director

Title: _____

Date Signed: _____

Date Signed: _____

Address for giving notice:

Address for giving notice:

222 Power Street
Corpus Christi, Texas 78401
Attention: Director of Engineering Services

820 Buffalo St.
Corpus Christi, Texas 78401

Designated Representative (§ 6.02):

Designated Representative (§ 6.02):

David L. Krams, P.E.

Title: Director of Engineering Services

Title: _____

Phone Number: 361-885-6134

Phone Number: _____

Facsimile Number: 361-881-5161

Facsimile Number: _____

E-Mail Address: krams@pocca.com

E-Mail Address: _____

Exhibit A
ENGINEER's Services and Responsibilities

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER will provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A-1.01 Study and Report Phase.

A. ENGINEER will:

1. Consult with PCCA to define and clarify PCCA's requirements for the Project and available data.
2. Advise PCCA as to the necessity of PCCA's providing data or services of the types described in Exhibit B, which are not part of ENGINEER's Basic Services, and assist PCCA in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER including, but not limited to, mitigating measures identified in any environmental assessment.
4. Identify and evaluate the number of alternate solutions stated in the Service Order available to PCCA and, after consultation with PCCA, recommend to PCCA those solutions which in ENGINEER's judgment meet PCCA's requirements for the Project.
5. Prepare a report ("Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to PCCA which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost; allowances for contingencies and for the estimated total costs of design, professional, and related Services provided by ENGINEER; and, on the basis of information furnished by PCCA, allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide additional study and report phase tasks or deliverables stated in the Service Order.
7. Furnish four (4) review copies (unless a different number is stated in the Service Order) of the Report to PCCA within the number of days of authorization to begin Services and review it with PCCA as provided in the Service Order.
8. Revise the Report in response to PCCA's and other parties' comments, as appropriate, and furnish four (4) final copies (unless a different number is stated in the Service Order) of the revised Report to PCCA within the number of days after completion of reviewing it with PCCA as provided in the Service Order.

B. ENGINEER's Services under the study and report phase will be considered complete on the date the final copies of the revised Report have been delivered to and accepted by PCCA.

A-1.02 Preliminary Design Phase.

A. After acceptance by PCCA of the Report, selection by PCCA of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by PCCA, and upon written authorization from PCCA, ENGINEER will:

1. On the basis of the above acceptance, selection, and authorization, prepare preliminary design phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise PCCA if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist PCCA in obtaining such reports, data, information, or services.
4. Based on the information contained in the preliminary design phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph A-1.01.A.5.
5. Perform or provide additional preliminary design phase tasks or deliverables stated in the Service Order.
6. Furnish the preliminary design phase documents to and review them with PCCA.
7. Submit to PCCA four (4) final copies (unless a different number is stated in the Service Order) of the preliminary design phase documents and revised opinion of probable Construction Cost within the number of days after authorization to proceed with this phase as provided in the Service Order.

B. ENGINEER's Services under the preliminary design phase will be considered complete on the date final copies of the preliminary design phase documents have been delivered to and accepted by PCCA.

A-1.03 Final Design Phase.

A. After acceptance by PCCA of the preliminary design phase documents and revised opinion of probable Construction Cost as determined in the preliminary design phase, but subject to any PCCA-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from PCCA, ENGINEER will:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the most recent Master Format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for PCCA's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist PCCA in consultations with appropriate authorities.
3. Advise PCCA of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph A-1.01.A.5.
4. Perform or provide additional final design phase tasks or deliverables stated in the Service Order.
5. Prepare and furnish Bid Documents for review and approval by PCCA, its legal counsel, and other advisors, as appropriate, and assist PCCA in the preparation of other related documents.

6. Submit two (2) final copies (unless a different number is stated in the Service Order) of the Bid Documents and a revised opinion of probable Construction Cost to PCCA within the number of days after authorization to proceed with this phase as provided in the Service Order.

B. In the event the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract or if ENGINEER's Services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), PCCA and ENGINEER will, prior to commencement of the final design phase, develop a schedule for performance of ENGINEER's Services during the final design, bidding or negotiating, construction, and post-construction phases in order to sequence and coordinate properly such Services as are applicable to the Work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the Work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is one (1) unless otherwise specified in the Service Order.

D. ENGINEER's Services under the final design phase will be considered complete on the date the submittals required by paragraph A-1.03.A.6 have been delivered to and accepted by PCCA.

A-1.04 Bidding or Negotiating Phase.

A. After acceptance by PCCA of the Bid Documents and the most recent opinion of probable Construction Cost as determined in the final design phase, and upon written authorization by PCCA to proceed, ENGINEER will:

1. Assist PCCA in advertising for and obtaining Bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bid Documents have been issued; attend pre-Bid conferences, if any; and receive and process bidders' deposits or charges for the Bid Documents.

2. Prepare Addenda as appropriate to clarify, correct, or change the Bid Documents.

3. Consult with PCCA as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work for which acceptability is required by the Bid Documents.

4. Determine the acceptability of substitute materials and equipment proposed during the bidding or negotiating phase when substitution prior to award of the contract is allowed by the Bid Documents.

5. Perform or provide additional bidding or negotiating phase tasks or deliverables stated in the Service Order.

6. Attend the Bid opening, prepare Bid tabulation sheets, and assist PCCA in evaluating Bids and in assembling and awarding contracts for the Work.

B. The bidding or negotiating phase will be considered complete upon commencement of the construction phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement).

A-1.05 Construction Phase.

A. Upon successful completion of the bidding and negotiating phase, and upon written authorization from PCCA, ENGINEER will:

1. *General Administration of Construction Contract.* Consult with PCCA and act as PCCA's Representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions will not be modified, except as ENGINEER may otherwise agree in writing. All of PCCA's instructions to Contractor will be issued through ENGINEER, who has authority to act on behalf of PCCA in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Selecting Independent Testing Laboratory.* Assist PCCA in the selection of an independent testing laboratory to perform the services identified in paragraph B-2.01.O.
3. *Pre-Construction Conference.* Participate in a pre-construction conference prior to commencement of Work at the Site.
4. *Baseline and Benchmarks.* Establish baselines and benchmarks for locating the Work as ENGINEER deems necessary to enable Contractor to proceed.
5. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work in progress while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and performance of the Work. Such visits and observations by ENGINEER are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's Work is proceeding in accordance with the Contract Documents, and ENGINEER will keep PCCA informed of the progress of the Work.
 - b. The purpose of ENGINEER's visits to the Site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the construction phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for PCCA a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER will not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor will ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor; provided, however, if ENGINEER observes a condition at the Project Site or Work being performed that in ENGINEER's opinion involves a matter of safety at the Project, ENGINEER will promptly notify Contractor and PCCA about such matter for safety precautions and programs incident to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
6. *Defective Work.* ENGINEER will have the authority to reject Contractor's Work while it is in progress if, on the basis of such observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

7. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

8. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to PCCA, as appropriate, and prepare Change Orders and Work Change Directives as authorized by PCCA.

9. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approval or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

10. *Substitutes and "Or-Equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, subject to the provisions of paragraph A-2.02.B of this Exhibit A.

11. *Inspections and Tests.* Require such special inspections or tests of Contractor's Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER is entitled to rely on the results of such tests.

12. *Disagreements between PCCA and Contractor.* Render formal written decisions on all claims of PCCA and Contractor relating to the acceptability of Contractor's Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's Work. In rendering such decisions, ENGINEER will be fair and not show partiality to PCCA or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity.

13. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to PCCA, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled insofar as it is ENGINEER's responsibility to observe Contractor's Work. In the case of unit price Work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A-1.05.A.5.a are expressly subject to the limitations set forth in paragraph A-1.05.A.5.b and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, ENGINEER will not thereby be deemed to have represented that observations made by ENGINEER to check the performance or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's Work for the purpose of recommending payment nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER a responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose a responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to PCCA free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between PCCA and Contractor that might affect the amount that should be paid.

14. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents; certificates of inspection, tests and approvals; Shop Drawings; Samples; and other data approved as provided under paragraph A-1.05.A.10; and the annotated record documents assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A-1.05.A.9.

c. ENGINEER will transmit these documents to PCCA.

15. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with PCCA and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If ENGINEER considers the Work Substantially Complete, ENGINEER will prepare a Notice of Substantial Completion and submit same to PCCA for its review and approval.

16. *Additional Tasks.* Perform or provide additional construction phase tasks or deliverables stated in the Service Order.

17. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER will also provide a notice in the form attached hereto as Exhibit E, "Notice of Acceptability of Work," that the Work is acceptable (subject to the provisions of paragraph A-1.05.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the Services provided by ENGINEER under this Agreement.

B. *Duration of Construction Phase.* The construction phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractor. If the Project involves more than one prime contract as indicated in paragraph A-1.03.C, construction phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER is not responsible for the acts or omissions of any Contractor or of any of Contractor's subcontractors, suppliers, or of any other individual or entity performing or

furnishing any portion of the Work. ENGINEER is not responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A-1.06 Post-Construction Phase.

- A. Upon written authorization from PCCA, ENGINEER, during the post-construction phase, will:
1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.
 2. Assist PCCA in training PCCA's staff to operate and maintain Project equipment and systems.
 3. Assist PCCA in developing procedures for control of the operation and maintenance of and recordkeeping for Project equipment and systems.
 4. Together with PCCA, visit the Project Site to observe any apparent defects in the Work, assist PCCA in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 5. Perform or provide additional post-construction phase tasks or deliverables stated in the Service Order.
 6. In company with PCCA or PCCA's Representative, provide an inspection of the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.

B. Post-construction phase Services may commence during the construction phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the correction period.

PART 2 – ADDITIONAL SERVICES

A-2.01 Additional Services Requiring PCCA's Authorization in Advance.

If authorized in the Service Order by PCCA, ENGINEER will furnish or obtain from others Additional Services of the types listed below. These services will be paid for by PCCA as indicated in Article 4 of the Agreement.

A. Preparation of applications and supporting documentation (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

B. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of Drawings or other information furnished by PCCA.

C. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, PCCA's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

D. Services resulting from PCCA's request to evaluate additional study and report phase alternative solutions beyond those identified in paragraph A-1.01.A.4.

E. Services required as a result of PCCA's providing incomplete or incorrect Project information with respect to Exhibit B.

F. Providing renderings or models for PCCA's use.

G. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting PCCA in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by PCCA.

H. Furnishing Services of ENGINEER's Consultants for other than Basic Services.

I. Services attributable to more prime construction contracts than specified in paragraph A-1.03.C.

J. Services during out-of-town travel required of ENGINEER other than for visits to the Site or PCCA's office.

K. Preparing for, coordinating with, participating in, and responding to structured independent review processes including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by PCCA, and performing or furnishing Services required to revise studies, reports, Drawings, Specifications, or other Bid Documents as a result of such review processes.

L. Preparing additional Bid or Contract Documents for alternate bids or prices requested by PCCA for the Work or a portion thereof.

M. Assistance in connection with Bid protests, re-bidding or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.

N. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A-1.05.A.5, and any type of property surveys or related engineering needed for the transfer of interests in real property; and providing other special field surveys.

O. Providing construction phase Services beyond the Contract Times set forth in Exhibit M.

P. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.

Q. Preparing and furnishing to PCCA Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

R. Preparation of operation and maintenance manuals.

S. Preparing to serve or serving as a consultant or witness for PCCA in any litigation, arbitration, or other dispute resolution process related to the Project.

T. Providing more extensive Services required to enable ENGINEER to issue notices or certifications requested by PCCA under paragraph 6.01.G of the Agreement.

U. Other Services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

A-2.02 Required Additional Services.

ENGINEER will perform or furnish, without requesting or receiving specific advance authorization from PCCA, the Additional Services of the types listed below. ENGINEER will advise PCCA in writing promptly after starting any such Additional Services.

A. Services in connection with Work Change Directives and Change Orders to reflect changes requested by PCCA so as to make the compensation commensurate with the extent of the Additional Services rendered.

B. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items and Services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

Exhibit B
PCCA's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B-2.01 In addition to other responsibilities of PCCA as set forth in this Agreement, PCCA will:

A. Provide ENGINEER with criteria and information as to PCCA's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; furnish copies of all design and construction standards that PCCA will require to be included in the Drawings and Specifications; and furnish copies of PCCA's standard forms, conditions, and related documents for ENGINEER to include in the Bid Documents, when applicable.

B. Furnish to ENGINEER any other available information known to be in PCCA's possession pertinent to the Project including reports and data relative to previous designs or investigations at the Site.

C. Following ENGINEER's assessment of initially available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land-use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at the Site, or hydrographic surveys with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, impact statements, and other environmental or cultural studies relevant to the Project and the Site.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever PCCA observes or otherwise becomes aware of any defect or nonconformance in ENGINEER's Services.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform Services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as PCCA deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Provide, as required, for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as PCCA requires, Contractor raises, or ENGINEER reasonably requests including, but not limited to, the review of Contract Documents supplied by ENGINEER.
 3. Such auditing services as PCCA requires to ascertain how or for what purpose Contractor has used the moneys paid.
 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by PCCA to perform or furnish Services in regard to the Project including, but not limited to, cost estimating, project peer review, value engineering, and constructability review unless such Services are related to an issue under legal review.
- K. Furnish to ENGINEER data as to PCCA's anticipated costs for Services to be provided by others for PCCA so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- L. ENGINEER will act as the PCCA Representative and Project Manager in accordance with the Agreement and the most current version of the PCCA Project Manual. However, David L. Krams, P.E., PCCA Director of Engineering Services, will, when Project circumstances or ENGINEER's Services require, have final authority over all decisions to be made by PCCA relative to the Project. If PCCA designates a construction manager or any individual or entity other than or in addition to ENGINEER to represent PCCA at the Site, the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER will be defined and set forth in the Service Order or an appendix to the Service Order.
- M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such Services begin.
- N. Attend the pre-Bid conference, Bid opening, pre-construction conferences, construction progress and other Project-related meetings, and Substantial Completion and Final Acceptance inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of PCCA prior to their incorporation into the Work with appropriate professional interpretation thereof:
1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
 2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- P. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B-2.01.O.
- Q. Perform or provide Additional Services stated in the Service Order.

Exhibit C
Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 – PAYMENTS TO THE ENGINEER

C-4.01 *Basic Services Having a Determined Scope – Standard Hourly Rates Method of Payment.*

PCCA will pay ENGINEER for Basic Services set forth in Exhibit A as follows:

A. An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

B. ENGINEER's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.

C. The total compensation for Services under paragraph C-4.01 will be stated in each Service Order issued pursuant to this Agreement.

D. The total compensation for ENGINEER's Services incorporates all labor, overhead, profit, equipment, Reimbursable Expenses, and ENGINEER's Consultant's charges.

E. With approval of the PCCA's Director of Engineering Services, ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with Services actually rendered. ENGINEER will not exceed the total estimated compensation amount unless approved in writing by PCCA.

F. The Standard Hourly Rates method of payment is established for the primary term of this Agreement. Should the time to complete the Work be extended beyond this period without fault on the part of ENGINEER, the total compensation to ENGINEER will be appropriately adjusted.

C-4.02 *Additional Services.*

PCCA will pay ENGINEER for Additional Services of ENGINEER's employees engaged directly on the Project, pursuant to paragraph A-2.01 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

C-4.03 Reimbursable Expenses.

A. When included as a part of Basic Services (Exhibit A, Part 1) or Additional Services (Exhibit A, Part 2), PCCA will pay ENGINEER for Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Reimbursable Expenses include the categories described in Appendix 1 to this Exhibit C and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by PCCA, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

C. The amounts payable to ENGINEER for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by ENGINEER. All invoiced external Reimbursable Expenses allocable to the Project may be invoiced with a markup of 10% of actual cost to ENGINEER.

D. The Reimbursable Expenses Schedule is established for the primary term of this Agreement; provided, however, if the primary term of this Agreement is longer than one year, the Reimbursable Expenses Schedule may be adjusted annually to reflect equitable changes in the compensation payable to ENGINEER.

C-4.04 Standard Hourly Rates.

The Standard Hourly Rates set forth in Appendix 2 to this Exhibit C are for salaries and wages paid to personnel in each billing class and the cost of customary and statutory benefits, general and administrative overhead, non-Project operating costs, and operating margin or profit.

C-4.05 ENGINEER's Consultant's Charges.

Whenever compensation to ENGINEER herein is stated to include charges of ENGINEER's Consultants, those charges will be the amounts billed by ENGINEER's Consultants to ENGINEER at actual cost to ENGINEER plus a markup of 5% if Professional Liability insurance is not provided. ENGINEER may use a markup of 10% if ENGINEER provides Professional Liability insurance that covers ENGINEER's Consultants in an amount approved by PCCA.

C-4.06 Favored Rates.

A. The execution of this Agreement by ENGINEER is a representation material to this Agreement that the hourly rates to be charged by ENGINEER set forth in this Exhibit C are equal to or less than the hourly rates charged by ENGINEER to public entities for the same or similar Services performed by ENGINEER within thirty (30) days prior to the effective date of this Agreement.

B. ENGINEER agrees that if, at any time after the effective date of the Agreement, ENGINEER agrees to charge or charges any other public entity in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area an hourly rate or hourly rates for the same or similar Services performed by ENGINEER pursuant to this Agreement that is, or are, less than any of the Standard Hourly Rates set forth in Appendix 2 to this Exhibit C, then ENGINEER will, effective the date ENGINEER agrees to charge such lower rate or rates, adjust its hourly rate or rates being charged PCCA pursuant to the Agreement to such lower hourly rate or rates. ENGINEER's invoices for payment for Services will include an Application and Certification for Payment signed by ENGINEER and ENGINEER's Consultants that the rates charged PCCA by ENGINEER (which, as defined in this Agreement, includes ENGINEER's independent associates, Consultants, subcontractors, or vendors) are equal to or less than hourly rates charged public entities in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area by ENGINEER for the same or similar Services provided by ENGINEER to PCCA. A sample Application and Certification for Payment form is attached to Master Agreement No. 16-01 as Appendix 3 to Exhibit C. If ENGINEER charges rates in excess of the rates agreed to be charged in this Agreement, then PCCA may recover from ENGINEER the excess charged and paid by PCCA to ENGINEER by deducting such excess from sums to be paid to ENGINEER by PCCA or by PCCA submitting an invoice to ENGINEER for the overcharges.

C-4.07 Other Provisions Concerning Payment.

A. Progress Payments. During the billing period, the portion of the amounts billed for ENGINEER's Services that are related to the Services identified in paragraphs C-4.01 and C-4.02, will be based on the cumulative hours charged to the Project by each class of ENGINEER's employees times the Standard Hourly Rate for each class plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

B. Extended Contract Times. Should the Contract Times to complete the Services be extended beyond the period identified in the Service Order, payment for ENGINEER's Services will be continued based on the Standard Hourly Rates method of payment in the Service Order.

**Exhibit C - Appendix 1
Reimbursable Expenses Schedule**

This Schedule of Reimbursable Expenses is subject to review and may be adjusted pursuant to Exhibit C to this Agreement. The Reimbursable Expenses Schedule for Services performed on the effective date of the Agreement is:

EQUIPMENT AND RELATED CHARGES

GROUND SURVEYING PACKAGE

\$ N/C

Conventional survey equipment and measuring tools

HYDROGRAPHIC SURVEYING PACKAGE

\$425.00/day

Boat

included with crew rate

GPS

Automated Hydrographic Surveying System

Fathometer

Tagline

HYDROEXCAVATION PACKAGE

\$ 2,500/week

Truck

Included with crew rate

Truck with Trailer

Hydro Excavator

Fill Material

Water

SPECIAL SURVEYING EQUIPMENT

DAILY RATE

Fathometer.....	\$ 150.00
Gradiometer.....	\$ 150.00
Centimeter GPS	\$ 150.00
Sub-Meter GPS	\$ 75.00
Robotic Total Station	\$ 150.00
Road Coring Machine	\$ 75.00

BOATS

24 Ft. Pontoon Work Barge w/Outboard.....	..\$ 250.00
18 Ft. Sea Ark Work Boat w/Outboard.....	..\$ 175.00
16 Ft. Polarcraft Work Boat w/Outboard\$ 75.00
10 Ft. Portable Boat w/Outboard.....	..\$ 25.00
Air Cooled Direct Drive Outboard.....	..\$ 25.00

RELATED CHARGES

Per Diem	Federal Travel Regulations
Mileage (Over 50 miles/day per vehicle)	\$.75/mile
Consumables & Fuel	Cost + 15%
Rental Equipment (Including Fuel and Lubricants)	Cost + 15%
Third Party Services	Cost + 15%
Reproduction/Printing	Cost + 15%

**Exhibit C – Appendix 2
Standard Hourly Rates Schedule**

The Standard Hourly Rates Schedule is subject to review and may be adjusted pursuant to Exhibit C to the Agreement. The Standard Hourly Rates Schedule for Services performed on the effective date of the Agreement is:

PERSONNEL RATE SCHEDULE

<u>Classification</u>	<u>Billing Rate</u>
Engineer VII (P.E.) 25+ Yrs Experience	\$150.00 -190.00/hr
Engineer VI (P.E.) 15+ Yrs Experience.....	\$145.00 -185.00/hr
Engineer V (P.E.) 10+ Yrs Experience.....	\$135.00 -175.00/hr
Engineer IV (P.E.) 5+ Yrs Experience	\$125.00 -165.00/hr
Engineer III (E.I.T.) 2+ Yrs Experience	\$ 95.00 -115.00/hr
Engineer II (E.I.T.) 0-2 Yrs Experience (MSCE).....	\$ 75.00 -95.00/hr
Engineer I (E.I.T.) 0-2 Yrs Experience.....	\$ 55.00 -75.00/hr
 CAD Designer II.....	 \$ 85.00 -110.00/hr
CAD Designer I	\$ 60.00 - 85.00/hr
CAD Technician II.....	\$ 50.00 - 65.00/hr
CAD Technician I.....	\$ 45.00 - 55.00/hr
 R.P.L.S.	 \$ 105.00 -175.00/hr
Party Chief	\$ 60.00 -75.00/hr
Instrument Operator	\$ 45.00 -60.00/hr
Rod/Assistant	\$ 40.00 -45.00/hr
2-Person Land Survey Crew* (4 Hr Minimum)	\$ 160.00/hr
3-Person Land Survey Crew* (4 Hr Minimum)	\$ 185.00/hr
4-Person Land Survey Crew* (4 Hr Minimum)	\$ 210.00/hr
<ol style="list-style-type: none"> 1. Includes ground surveying package. 2. Additional charges may apply if special equipment is needed. 	
 Hydrographic Survey Crew* (1/2 Day Minimum).....	 \$2,500/Day
<ol style="list-style-type: none"> 1. Includes Hydrographic surveying package. 	

Hydroexcavation (SUE) Crew* \$15,000/Week

1. *1 week minimum unless work can be scheduled for multiple projects in the same week.*
2. *Includes hydroexcavation package.*
3. *Additional charges for work on active roadways could include road coring machine, traffic control, and pavement repair.*
4. *Disposal site and permits provided by client.*

Construction Inspector \$ 85.00 - 100.00/hr.

Clerical Assistant \$ 40.00 - 80.00/hr.

OVERTIME AND HOLIDAY RATES

Add 50% surcharge to all non-engineer and crew categories' hourly billing rate for weekends and/or for over 40 hrs/week. Add 100% surcharge to all non-engineer categories' hourly billing rates for holidays. Surcharge does not apply to premium rates.

Exhibit C – Appendix 3
Application and Certification for Payment

See attached sample Application and Certification for Payment.

Issued 11/09
Rev. 05/15

Exhibit C – Appendix 3
Application and Certification for Payment

APPLICATION AND CERTIFICATION FOR PAYMENT

To PCCA: Port of Corpus Christi Authority
P. O. Box 1541
Corpus Christi, TX 78403

Project No.: _____
Project Title: _____

Master Agreement No.: _____
Service Order No.: _____
Application Date: _____

From Engineer: _____

ENGINEER'S APPLICATION FOR PAYMENT

Application is made for payment as shown below:

1. Total Amount of Payment for this Service Order (If required) \$ _____
2. Total Amount of Payment for this Application \$ _____
3. Total Amount of Previous Payments for this Service Order \$ _____
4. Total Amount of Payment for this Service Order To Date (Item 2 + Item 3) \$ _____

ENGINEER'S CERTIFICATION FOR PAYMENT

ENGINEER hereby certifies that the rates charged on this invoice are equal to or less than rates charged to public entities in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area by ENGINEER for the same or similar Services provided by ENGINEER to PCCA. If ENGINEER charges rates less than rates charged to public entities in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area as agreed to in this Agreement, then PCCA may recover from ENGINEER the excess charged and paid by PCCA to ENGINEER by deducting such excess from sums to be paid to ENGINEER by PCCA or by PCCA submitting an invoice to ENGINEER for the overcharges.

By: _____

Name: _____

Title: _____

State of Texas §

County of Nueces §

§

Sworn to and subscribed before me on the ____ day of ____ 20__.

(Seal)

Notary Public, State of Texas

Exhibit D
“Duties, Responsibilities, and Limitations of Authority
of Resident Project Representative”

Paragraph 6.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

D-6.02 Resident Project Representative.

A. ENGINEER may, with prior written consent of PCCA, furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENGINEER in observing progress and performance of the Work. ENGINEER’s RPR, assistants, and other field staff may provide full-time representation or representation to a lesser degree.

B. Through such additional observations of Contractor’s Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER will endeavor to provide further protection for PCCA against defects and deficiencies in the Work. However, ENGINEER will not, during such visits or as a result of such observations of Contractor’s Work in progress, supervise, direct, or have control over the Contractor’s Work nor will ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Section A-1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with PCCA and in the Contract Documents, and are further limited and described as follows:

1. *General.* RPR is ENGINEER’s agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s Work in progress will, in general, be with ENGINEER and Contractor, keeping PCCA advised as necessary. RPR’s dealings with subcontractors will only be through or with the full knowledge and approval of Contractor. RPR will generally communicate with PCCA with the knowledge of and under the direction of ENGINEER.

2. *Schedules.* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

3. *Conferences and Meetings.* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison.*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent, and assist in understanding the intent of the Contract Documents.
 - b. Assist ENGINEER in serving as PCCA's liaison with Contractor when Contractor's operations affect PCCA's on-site operations.
 - c. Assist in obtaining from PCCA additional details or information, when required, for proper execution of the Work.
5. *Interpretation of Contract Documents.* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples.*
 - a. Record time of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
7. *Modifications.* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Review of Work and Rejection of Defective Work.*
 - a. Conduct on-site observations of Contractor's Work in progress to assist ENGINEER in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any part of Contractor's Work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise ENGINEER of that part of the Work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
9. *Inspections, Tests, and System Startups.*
 - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and system startups of important phases of the Work.
 - b. Confirm that tests, equipment, systems startups, and operating and maintenance training are conducted in the presence of appropriate PCCA personnel and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.

d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

10. *Records.*

a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site; weather conditions; data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions; Site visitors; daily activities; decisions; observations in general; and specific observations in more detail as in the case of observing test procedures; send copies to ENGINEER.

c. Record names, addresses, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

d. Maintain records for use in preparing Project documentation.

e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.

11. *Reports.*

a. Furnish to ENGINEER periodic reports of the Work as required by the Project and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Furnish to ENGINEER and PCCA copies of all inspection, test, and system startup reports.

d. Report immediately to ENGINEER the occurrence of any accidents at the Site, any Hazardous Environmental Conditions, emergencies, acts of God endangering the Work, and property damaged by fire or other causes.

12. *Payment Requests.* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered to the Site but not incorporated into the Work.

13. *Certificates; Operation and Maintenance Manuals.* During the course of the Work, confirm that materials and equipment certifications, operations and maintenance manuals, and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to PCCA prior to payment for that part of the Work.

14. Completion:

- a. Before ENGINEER issues a Notice of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations including, but not limited to, those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, PCCA, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of Contractor's Work unless such advice or direction are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of PCCA or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize PCCA to occupy the Project in whole or in part.

Exhibit E
Notice of Acceptability of Work

PROJECT TITLE:

PCCA PROJECT NUMBER:

MASTER AGREEMENT NO.:

SERVICE ORDER NO.:

DATE OF CONSTRUCTION AGREEMENT:

ENGINEER:

To: PCCA

And To: *(Insert name of Contractor)*

The undersigned (ENGINEER) hereby gives notice to the above PCCA and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, and the terms and conditions set forth on the reverse side hereof. ENGINEER further recommends PCCA issue a Notice of Final Acceptance to the Contractor.

Company: _____

By: _____

Name: _____

Title: _____

Date: _____

(See Reverse Side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the Scope of Services ENGINEER has been employed by PCCA to perform or furnish during construction of the Project (including observation of the Contractor's Work) under ENGINEER's Agreement with PCCA and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with PCCA and the Construction Contract referenced on the reverse hereof.
5. Said Notice affirms Contractor's performance under the Construction Contract referenced on the reverse hereof but is not an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.
6. Said Notice affirms that the design of the Project complies with all City of Corpus Christi building codes regardless of whether or not the Project is located within the city limits of the City of Corpus Christi.

Exhibit F
Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

F-5.02 *Designing to Construction Cost Limit*

- A. The Construction Cost Limit stated in the Service Order is hereby agreed to.
- B. If stated in the Service Order, a percentage bidding or negotiating contingency will be added to any Construction Cost Limit established.
- C. The written acceptance by PCCA at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost Limit will constitute a corresponding increase in the Construction Cost Limit.
- D. ENGINEER will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof, are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices to bring the Project within the Construction Cost Limit.
- E. If the bidding or negotiating phase has not commenced within six months after completion of the final design phase or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit will not be binding on ENGINEER and PCCA will consent to an adjustment in such Construction Cost Limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the final design phase and the date on which proposals or Bids are sought.
- F. If the lowest *bona fide* proposal or Bid exceeds the established Construction Cost Limit, PCCA will: (1) give written approval to increase such Construction Cost Limit or (2) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (2), ENGINEER will modify the Drawings and Specifications as necessary to bring the Construction Cost within the Construction Cost Limit at no cost to PCCA, and the providing of such Services will be the limit of ENGINEER's responsibility in this regard; and, having done so, ENGINEER will not otherwise be liable for damages attributable to the lowest *bona fide* proposal or Bid exceeding the established Construction Cost Limit.
- G. If PCCA refuses to accept a revised opinion of the probable Construction Cost from ENGINEER, then ENGINEER has no responsibility for modification of the Drawings and Specifications. Modification of the Drawings and Specifications will be performed as Additional Services.

**Exhibit G
Insurance**

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties. A PCCA Certificate of Insurance must be issued upon issuance of each Service Order.

G-6.05 Insurance

The limits of liability for the insurance required by paragraph 6.05 of the Agreement are as follows:

<u>Type of Insurance</u>	<u>Limits of Liability</u>
A. Workers' Compensation	Statutory
B. Employer's Liability	\$1,000,000
C. Commercial General Liability	\$1,000,000 (<i>Any One Occurrence</i>) \$2,000,000 (<i>Aggregate</i>)

Such policy will provide evidence of contractual liability at the aforementioned limits. The Aggregate limit is per Project. The coverage will cover Products and Completed Operations.

D. Business Automobile Liability	\$1,000,000 (<i>CSL, Each Accident</i>)
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Automobile liability coverage will include all owned, non-owned, and hired vehicles.

E. Professional Liability Insurance (E&O) Effective Through:	\$2,000,000 (<i>Per Claim</i>) Primary Term and Any Extension of this Agreement
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ENGINEER will procure and maintain professional liability insurance for protection from claims arising out of performance of Professional Services caused by a negligent error, omission, or act for which the insured is legally liable. Such professional liability insurance will provide and maintain in full force and effect coverage in such amounts with deductible provisions that must be approved by PCCA in writing and for such period of time as set forth above. If required, a copy of the policy will be delivered to PCCA.

F. Umbrella Liability	\$5,000,000
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Umbrella liability coverage will apply to Employer's Liability, Commercial General Liability, and Business Automobile Liability.

**Exhibit G – Appendix 1
PCCA Certificate of Insurance**

An executed copy of the Certificate(s) of Insurance must be provided to PCCA for each Service Order which certificate(s) must be approved by, and on file with, the Texas Insurance Commission, and must be reasonably acceptable in their content, to PCCA.

Exhibit H
Dispute Resolution

Paragraph 6.09 of the Agreement is amended and supplemented to include the following agreement of the parties:

H-6.09 *Dispute Resolution*

All disputes between PCCA and ENGINEER, subject to the negotiation or mediation referred to in paragraph 6.09 of this Agreement, will be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association effective at the Effective Date of the Agreement, subject to the limitations and restrictions stated in paragraphs A through D below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph H-6.09 will be specifically enforceable under prevailing law of any court having jurisdiction.

A. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations.

B. All demands for arbitration and all answering statements thereto that include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$100,000.00 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider or make findings (except in denial of their own jurisdiction) concerning any dispute where the amount in controversy of any such dispute is more than \$100,000.00 (exclusive of interest and costs) or to render a monetary award in response thereto against any party that totals more than \$100,000.00 (exclusive of interest and costs).

C. The award rendered by the arbitrators will be final, and judgment may be entered upon it in any court in Nueces County, Texas, having jurisdiction thereof.

D. If a dispute in question between PCCA and ENGINEER involves the Work of a Contractor, subcontractor, or consultant to PCCA or ENGINEER (each a "Joinable Party"), either PCCA or ENGINEER may join each Joinable Party as a party to the arbitration between PCCA and ENGINEER hereunder, and ENGINEER or PCCA, as appropriate, will include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between PCCA and ENGINEER involving the Work or Services of such Joinable Party. Nothing in this paragraph H-6.09, nor in the provision of such contract consenting to joinder, will create any claim, right, or cause of action in favor of the Joinable Party and against PCCA or ENGINEER that does not otherwise exist.

Exhibit I
Allocation of Risks

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

I-6.11 Indemnification and Release.

A. As used in this paragraph I-6.11, each of the following terms will have the meanings set forth in this Section I-6.11A

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 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 reasonable and incurred 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 PCCA, its Port Commissioners, directors, managers, employees, and agents.

6. “ENGINEER Parties” means the Engineer, its agents, employees, owners, consultants under contract, or other entities over which the Engineer exercises control.

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 paragraph I-6.11, ENGINEER will Defend and Indemnify the Indemnified Persons from and against all Claims to the extent caused by or resulting from, or alleged to have been caused by or resulted from, any of the following matters (these Claims being referred to herein as the “Indemnified Claims”):

1. The negligent conduct of ENGINEER’s business on the Project;

2. ENGINEER’s breach of this Agreement; or

3. Any negligent act, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by any ENGINEER Party, including the sole, joint, concurrent, or comparative negligence of any ENGINEER Party in connection with or pertaining to this Agreement.

C. The Indemnities, Waivers and obligation to Defend in this paragraph I-6.11 will 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; 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 paragraph I-6.11, 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 ENGINEER Parties, then the ENGINEER's obligation to the Indemnified Persons will extend only to the percentage of the total responsibility of the ENGINEER Parties in contributing to such Indemnified Claim.

E. In Claims against any Indemnified Person by or for an employee of an ENGINEER Party, the ENGINEER's indemnification obligation under this paragraph I-6.11 will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the ENGINEER Party under the Workers' Compensation Act, disability benefit acts, or other employee benefit acts.

F. Except as otherwise expressly limited in this paragraph I-6.11, 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.

G. If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this paragraph I-6.11, the Indemnified Person will be represented by its general counsel or another attorney selected by the Indemnified Person and approved by ENGINEER, which approval will not be unreasonably withheld, and ENGINEER shall indemnify the Indemnified Person for attorney's fees actually incurred.

H. If ENGINEER should fail or refuse, after written notice to ENGINEER 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 ENGINEER will constitute a settlement of the proportionate fault including, but not limited to, negligence of both ENGINEER and the Indemnified Person, which settlement may later be apportioned between Indemnified Person and ENGINEER.

I. ENGINEER agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage; provided, however, PCCA acknowledges that Eningeer's professional liability insurance will not provide for defense coverage.

J. To the fullest extent provided by this paragraph I-6.11, ENGINEER hereby Waives all Claims against the Indemnified Persons caused by or resulting from any of the Indemnified Claims.

Exhibit J
Special Provisions

The Agreement is amended to include the following provisions, and to the extent they are inconsistent with prior provisions of the Agreement, the following provisions will control the Agreement, *to wit*:

A. ENGINEER will prepare a schedule of Services identified as the "Service Schedule" in the Service Order attached hereto and made a part of this Agreement. The Service Schedule will contain a complete schedule so that ENGINEER's Scope of Services under this Agreement can be accomplished within the specified time and contract cost. The Service Schedule will provide specific task sequences and definite review times by PCCA and ENGINEER of the Services performed. If the review time should take longer than shown on the Service Schedule, through no fault of ENGINEER, additional contract time will be authorized by PCCA through a supplemental agreement if requested by a timely written request from ENGINEER and approved by PCCA.

B. ENGINEER will notify PCCA in writing as soon as possible if ENGINEER determines or reasonably anticipates that Services under the Agreement cannot be completed before the due date for such Services, and PCCA may, at its sole discretion, extend the contract period by timely supplemental agreement. ENGINEER must allow adequate time for review and approval of the request for time extension by PCCA prior to expiration of this Agreement.

C. ENGINEER will promptly advise PCCA in writing of events that have a significant impact upon the progress of the Services, including:

1. Problems, delays, adverse conditions that will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the completion of any phase by the established time periods; this disclosure will be accompanied by a statement of the action taken or contemplated and any state or federal assistance needed to resolve the situation; and

2. Favorable developments or events that enable meeting the Service Schedule goals sooner than anticipated.

D. PCCA assumes no liability for Services performed or costs incurred prior to the date authorized by PCCA to begin Services, during periods when Services are suspended, or subsequent to the completion date of the Services.

E. If PCCA finds it necessary to request changes to previously satisfactorily completed Work or parts thereof which involve changes to the original Scope of Services or character of the Work under the Agreement, ENGINEER will make such revisions if requested and as directed by PCCA. This will be considered as Additional Services pursuant to Exhibit A, Part 2, "Additional Services."

F. All data, basic sketches, charts, calculations, plans, Specifications, and other documents created or collected under the terms of the Agreement are the exclusive property of PCCA and will be furnished to PCCA upon request. All documents prepared by ENGINEER and all documents furnished to ENGINEER by PCCA will be delivered to PCCA upon completion or termination of the Agreement. ENGINEER, at ENGINEER's expense, may retain copies of such documents or any other data that it has furnished PCCA under the Agreement.

G. ENGINEER will furnish adequate and sufficient personnel and equipment to perform the Services. All employees of ENGINEER will have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of ENGINEER who, in the opinion of PCCA, is incompetent or whose conduct becomes detrimental to the Services will immediately be removed from association with the Project when ENGINEER is so instructed by PCCA. ENGINEER certifies that it presently has adequate qualified personnel in its employ for performance of the Services required under the Agreement or will be able to obtain such personnel from sources other than PCCA.

H. PCCA has the right at all reasonable times to review or otherwise evaluate the Services performed or being performed hereunder and the premises in which it is being performed. If any review or evaluation is made on the premises of ENGINEER or an ENGINEER's Consultant, ENGINEER will provide and require its Consultants to provide all reasonable facilities and assistance for the safety and convenience of PCCA's Representative(s) in the performance of their duties.

I. The responsible ENGINEER will sign, seal and date all appropriate engineering submissions to PCCA in accordance with the Texas Engineering Practices Act and the Rules of the State Board of Registration for Professional Engineers.

J. PCCA has the exclusive right to examine the books and records of ENGINEER for the purpose of checking the amount of Services performed by ENGINEER at the time of termination of the Agreement. ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and will make such materials available at its office during the Agreement period and for four (4) years from the date of final payment under this Agreement or until pending litigation has been completely and fully resolved, whichever occurs last. PCCA will have access to any and all books, documents, papers, and records of ENGINEER that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions of time-based and Reimbursable Expenses.

K. ENGINEER will comply with the Regulations of the Department of Transportation 49 CFR Parts 21 and 23 CFR §710.405(b) as they relate to nondiscrimination; also, Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in Department of Labor Regulation 41 CFR Part 60. See "Civil Rights Compliance" attached hereto and identified as Exhibit K.

L. Under Section 231.006 of the Family Code, ENGINEER certifies that the individuals or business entity named in the Agreement are eligible to receive the specified grant or payment and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate. ENGINEER further acknowledges that ENGINEER has read Exhibit L and has provided the names and social security numbers required therein.

Exhibit K
Civil Rights Compliance

(Required when state or federal funding is involved)

During the performance of this Agreement, ENGINEER, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance with Regulations: ENGINEER will comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Parts 21 and 23, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination: ENGINEER, with regard to the work performed by him during the contract, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. ENGINEER will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by ENGINEER for Services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by ENGINEER of ENGINEER's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

D. Information and Reports: ENGINEER will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to ENGINEER's books, records, accounts, other sources of information, and ENGINEER's facilities as may be determined by PCCA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information, ENGINEER will so certify to the funding agency named in the Service Order, as appropriate, and will set forth what efforts ENGINEER has made to obtain the information.

E. Sanctions for Noncompliance: In the event of ENGINEER's noncompliance with the nondiscrimination provisions of the Agreement, PCCA may impose such contract sanctions as it may determine to be appropriate including, but not limited to, withholding of payments to ENGINEER under this Agreement until ENGINEER complies and/or cancellation, termination, or suspension of this Agreement, in whole or in part.

F. Incorporation of Provisions: ENGINEER will include the provisions of paragraphs A through F of this Exhibit K in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. ENGINEER will take such action with respect to any subcontract or procurement as PCCA may direct as a means of enforcing such provisions including sanctions for noncompliance.

Exhibit L
Child Support Statement
for Contracts or Grants

(Required when state or federal funding is involved)

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this Agreement, Bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

List below the names and social security numbers of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the Bid or application.

Section 231.006, Family Code, specifies that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage has been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Parts A and D of Title IV of the federal Social Security Act (42 USC Sections 601-617 and 651-669).

**Exhibit M
Service Order Form**

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS
SERVICE ORDER NO. *(Insert Service Order number)*
MASTER AGREEMENT NO. *(Insert Master Agreement number)*
PROJECT NO. *(Insert Project number)***

Pursuant to PCCA Master Agreement No. *(Insert Master Agreement number)* between Port of Corpus Christi Authority of Nueces County, Texas ("PCCA") and *(Insert name of Engineer)* ("ENGINEER"), ENGINEER will provide the Basic and Additional Services set forth in Exhibit A of Master Agreement No. *(Insert Master Agreement number)* in accordance with any additions or deletions to the same or any Services different from those described in the said Exhibit A, in this Service Order. This Service Order modifies or amends PCCA Master Agreement No. *(Insert Master Agreement number)*, the provisions of which not specifically amended by this Service Order will remain in effect.

Description of Project:

(Insert a brief paragraph that includes the Project number and title, a description of the Project, and list the amount specific to this Service Order. A more detailed description of the Project may be included if desired as Appendix 1, attached hereto and included herein by reference for all purposes.)

Project Contact for PCCA:

Project Contact for ENGINEER:

Project Manager: *(Insert name of Project Manager)*

Project Manger: *(Insert name of Project Manager)*

Phone Number: *(Insert Project Manager's phone number)*

Phone Number: *(Insert Project Manager's phone number)*

Scope of Services:

(Insert a detailed description of the Services to be performed.)

1. Study/Report Phase.
2. Preliminary Design Phase.
3. Final Design Phase.

Service Schedule:

(If deadlines are required, describe them here.)

Deliverables:

(Insert numbered list of deliverables to be provided by ENGINEER.)

(List names and addresses of all consultants ENGINEER will employ on this Project.)

Compensation:

In accordance with Article 4 of Master Agreement No. *(Insert Master Agreement number)* and negotiations between the parties, ENGINEER will be compensated pursuant to this Service Order as follows:

	<u>Contract Not to Exceed</u>
Report & Study Phase	\$ _____
Preliminary Design Phase	\$ _____

Final Design Phase \$ _____

Construction Cost Limit:

(If a Construction Cost Limit is established, enter amount here. See paragraph 5.02 of Article 5 and Exhibit F of the Agreement)

Construction Cost Limit \$ _____

Reimbursement:

The following applies to expenses reimbursed under this Service Order:

Invoices: ENGINEER will submit invoices to PCCA *(Insert whether monthly, upon completion of each task, or other payment schedule)* in accordance with the fee schedule set forth in this Agreement. Requests for payment must be supported by documentation such as invoices, receipts, statements, stubs, tickets, time sheets, and any other documentation that, in the reasonable judgment of PCCA, provides complete substantiation of Reimbursable Expenses incurred by ENGINEER. All deliverables and reimbursement documents submitted to PCCA must prominently display PCCA Master Agreement No. *(Insert Master Agreement number)*, Service Order No. *(Insert Service Order number)*.

Funding Agency: *(Insert name of outside funding agency, if any)*

Termination or Interpretation of Services:

PCCA reserves the right to halt or defer all or any portion of the Services included in the Scope of Services for this Service Order at any time during the performance period. If the Services are halted or deferred, the parties agree that the schedule and budget may require renegotiation.

Amendments to Service Order:

Material changes to this Service Order may be made only by written agreement of the parties to the Agreement. All provisions of PCCA Master Agreement No. *(Insert Master Agreement number)* not specifically amended by this Service Order will remain in force and effect.

Effective on the date executed by the last party to this Service Order.

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

By: _____

Name: David L. Krams, P.E.

Title: Director of Engineering Services

Date of Execution: _____

“PCCA”

(Insert name of Engineer)

By: _____

Name: _____

Title: _____

Date of Execution: _____

“ENGINEER”

Client#: 180670

LJAENGIN

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/02/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest Three Memorial City 840 Gessner, Suite 600 Houston, TX 77024	CONTACT NAME: Dinora Ancira PHONE (A/C, No, Ext): 713 490-4600 FAX (A/C, No): 713-490-4700 E-MAIL ADDRESS: dinora.ancira@usi.biz														
INSURED LJA Engineering, Inc. 2929 Briarpark Dr. Ste 600 Houston, TX 77042	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Hartford Fire Insurance Company</td> <td>19682</td> </tr> <tr> <td>INSURER B : Commerce & Industry Insurance C</td> <td>19410</td> </tr> <tr> <td>INSURER C : Hartford Fire Insurance Co</td> <td>19682</td> </tr> <tr> <td>INSURER D : Berkley Insurance Company</td> <td>32603</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Hartford Fire Insurance Company	19682	INSURER B : Commerce & Industry Insurance C	19410	INSURER C : Hartford Fire Insurance Co	19682	INSURER D : Berkley Insurance Company	32603	INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR 10,000 P/D Ded GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC			61UUNJD0702**	09/01/2015	09/01/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000** PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			61UUNJD0702	09/01/2015	09/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			BE33096781	09/01/2015	09/01/2016	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	61WBVX6527	09/01/2015	09/01/2016	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability			AEC900619800	09/01/2015	09/01/2016	\$5,000,000 per claim \$5,000,000 annl aggr.

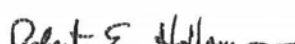
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Blanket Additional Insured including products/completed operations coverage(all policies except Professional Liability and Workers Compensation) is provided if required by written contract executed prior to a loss, but limited to the operations of the Named Insured per policy forms HG00 01 06 05(GL); CG20100413GL; CG20370413(GL); HA 99 16 03 12(Auto); 80517 11/09(Umbrella).

(See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

Port of Corpus Christi Authority P.O. Box 1541 Corpus Christi, TX 78403	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

Coverage provided on the General Liability is primary and non-contributory if required by written contract executed prior to a loss.

****Maximum annual Aggregate limit \$10,000,000**

Blanket Waiver of Subrogation is provided on General Liability, Auto, Umbrella, Professional Liability and Workers Compensation policies as required by written contract executed prior to a loss per policy form HG 00 01 06 05(GL); HA 99 16 03 12(Auto); 80517 11/09(Umbrella); and WC 42 03 04(Workers Compensation).

Umbrella Liability policy follows form of the underlying policies, General Liability, Auto Liability and Workers Compensation.

30 day notice of cancellation except 10 day notice of cancellation for non-payment of premium.

SERVICE ORDER NO. 1
PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS
MASTER AGREEMENT NO. 16-01 LJA Engineering, Inc.
PROJECT NO. 15-061C
PROJECT NAME: Security Grant 15 – Perimeter Fencing at Bulk Terminal

Pursuant to PCCA Master Agreement No. 16-01 between Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”) and LJA Engineering, Inc. (“ENGINEER”), ENGINEER will provide the Basic and Additional Services set forth in Exhibit A of Master Agreement No. 16-01 in accordance with any additions or deletions to the same or any Services different from those described in the said Exhibit A, in this Service Order. This Service Order modifies or amends PCCA Master Agreement No. 16-01, the provisions of which not specifically amended by this Service Order will remain in effect.

Description of Project:

This project will provide a full outer perimeter security fence for the Bulk Terminal, which includes Bulk Docks #1 and #2, and associated bulk commodity storage areas. This perimeter fencing with controlled entry gates at selected locations will provide a single access point to the Bulk Docks from the Navigation Blvd. entrance. Funding for this work is provided under Federal Emergency Management Agency (FEMA) Security Grant 15, Project 2, Perimeter Fencing at Bulk Terminal. Grant related reporting and record keeping will be required.

Project Contact for PCCA:

Project Contact for ENGINEER:

Project Manager: David L. Michaelson, P.E.

Project Manager: Carlos Martinez, P.E.

Phone Number: (361) 885-6164

Phone Number: (361) 887-8851

Scope of Services:

1. Study/Report Phase.

In accordance with Section A-1.01 of Exhibit A of the Master Agreement, ENGINEER will provide the following services:

Provide grant administration services to include correspondence, reporting and record keeping as required by FEMA through the life of the grant.

2. Preliminary Design Phase.

In accordance with Section A-1.02 of Exhibit A of the Master Agreement, ENGINEER will provide the following services:

Meetings with Port staff to coordinate the location of the improvements.

3. Final Design Phase.

With concurrence from PCCA on the preliminary design and in accordance with the Basic Services in Section A-1.03 of Exhibit A of the Master Agreement, ENGINEER will provide the following services:

Develop the construction plans, bid documents, technical specifications, and estimates of construction costs for the site fencing and gates. Contract documents to include Base Bid and various Additive/Deductive and Alternate Bid Items to better ensure project is within the budget.

4. Bidding or Negotiating Phase.

With concurrence from PCCA on the Bid Documents and the most recent opinion of probable Construction Cost as determined in the final design and in accordance with the Basic Services in Section A-1.04 of Exhibit A of the Master Agreement, ENGINEER will provide the following services:

Facilitating pre-bid meetings, assisting with solicitation and evaluation of sealed bids, recommendations of bids, assisting with executing contracts, scheduling, developing addenda, assisting with preparing mandatory post award reports.

5. Construction Phase.

With concurrence from PCCA on the bidding and negotiations and in accordance with the Basic Services in Section A-1.05 of Exhibit A of the Master Agreement, ENGINEER will provide the following services:

Project Inspection will include direct, day to day monitoring of all construction and installation work to provide quality control and quality assurance. Project Inspection will ensure that all construction is accomplished per the plans and specifications that were set forth in each contract. Tasks include reviewing submittals, reviewing pay requests, processing change orders, attending construction progress meetings.

Service Schedule:

1. Preliminary Plans, Specifications and Estimates for security improvements: 30 days after design scoping meeting with PCCA.
2. Final Plans, Specifications and Estimates for security improvements: 60 days after Preliminary Plans comments received by PCCA.

Deliverables:

1. Design Drawings – 11" x 17" – 1 hard copy set and CD
2. Technical Specifications – 8 ½" x 11" – 1 hard copy set and CD

Compensation:

In accordance with Article 4 of Master Agreement No. 16-01 and negotiations between the parties, ENGINEER will be compensated on a time and materials, not-to-exceed basis in accordance with Section C.401 of the Master Agreement, pursuant to this Service Order as follows:

Report & Study Phase	\$ <u>22,080</u>
Preliminary Design Phase	\$ <u>22,080</u>
Final Design, Bidding and Construction Phases	\$ <u>38,640</u>
Total	\$ <u>82,800</u>
Contingency (<i>PCCA Approval Required</i>)	\$ _____

Construction Cost Limit:

(If a Construction Cost Limit is established, enter amount here. See paragraph 5.02 of Article 5 and Exhibit F of the Agreement)

Construction Cost Limit

\$ N/A

Reimbursement:

The following applies to expenses reimbursed under this Service Order:

Invoices: ENGINEER will submit invoices to PCCA monthly in accordance with the fee schedule set forth in this Agreement. Requests for payment must be supported by documentation such as invoices, receipts, statements, stubs, tickets, time sheets, and any other documentation that, in the reasonable judgment of PCCA, provides complete substantiation of Reimbursable Expenses incurred by ENGINEER. All deliverables and reimbursement documents submitted to PCCA must prominently display PCCA Master Agreement No. 16-01, Service Order No. 1.

Funding Agency: US Department of Homeland Security – FEMA.

Termination or Interpretation of Services:

PCCA reserves the right to halt or defer all or any portion of the Services included in the Scope of Services for this Service Order at any time during the performance period. If the Services are halted or deferred, the parties agree that the schedule and budget may require renegotiation.

Amendments to Service Order:

Material changes to this Service Order may be made only by written agreement of the parties to the Agreement. All provisions of PCCA Master Agreement No. 16-01 not specifically amended by this Service Order will remain in force and effect.

Material Changes to Master Agreement:

All provisions of PCCA Master Agreement No. 16-01 are in full force and effect.

Effective on the date executed by the last party to this Service Order.

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

By: _____

Name: _____ David L. Krams, P.E. _____

Title: _____ Director of Engineering Services _____

Date of Execution: _____

“PCCA”

LJA Engineering, Inc.

By: _____

Name: _____

Title: _____

Date of Execution: _____

“ENGINEER”



DATE: February 16, 2016
TO: Port Commission
FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 14-H

Approve a Service Order with RVE, Inc., dba LJA Engineering Inc., under Professional Services Master Agreement 13-06, for Engineering and Construction Phase Services for Installation of Additional Cameras at the La Quinta and Gulf Intracoastal Waterway Camera Locations

SUMMARY: Staff requests approval of a Service Order with LJA Engineering Inc. (previously RVE Inc.), under its existing Professional Services Master Agreement, in an amount not to exceed \$48,900 for engineering and construction phase services associated with the installation of additional cameras at the La Quinta and Gulf Intracoastal Waterway camera pole locations.

BACKGROUND: In 2015, the PCCA completed the installation of two new waterway surveillance camera locations for the La Quinta Channel and Gulf Intracoastal Waterway. See attached exhibit. The project was partially funded under Security Grant 13, and the deadline to complete this work was August 31, 2015. However, during a follow-up visit to the PCCA by FEMA auditors, PCCA staff and the FEMA auditors discussed the subject of a WAV (Wide Angle View) Camera that had been purchased under a different Security Grant project for installation at this site but had not been installed though it had been approved for installation by the Security Grant administrator. Upon review of the situation and after formal request by PCCA staff, FEMA officials have granted an extension of time to allow the installation of the additional WAV camera and other surveillance cameras to be placed into service on the two camera pole locations.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: Since 2002, the PCCA has employed RVE, Inc. (now LJA Engineering, Inc.) as the PCCA's security engineer. For projects such as these that involve the use, access, and development of security systems and sensitive information, once a primary engineering firm is selected, that firm is allowed to continue to provide similar services throughout the grant program. This practice limits the number of vendors who have access to the highly sensitive security systems that have been

developed over the years. The PCCA has continued to use LJA for these reasons as well as LJA's successful past performance.

EMERGENCY: This is a time sensitive project that needs to be complete by August 31, 2016.

FINANCIAL IMPACT: The 2016 budget includes \$376,900 (\$94,225 PCCA funds and \$282,675 Federal Grant reimbursable funds) for this capital project. If no action is taken on this project, the PCCA would lose the Federal Security Grant funds.

STAFF RECOMMENDATION: Staff recommends approval of a Service Order with RVE Inc., dba LJA Engineering Inc., in an amount not to exceed \$48,900 for engineering and construction phase services associated with the installation of additional cameras at the La Quinta and Gulf Intracoastal Waterway channel surveillance locations.

DEPARTMENTAL CLEARANCES:

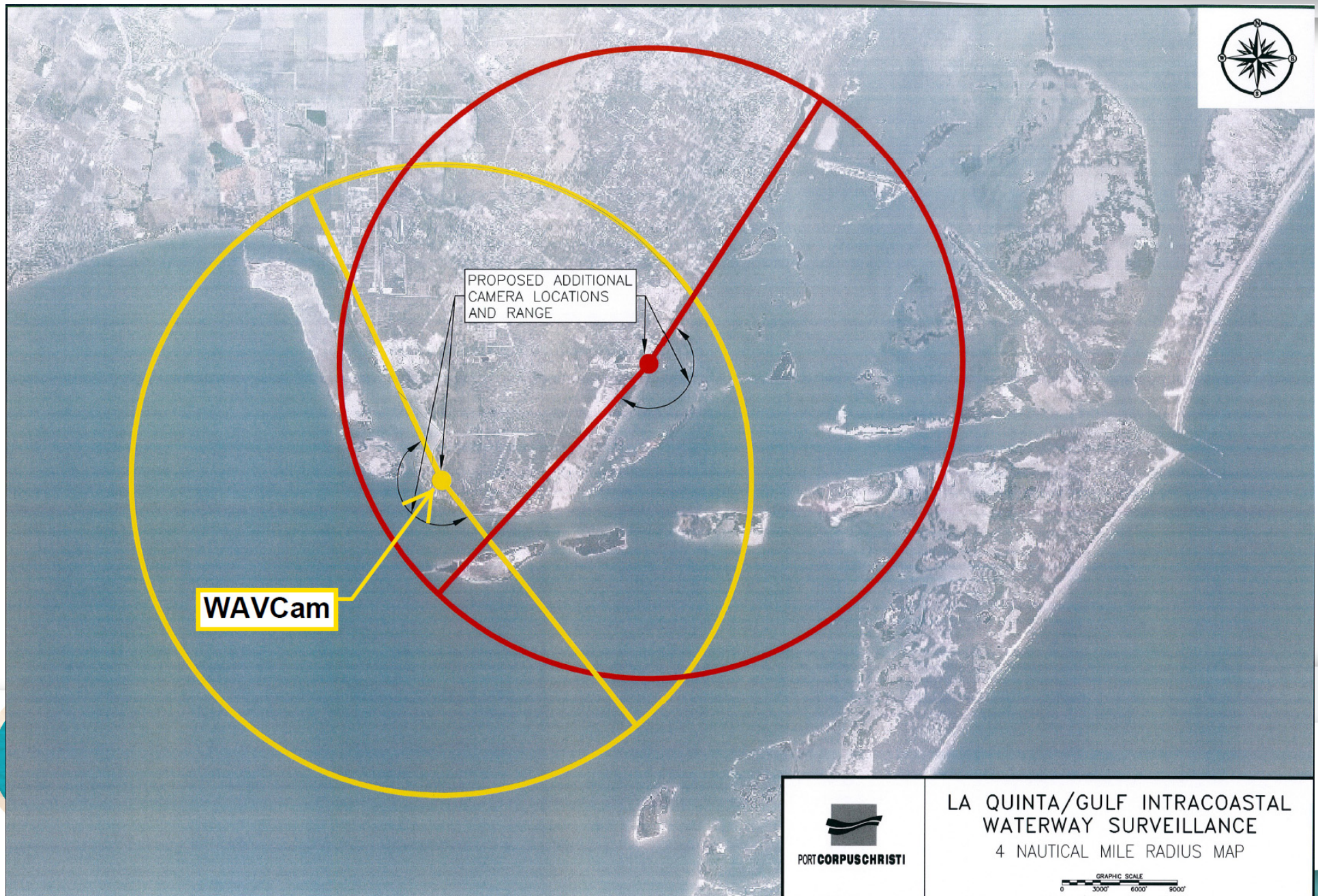
Originating Department	Engineering Services
Reviewed & Approved	David Krams
	Dave Michaelson
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Map Exhibit of La Quinta Channel & Gulf Intracoastal Waterway camera pole locations

Additional Surveillance at La Quinta & GIWW Camera Locations

AGENDA ITEM NO. 14-H



DATE: February 16, 2016

TO: Port Commission

FROM: Sarah L. Garza, Director of Environmental Planning & Compliance
sarah@pocca.com
(361) 885-6163

AGENDA ITEM NO. 14-I

Approve a Service Order with Apex TITAN, Inc., a Subsidiary of Apex Companies, Under Its Professional Services Master Agreement No. 06-14 for Additional Environmental Consulting Services Associated with Investigation and Assessment of PCCA Property near South Side of the Channel and Navigation Boulevard

SUMMARY: Staff requests approval of Service Order number 4 for an amount of \$7,156.50 with Apex TITAN, Inc., a subsidiary of Apex Companies, under its Professional Services Master Agreement No. 06-14 for additional environmental consulting services associated with the investigation and assessment of PCCA property near the south side of the Inner Harbor Channel and Navigation Boulevard. This property is being investigated under a Voluntary Cleanup Program agreement between the PCCA and the Texas Commission on Environmental Quality (TCEQ) and is included in the 2016 budget. Project costs associated with previous Service Orders total \$69,044.50, to date.

BACKGROUND: The PCCA owns property located south of the former Tule Lake Lift Bridge that has been leased to various parties in the past. In the course of leasing the property, soil samples were collected and tested, and elevated metals were found in the samples. Additional site investigation, delineation, and remedial activities were conducted on the property in 2008, 2009, 2014 and 2015, to evaluate the presence, magnitude, and extent of the impacts associated with elevated concentrations of metals in soil borings above the TCEQ Texas Risk Reduction Program Tier 1 Residential Assessment Levels. Additional data collection and completion of an Affected Property Assessment Report is still needed for case closure with the TCEQ.

In 2015, the PCCA applied to the Voluntary Cleanup Program and was accepted. Through the Voluntary Cleanup Program the state will issue a certificate of closure for the entire property after all impacts have been fully assessed and remediated, if necessary. There was surface staining identified in a Phase I Environmental Site Assessment completed by a previous tenant. The surface staining was removed by the past tenant but sampling was not conducted to verify removal. Therefore, it is

necessary to collect samples in these areas for this purpose. Additionally, another round of groundwater sampling is warranted to further define the arsenic concentrations, if any, in groundwater.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: This will conform to the PCCA's draft Environmental Policy for approval at this same Commission Meeting.

EMERGENCY: No.

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: Staff recommends approval of a Service Order with Apex TITAN Inc. in an amount not to exceed \$7,156.50 to progress the site towards case closure under the TCEQ's Voluntary Cleanup Program.

DEPARTMENTAL CLEARANCES:

Originating Department	Environmental Planning & Compliance
Reviewed & Approved By	James Haley
	Sarah Garza
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Location Map Exhibit



Service Order with Apex TITAN, Inc. for site investigation activities.



DATE: February 16, 2016

TO: Port Commission

FROM: Sarah L. Garza, Director of Environmental Planning & Compliance
sarah@pocca.com
(361) 885-6163

AGENDA ITEM NO. 14-J

**Approve Professional Services Master Agreement No. 08-16 and
Service Order 1 with Alan Plummer Associates Inc. for
General Environmental Consulting Services**

SUMMARY: Staff is requesting approval of a Professional Services Master Agreement with Alan Plummer Associates Inc. (APAI) for environmental consulting services. Additionally, included with the Master Agreement is Service Order No. 1 for consulting services associated with public water supply system compliance requirements for an amount not-to-exceed \$10,940. This is budgeted under General Environmental in the 2016 Budget.

BACKGROUND: APAI has expertise in public water supply system requirements and staff is needing support in ensuring compliance within the Port area for our existing water supply system. Support would include developing a compliance strategy and identifying long-term maintenance requirements to maintain compliance.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: This will provide assistance to PCCA to meet the requirements of our existing environmental policy which includes a commitment to comply with applicable legal and other requirements.

EMERGENCY: No.

FINANCIAL IMPACT: N/A

STAFF RECOMMENDATION: Staff recommends approval of the Professional Services Master Agreement with APAI for environmental consulting services and the associated Service Order No. 1 for \$10,940.

DEPARTMENTAL CLEARANCES:

Originating Department	Environmental Planning & Compliance
Reviewed and Approved By	Danielle Converse
	Sarah Garza
Legal	Jimmy Welder
Senior Staff	John LaRue
	Sean Strawbridge
	Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Master Agreement No. 08-16 with Alan Plummer Associates Inc.

**MASTER AGREEMENT
BETWEEN
PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS,
AND ENVIRONMENTAL CONSULTANT
FOR
PROFESSIONAL SERVICES
SERVICE ORDER BASIS**



ALAN PLUMMER ASSOCIATES, INC.

MASTER AGREEMENT NO. (08-14)

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**MASTER AGREEMENT
BETWEEN
PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS, AND ENVIRONMENTAL
CONSULTANT FOR PROFESSIONAL SERVICES
SERVICE ORDER BASIS**

THIS IS AN AGREEMENT made effective as of the 16th day of February, 2016 ("Effective Date") between Port of Corpus Christi Authority of Nueces County, Texas, ("PCCA") and Alan Plummer Associates, Inc. ("ENVIRONMENTAL CONSULTANT"), and ending at 5:00 p.m. on the 15th day of February, 2017. ENVIRONMENTAL CONSULTANT intends to provide Professional Services to PCCA pursuant to Service Orders that may be issued by PCCA to ENVIRONMENTAL CONSULTANT from time to time as a part of this Agreement. In addition, PCCA has the option to renew the term of this Agreement for two (2) additional option periods of one (1) year each, beginning on the first day after the expiration of the primary term and each option term thereof. The right to renew will be exercised by PCCA giving to ENVIRONMENTAL CONSULTANT notice in writing of such exercise at least thirty (30) days prior to the expiration of the primary term or any option term of this Agreement. Notice of an intention to exercise an option under this Agreement must, to be effective, be hand delivered by reputable courier or sent by certified mail or facsimile transmission to ENVIRONMENTAL CONSULTANT at the address provided in the section in this Agreement entitled, "Notices," and must be postmarked no later than the latest date provided in this paragraph for PCCA's exercising the option. If either party wishes to change its address for notices, that party will submit the address change in writing to the other party in the same manner set forth in this paragraph. Each Service Order issued by PCCA to ENVIRONMENTAL CONSULTANT will be for a separate Project ("Project"). This Agreement is referred to in any Service Order issued pursuant hereto as "Master Agreement No. 08-16." PCCA and ENVIRONMENTAL CONSULTANT in consideration of their mutual covenants as set forth herein further agree as follows:

**ARTICLE 1
SERVICES OF ENVIRONMENTAL CONSULTANT**

1.01 Scope and Project Description

A. ENVIRONMENTAL CONSULTANT will provide the Basic and Additional Services set forth herein and in Exhibit A. The Service Order may add or delete certain Basic or Additional Services provided for in this Agreement or provide certain terms that are different from terms provided in this Agreement. In such instances, PCCA and ENVIRONMENTAL CONSULTANT will provide in the Service Order reference by paragraph number or numbers those terms in this Agreement that are deleted or changed by the terms in the Service Order. In the event of a conflict between terms in this Agreement and the Service Order, the terms stated in the Service Order will control this Agreement. **Services pursuant to this Agreement will be required on an irregular and as needed basis during the term of this Agreement, and PCCA has not made nor does it make any representation of any kind or guarantee regarding the amount of Services PCCA will require from ENVIRONMENTAL CONSULTANT under this Agreement.**

B. During the term of this Agreement, PCCA may request that ENVIRONMENTAL CONSULTANT perform certain tasks described in this Agreement and in Exhibit A, subject to the issuance by PCCA of a Service Order, a sample of which is attached hereto and incorporated herein by reference for all purposes as Exhibit M. A Service Order for each separate Project issued pursuant to this Agreement will be attached to this Agreement, and each Service Order attached to this Agreement is hereby incorporated herein by reference for all purposes. Multiple Service Orders may be issued during the term of this Agreement. All Service Orders must be in writing, signed by an authorized representative of PCCA and ENVIRONMENTAL CONSULTANT, and include, if not described in this Agreement, a Scope of Services, a Basis of Payment, a list of tasks to be performed by ENVIRONMENTAL CONSULTANT, a time schedule, a list of deliverables, if any, and such other information or special conditions as may

be necessary for the Services required. Upon execution by the parties to this Agreement, each Service Order will become an attachment to this Agreement, and this Agreement with any attached Service Orders thereafter will be referred to as the "Agreement." **Nothing, however, contained in the foregoing provision for the issuance of a Service Order or Service Orders constitutes a representation or a guarantee that PCCA will issue any Service Order to ENVIRONMENTAL CONSULTANT for any of the Services of ENVIRONMENTAL CONSULTANT described in this Agreement.**

C. ENVIRONMENTAL CONSULTANT will neither perform nor have claim for payment for services that are not included in a Service Order. Changes in scope of work, cost estimate or schedule will be captured in a Service Order Amendment.

D. Upon execution of this Master Agreement No. 08-16 and issuance of a Service Order, ENVIRONMENTAL CONSULTANT is authorized to begin Basic Services and/or Additional Services as set forth in Exhibit A and each Service Order.

E. When applicable, ENVIRONMENTAL CONSULTANT will perform Services in accordance with the latest version of the PCCA Project Manual issued prior to the date of the Service Order.

ARTICLE 2

PCCA'S RESPONSIBILITIES

2.01 General

PCCA has the responsibilities set forth herein and in Exhibit B.

ARTICLE 3

TIMES FOR RENDERING SERVICES

3.01 General

A. ENVIRONMENTAL CONSULTANT's Services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of each Project through completion. Unless specific periods of time or specific dates for providing Services are specified in each Service Order attached to this Agreement, ENVIRONMENTAL CONSULTANT's obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.

B. If, in each Service Order attached to this Agreement, specific periods of time for rendering Services are set forth or specific dates by which Services are to be completed are provided and if such periods of time or dates are changed through no fault of ENVIRONMENTAL CONSULTANT, the rates and amounts of compensation provided for herein will be subject to equitable adjustment. If PCCA has requested changes in the scope, extent, or character of the Project, the time of performance of ENVIRONMENTAL CONSULTANT's Services will be adjusted equitably.

C. For purposes of this Agreement, the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If PCCA fails to give prompt written authorization to proceed with any phase of Services after completion of the immediately preceding phase, or if ENVIRONMENTAL CONSULTANT's Services are delayed through no fault of ENVIRONMENTAL CONSULTANT, ENVIRONMENTAL CONSULTANT may, after giving seven days written notice to PCCA, suspend Services under this Agreement.

B. If ENVIRONMENTAL CONSULTANT's Services are delayed or suspended in whole or in part by PCCA or if ENVIRONMENTAL CONSULTANT's Services are extended by PCCA or its Contractor's actions or inactions for more than 90 days from the date of the beginning of the delay or suspension through no fault of ENVIRONMENTAL CONSULTANT, ENVIRONMENTAL CONSULTANT will be entitled to an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENVIRONMENTAL CONSULTANT in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4

PAYMENTS TO ENVIRONMENTAL CONSULTANT

4.01 Methods of Payment for Services and Reimbursable Expenses of Environmental Consultant

A. *For Basic Services.* PCCA will pay ENVIRONMENTAL CONSULTANT for Basic Services performed or furnished under Exhibit A, Part 1, for each Service Order as set forth in Exhibit C.

B. *For Additional Services.* PCCA will pay ENVIRONMENTAL CONSULTANT for Additional Services performed or furnished under Exhibit A, Part 2, for each Service Order as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, PCCA will pay ENVIRONMENTAL CONSULTANT for Reimbursable Expenses incurred by ENVIRONMENTAL CONSULTANT and ENVIRONMENTAL CONSULTANT's Other Consultants and subcontractors as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENVIRONMENTAL CONSULTANT's standard invoicing practices and will be submitted monthly to PCCA by ENVIRONMENTAL CONSULTANT, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C. A brief monthly report will be submitted with each invoice that lists the tasks performed, amounts invoiced for each task, and an estimated percent completion for each task.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If PCCA fails to make any payment due ENVIRONMENTAL CONSULTANT for Services and Reimbursable Expenses within 30 days after receipt of ENVIRONMENTAL CONSULTANT's invoice, the amounts due ENVIRONMENTAL CONSULTANT will be increased at the rate of three percent (3%) per annum from said 30th day. In addition, ENVIRONMENTAL CONSULTANT may, after giving seven days written notice to PCCA, suspend Services under this Agreement until ENVIRONMENTAL CONSULTANT has been paid in full all amounts due for Services, Reimbursable Expenses, and other relevant charges. Payments will be credited first to interest and then to principal.

C. *Representation of Invoices.* No partial payment or approval of any invoice by PCCA will constitute final acceptance or approval of the scope of work as to which the partial payment or approval relates, nor shall partial payment or approval be construed as relieving ENVIRONMENTAL CONSULTANT of any of its obligations. Each invoice will constitute a representation to PCCA that:

1. The invoiced work has been fully performed in accordance with all requirements of this Agreement.
2. The performance of the Work is progressing in accordance with all requirements of this Agreement.
3. Payment of the invoiced amount has been earned by, and is properly due and payable to ENVIRONMENTAL CONSULTANT.

4. ENVIRONMENTAL CONSULTANT has paid or will pay all Other Consultants and any other subcontractors and vendors working for ENVIRONMENTAL CONSULTANT on each Project for their services.

D. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment. Any undisputed portion will be paid. PCCA will promptly notify ENVIRONMENTAL CONSULTANT of any disputed item and request either clarification of the disputed item or that remedial action be taken to resolve the disputed item. Once a disputed item has been settled, ENVIRONMENTAL CONSULTANT will include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. *Payments Upon Termination.*

1. In the event of termination under paragraph 6.06, ENVIRONMENTAL CONSULTANT will be entitled to invoice PCCA and will be paid in accordance with Exhibit C for all Services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by PCCA for convenience or by ENVIRONMENTAL CONSULTANT for cause, ENVIRONMENTAL CONSULTANT, in addition to invoicing for those items identified in subparagraph 4.02.D.1, will be entitled to invoice PCCA and will be paid a reasonable amount for Services and Reimbursable Expenses directly attributable to termination, both before and after the effective date of termination, such as costs of terminating contracts with Other Consultants and any other subcontractors and vendors working for ENVIRONMENTAL CONSULTANT, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

3. Notwithstanding anything in this Agreement herein to the contrary, neither party will be charged with or liable for any consequential damages including, but not limited to, loss of profits or loss of business opportunities suffered by the other party as a result of either party's breach of this Agreement or failure to perform any of its obligations under this Agreement.

F. *Records of Environmental Consultant's Costs.* Records of ENVIRONMENTAL CONSULTANT's costs and hourly rates pertinent to ENVIRONMENTAL CONSULTANT's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENVIRONMENTAL CONSULTANT's charges and, upon PCCA's timely request, ENVIRONMENTAL CONSULTANT will provide to PCCA ENVIRONMENTAL CONSULTANT's records of time-based and reimbursable costs.

G. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that imposes taxes, fees, or costs on ENVIRONMENTAL CONSULTANT's Services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs will be invoiced to and paid by PCCA as a Reimbursable Expense to which a factor of 1.0 will be applied. Should such taxes, fees, or costs be imposed, they will be in addition to ENVIRONMENTAL CONSULTANT's estimated total compensation.

ARTICLE 5

OPINIONS OF COST

5.01 Opinions of Costs

ENVIRONMENTAL CONSULTANT's opinions of Costs of the Project provided for herein are to be made on the basis of ENVIRONMENTAL CONSULTANT's experience and qualifications and represent ENVIRONMENTAL CONSULTANT's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENVIRONMENTAL CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over the methods of others working on the Project and determining prices, or over competitive bidding or market conditions, ENVIRONMENTAL CONSULTANT cannot

and does not guarantee that proposals, Bids, or actual Costs of the Project will not vary from opinions of Costs of the Project prepared by ENVIRONMENTAL CONSULTANT. If PCCA wishes greater assurance as to Costs of the Project, PCCA may employ an independent cost estimator as provided in Exhibit B or request ENVIRONMENTAL CONSULTANT to employ an independent cost estimator as an Additional Service.

ARTICLE 6

GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional consulting services and related Services performed or furnished by ENVIRONMENTAL CONSULTANT under this Agreement will be the care and skill ordinarily used by members of ENVIRONMENTAL CONSULTANT's profession practicing under similar circumstances at the same time and in the same locality.

B. ENVIRONMENTAL CONSULTANT is responsible for the technical accuracy of its Services and documents resulting therefrom, and PCCA is not responsible for discovering deficiencies therein. ENVIRONMENTAL CONSULTANT will correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in PCCA-furnished information.

C. ENVIRONMENTAL CONSULTANT will perform or furnish professional consulting services and related Services in all phases of the Project to which this Agreement applies as per the applicable Service Order. ENVIRONMENTAL CONSULTANT will serve as PCCA's prime professional for the Project. ENVIRONMENTAL CONSULTANT may employ such Other Consultants or other subcontractors and vendors as ENVIRONMENTAL CONSULTANT deems necessary to assist in the performance or furnishing of the Services. ENVIRONMENTAL CONSULTANT is not required to employ any Other Consultant unacceptable to ENVIRONMENTAL CONSULTANT. ENVIRONMENTAL CONSULTANT must provide to PCCA for inclusion in the Service Order the names and addresses of all ENVIRONMENTAL CONSULTANT's employees working on the Project site and any other subcontractors that ENVIRONMENTAL CONSULTANT will use on the Project.

D. ENVIRONMENTAL CONSULTANT and PCCA will comply with applicable Laws or Regulations and PCCA-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to PCCA's responsibilities or to ENVIRONMENTAL CONSULTANT's Scope of Services, times of performance, or compensation.

E. PCCA is responsible for, and ENVIRONMENTAL CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by PCCA to ENVIRONMENTAL CONSULTANT pursuant to this Agreement, unless otherwise indicated when provided to ENVIRONMENTAL CONSULTANT. ENVIRONMENTAL CONSULTANT may use such requirements, reports, data, and information in performing or furnishing Services under this Agreement.

F. PCCA will make decisions and carry out its other responsibilities in a timely manner and bear all costs incident thereto so as not to delay the Services of ENVIRONMENTAL CONSULTANT.

G. ENVIRONMENTAL CONSULTANT is not required to sign any document, no matter by whom requested, that would result in ENVIRONMENTAL CONSULTANT's having to certify, guarantee, or warrant the existence of conditions whose existence ENVIRONMENTAL CONSULTANT cannot ascertain. PCCA agrees not to make resolution of any dispute with ENVIRONMENTAL CONSULTANT or payment of any amount due to ENVIRONMENTAL CONSULTANT in any way contingent upon ENVIRONMENTAL CONSULTANT's signing any such certification.

H. Except when specified in the Service Order, during the construction phase, ENVIRONMENTAL CONSULTANT will not supervise, direct, or have control over Contractor's Work, nor will ENVIRONMENTAL CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor; for safety precautions and programs incident to Contractor's Work in progress; nor for any failure of Contractor to comply with Laws and Regulations applicable to any Contractor on the Project furnishing and performing the Work.

I. ENVIRONMENTAL CONSULTANT neither guarantees the performance of any Contractor on the Project nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. ENVIRONMENTAL CONSULTANT is not responsible for the acts or omissions of any Contractor(s), subcontractor(s) or supplier(s), or of any of Contractor's agents or employees or any other persons (except ENVIRONMENTAL CONSULTANT's own employees, Other Consultants or subcontractors and vendors) at the Site or otherwise furnishing or performing any of Contractor's Work; or for any decision made on interpretations or clarifications of the Contract Documents given by PCCA without consultation and advice of ENVIRONMENTAL CONSULTANT.

K. All construction Contract Documents prepared hereunder must include the PCCA "General Conditions."

L. All Services provided pursuant to this Agreement by ENVIRONMENTAL CONSULTANT shall be warranted for a period of one-year following final acceptance of the Services by PCCA. If any failure to meet this warranty occurs within one year after Services are accepted by PCCA, the ENVIRONMENTAL CONSULTANT shall again perform the Services affected by such failure at the ENVIRONMENTAL CONSULTANT'S sole expense. Upon the expiration of one year, all such obligations to re-perform the Services shall cease unless otherwise stated in writing. The ENVIRONMENTAL CONSULTANT shall be entitled to rely on the accuracy of information supplied by or at the direction of PCCA.

M. In the performance of its obligations under this Agreement, the ENVIRONMENTAL CONSULTANT shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture or associate of PCCA. The ENVIRONMENTAL CONSULTANT shall be solely responsible for the means, methods, techniques, sequences and procedures utilized by it in the performance of this Agreement.

N. ENVIRONMENTAL CONSULTANT will prepare a schedule of Services identified as the "Service Schedule" in the Service Order attached hereto and made a part of this Agreement. The Service Schedule will contain a complete schedule so that ENVIRONMENTAL CONSULTANT's Scope of Services under this Agreement can be accomplished within the specified time and contract cost. The Service Schedule will provide specific task sequences and definite review times by PCCA and ENVIRONMENTAL CONSULTANT of the Services performed. If the review time should take longer than shown on the Service Schedule, through no fault of ENVIRONMENTAL CONSULTANT, additional contract time will be authorized by PCCA through a supplemental agreement if requested by a timely written request from ENVIRONMENTAL CONSULTANT and approved by PCCA.

O. ENVIRONMENTAL CONSULTANT will notify PCCA in writing as soon as possible if ENVIRONMENTAL CONSULTANT determines or reasonably anticipates that Services under the Agreement cannot be completed before the due date for such Services, and PCCA may, at its sole discretion, extend the contract period by timely supplemental agreement. ENVIRONMENTAL CONSULTANT must allow adequate time for review and approval of the request for time extension by PCCA prior to expiration of this Agreement.

P. ENVIRONMENTAL CONSULTANT will promptly advise PCCA in writing of events that have a significant impact upon the progress of the Services, including:

1. Problems, delays, adverse conditions that will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the completion of any phase by the established time periods; this disclosure will be accompanied by a statement of the action taken or contemplated and any state or federal assistance needed to resolve the situation; and

2. Favorable developments or events that enable meeting the Service Schedule goals sooner than anticipated.

Q. PCCA assumes no liability for Services performed or costs incurred prior to the date authorized by PCCA to begin Services, during periods when Services are suspended, or subsequent to the completion date of the Services.

R. If PCCA finds it necessary to request changes to previously satisfactorily completed Work or parts thereof which involve changes to the original Scope of Services or character of the Work under the Agreement, ENVIRONMENTAL CONSULTANT will make such revisions if requested and as directed by PCCA. This will be considered as Additional Services pursuant to Exhibit A, Part 2, "Additional Services."

S. All data, basic sketches, charts, calculations, plans, Specifications, and other documents created or collected under the terms of the Agreement are the exclusive property of PCCA and will be furnished to PCCA upon request. All documents prepared by ENVIRONMENTAL CONSULTANT and all documents furnished to ENVIRONMENTAL CONSULTANT by PCCA will be delivered to PCCA upon completion or termination of the Agreement. ENVIRONMENTAL CONSULTANT, at ENVIRONMENTAL CONSULTANT's expense, may retain copies of such documents or any other data that it has furnished PCCA under the Agreement.

T. ENVIRONMENTAL CONSULTANT will furnish adequate and sufficient personnel and equipment to perform the Services. All employees of ENVIRONMENTAL CONSULTANT will have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of ENVIRONMENTAL CONSULTANT who, in the opinion of PCCA, is incompetent or whose conduct becomes detrimental to the Services will immediately be removed from association with the Project when ENVIRONMENTAL CONSULTANT is so instructed by PCCA. ENVIRONMENTAL CONSULTANT certifies that it presently has adequate qualified personnel in its employ for performance of the Services required under the Agreement or will be able to obtain such personnel from sources other than PCCA.

U. PCCA has the right at all reasonable times to review or otherwise evaluate the Services performed or being performed hereunder and the premises in which it is being performed. If any review or evaluation is made on the premises of ENVIRONMENTAL CONSULTANT or its Other Consultant or subcontractor, ENVIRONMENTAL CONSULTANT will provide and require its Other Consultant or subcontractor to provide all reasonable facilities and assistance for the safety and convenience of PCCA's Representative(s) in the performance of their duties.

V. The responsible ENVIRONMENTAL CONSULTANT will sign, certify and date all appropriate submissions to PCCA. Where appropriate, the responsible Environmental Professional (Engineer, Geologist, Industrial Hygienist, etc.) will also seal all appropriate submissions in accordance with the applicable licensing board.

W. PCCA has the exclusive right to examine the books and records of ENVIRONMENTAL CONSULTANT for the purpose of checking the amount of Services performed by ENVIRONMENTAL CONSULTANT at the time of termination of the Agreement. ENVIRONMENTAL CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and will make such materials available at its office during the Agreement period and for four (4) years from the date of final payment under this Agreement or until pending litigation has been completely and fully resolved, whichever occurs last. PCCA will have access to any and all books, documents, papers, and records of ENVIRONMENTAL CONSULTANT that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions of time-based and Reimbursable Expenses.

X. ENVIRONMENTAL CONSULTANT will comply with the Regulations of the Department of Transportation 49 CFR Parts 21 and 23 CFR §710.405(b) as they relate to nondiscrimination; also, Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in Department of Labor Regulation 41 CFR Part 60. See "Civil Rights Compliance" attached hereto and identified as Exhibit K.

Y. Under Section 231.006 of the Family Code, ENVIRONMENTAL CONSULTANT certifies that the individuals or business entity named in the Agreement are eligible to receive the specified grant or payment and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate. ENVIRONMENTAL CONSULTANT further acknowledges that ENVIRONMENTAL CONSULTANT has read Exhibit L and has provided the names and social security numbers required therein.

6.02 Authorized Project Representative

Contemporaneous with the execution of each Service Order, ENVIRONMENTAL CONSULTANT and PCCA will designate specific individuals to act on behalf of ENVIRONMENTAL CONSULTANT and PCCA with respect to the Services to be performed or furnished by ENVIRONMENTAL CONSULTANT and responsibilities of PCCA under such Service Order. Such individuals will have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party. ENVIRONMENTAL CONSULTANT will not change designated project personnel without prior written consent of PCCA.

6.03 Design Without Construction Phase Services

A. Should PCCA provide construction phase services with either PCCA's Representative or a third party, ENVIRONMENTAL CONSULTANT's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENVIRONMENTAL CONSULTANT's Basic Services under this Agreement do not include Project observation, review of Contractor's performance, or any other construction phase services, and that such services will be provided by PCCA, then PCCA assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claim against ENVIRONMENTAL CONSULTANT that may be in any way connected thereto.

6.04 Use of Documents

A. Upon payment of all fees owed for each Service Order, all materials, information, electronic files and Documents acquired or generated relative to each corresponding Service Order are the property of PCCA.

B. Copies of PCCA-furnished data that are delivered to ENVIRONMENTAL CONSULTANT pursuant to Exhibit B and that may be relied upon by ENVIRONMENTAL CONSULTANT may be provided as printed copies (also known as hard copies) or as electronic media format of text, data, graphics or of other types.

C. Copies of Documents that may be relied upon by PCCA may be either printed copies (also known as hard copies) that are signed or sealed by ENVIRONMENTAL CONSULTANT or files in electronic media format of text, data, graphics, or of other types that are furnished by ENVIRONMENTAL CONSULTANT.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party will be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENVIRONMENTAL CONSULTANT is responsible to maintain documents stored in electronic media format after acceptance by PCCA.

E. When transferring documents, neither PCCA nor ENVIRONMENTAL CONSULTANT make any representation to the other as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by PCCA or ENVIRONMENTAL CONSULTANT at the beginning of this Project.

F. Documents provided by ENVIRONMENTAL CONSULTANT are not intended or represented to be suitable for reuse by PCCA or others on extensions of the Project or on any other project. PCCA may, however, reuse such documents without any payment to ENVIRONMENTAL CONSULTANT. Any such reuse or

modification without written verification or adaptation by ENVIRONMENTAL CONSULTANT, as appropriate for the specific purpose intended, will be at PCCA's sole risk and without liability or legal exposure to ENVIRONMENTAL CONSULTANT or to ENVIRONMENTAL CONSULTANT's Other Consultants.

G. If there is a discrepancy between the electronic files and the hard copies, ENVIRONMENTAL CONSULTANT will correct discrepancy upon notification.

H. Any verification or adaptation of the Documents by ENVIRONMENTAL CONSULTANT for extensions of the Project or for any other project will entitle ENVIRONMENTAL CONSULTANT to further compensation at rates to be agreed upon by PCCA and ENVIRONMENTAL CONSULTANT.

6.05 Insurance

A. At ENVIRONMENTAL CONSULTANT's expense, ENVIRONMENTAL CONSULTANT will procure and maintain and keep in force minimum insurance as set forth in Exhibit G, "Insurance," as will protect ENVIRONMENTAL CONSULTANT from claims which may arise out of or result from ENVIRONMENTAL CONSULTANT's Services pursuant to this Agreement, whether such operations be by ENVIRONMENTAL CONSULTANT, any Other Consultants or by any subcontractor working for ENVIRONMENTAL CONSULTANT, by anyone directly or indirectly employed by ENVIRONMENTAL CONSULTANT or ENVIRONMENTAL CONSULTANT's subcontractor, or by anyone for whose acts ENVIRONMENTAL CONSULTANT or ENVIRONMENTAL CONSULTANT's Other Consultant or subcontractor may be liable. All required insurance coverages must be purchased from insurance carriers with an A. M. Best rating of A:VII or better.

B. ENVIRONMENTAL CONSULTANT will deliver to PCCA certificates of insurance evidencing the coverages indicated in Exhibit G, "Insurance." Such certificates will be furnished prior to commencement of ENVIRONMENTAL CONSULTANT's Services and at renewals or changes of insurance companies thereafter during the life of the Agreement. Any such certificates must be executed by an authorized representative of the company issuing the insurance policy and contain a provision that coverage afforded under the policies will not be cancelled until at least 30 days prior written notice has been given to PCCA by ENVIRONMENTAL CONSULTANT. ENVIRONMENTAL CONSULTANT's Other Consultants and subcontractors will be named as "additional insureds" on each liability (excluding Workers' Compensation and Professional Liability policies) or property policy of insurance purchased and maintained by ENVIRONMENTAL CONSULTANT for the Project.

C. At any time, PCCA may request that ENVIRONMENTAL CONSULTANT, at PCCA's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G, "Insurance." If so requested by PCCA, with the concurrence of ENVIRONMENTAL CONSULTANT, and if commercially available, ENVIRONMENTAL CONSULTANT will obtain and will require ENVIRONMENTAL CONSULTANT's Other Consultants and, as applicable, ENVIRONMENTAL CONSULTANT's subcontractors to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by PCCA, and Exhibit G and the Service Order will be amended to incorporate these requirements.

D. Under all applicable coverages, except professional liability coverage, ENVIRONMENTAL CONSULTANT will provide a Waiver of Subrogation endorsement in favor of PCCA. The endorsement will additionally provide that ENVIRONMENTAL CONSULTANT releases PCCA from liability for any claims ENVIRONMENTAL CONSULTANT may have against PCCA that are or should have been covered by the insurance for which the Waiver of Subrogation is made.

E. Under all applicable coverages, except professional liability coverage, ENVIRONMENTAL CONSULTANT will cause the policies of insurance for all applicable coverages to be endorsed to include PCCA as an "additional insured" when permitted by law and provide that, notwithstanding any language in any policy of insurance held by PCCA ("PCCA Insurance") to the effect that the PCCA Insurance is primary, the policies of insurance held by ENVIRONMENTAL CONSULTANT are primary coverage, and the PCCA Insurance is non-contributory so that PCCA Insurance will not share with the policies held by ENVIRONMENTAL CONSULTANT.

The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance if it exceeds \$50,000, in which case PCCA may elect not to enter into this Agreement with ENVIRONMENTAL CONSULTANT. If requested, ENVIRONMENTAL CONSULTANT will provide PCCA a true copy of each of the Policies required in this Agreement, including all endorsements on each policy.

F. ENVIRONMENTAL CONSULTANT will not commence Services under this Agreement until ENVIRONMENTAL CONSULTANT has obtained all insurance required hereunder and certificates of such insurance in a form that is on file with and that has been approved by the Texas Department of Insurance.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For Cause.* Either party, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, may terminate this Agreement upon 30 days written notice.

a. If ENVIRONMENTAL CONSULTANT believes that ENVIRONMENTAL CONSULTANT is being requested by PCCA to furnish or perform Services contrary to ENVIRONMENTAL CONSULTANT's responsibilities as a licensed professional or if ENVIRONMENTAL CONSULTANT's Services for the Project are delayed or suspended for more than 90 days for reasons beyond ENVIRONMENTAL CONSULTANT's control, ENVIRONMENTAL CONSULTANT may terminate this Agreement upon seven days written notice to PCCA.

b. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of such notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of such notice.

2. *For Convenience.* PCCA may terminate this Agreement effective upon the receipt of notice from PCCA by ENVIRONMENTAL CONSULTANT.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENVIRONMENTAL CONSULTANT to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

C. ENVIRONMENTAL CONSULTANT will be paid for all Services performed and Reimbursable Expenses incurred prior to the effective date of termination. Upon payment of all amounts rightfully owed by PCCA to ENVIRONMENTAL CONSULTANT, PCCA will take ownership of the Documents pursuant to Section 6.04 herein.

6.07 Controlling Law

This Agreement is governed by the laws of the state of Texas. Venue of any action will be in Nueces County, Texas. In the event of a conflict between the wording of this Agreement, including any Service Order or Service Orders attached to it and any Purchase Order issued by PCCA in connection with this Agreement, the wording of this Agreement, including any Service Order or Service Orders attached to it, will control the interpretation of this Agreement.

6.08 Successors, Assigns, and Beneficiaries

A. PCCA and ENVIRONMENTAL CONSULTANT each is hereby bound and the partners, successors, executors, administrators, and legal representatives of PCCA and ENVIRONMENTAL CONSULTANT and, to the extent permitted by paragraph 6.08.B, the assigns of PCCA and ENVIRONMENTAL CONSULTANT are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither PCCA nor ENVIRONMENTAL CONSULTANT may assign, sublet, or transfer any rights under or interest in this Agreement (including, but without limitation, claims arising out of this Agreement or moneys that are due or may become due) without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by PCCA or ENVIRONMENTAL CONSULTANT to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of PCCA and ENVIRONMENTAL CONSULTANT and not for the benefit of any other party, person, or entity.

6.09 Dispute Resolution

A. PCCA and ENVIRONMENTAL CONSULTANT agree to negotiate all disputes between them in good faith (including, if agreed, the use of a mediator) for a period of 30 days from the date of notice prior to exercising their rights under this Section or other provisions of this Agreement or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that PCCA and ENVIRONMENTAL CONSULTANT have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in this Section.

C. In the event PCCA requests that ENVIRONMENTAL CONSULTANT perform Services that, in ENVIRONMENTAL CONSULTANT's opinion, are not included under the Basic Services described in Exhibit A and PCCA believes that it is included, ENVIRONMENTAL CONSULTANT will proceed with the Services after notifying PCCA that ENVIRONMENTAL CONSULTANT does not agree that the Services after including under the Basic Services without delay, and perform them to the satisfaction of PCCA. At the conclusion of the Project, or in no event longer than six months, ENVIRONMENTAL CONSULTANT may request that the issue of payment for this work be submitted to mediation (if both parties agree) or to arbitration as outlined in this Section.

D. In the event PCCA and ENVIRONMENTAL CONSULTANT cannot agree on the price of Additional Services requested by PCCA, ENVIRONMENTAL CONSULTANT will proceed with the Services without delay and perform them to the satisfaction of PCCA. At the conclusion of the Project, or in no event longer than six months, ENVIRONMENTAL CONSULTANT may request that the disputed price for any Additional Services be submitted to mediation (if both parties agree) or to arbitration.

1. All disputes between PCCA and ENVIRONMENTAL CONSULTANT, subject to the negotiation or mediation referred to in this Section, will be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association effective at the Effective Date of the Agreement, subject to the limitations and restrictions stated in paragraphs A through D below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under prevailing law of any court having jurisdiction.

a. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations.

b. All demands for arbitration and all answering statements thereto that include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$100,000.00 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider or make findings (except in denial of their own jurisdiction) concerning any dispute where the amount in controversy of any such dispute is more than \$100,000.00 (exclusive of interest and costs) or to render a monetary award in response thereto against any party that totals more than \$100,000.00 (exclusive of interest and costs).

c. The award rendered by the arbitrators will be final, and judgment may be entered upon it in any court in Nueces County, Texas, having jurisdiction thereof.

d. If a dispute in question between PCCA and ENVIRONMENTAL CONSULTANT involves the Work of a Contractor, subcontractor, or consultant to PCCA or ENVIRONMENTAL CONSULTANT (each a "Joinable Party"), either PCCA or ENVIRONMENTAL CONSULTANT may join each Joinable Party as a party to the arbitration between PCCA and ENVIRONMENTAL CONSULTANT hereunder, and ENVIRONMENTAL CONSULTANT or PCCA, as appropriate, will include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between PCCA and ENVIRONMENTAL CONSULTANT involving the Work or Services of such Joinable Party. Nothing in this Section, nor in the provision of such contract consenting to joinder, will create any claim, right, or cause of action in favor of the Joinable Party and against PCCA or ENVIRONMENTAL CONSULTANT that does not otherwise exist.

6.10 Hazardous Environmental Conditions

A. PCCA, will disclose, to the best of its knowledge, to ENVIRONMENTAL CONSULTANT the existence of all Asbestos, PCBs, Petroleum, Hazardous Substance, or Radioactive Material known to PCCA or its employees and located at the Site, including type, quantity and location.

B. If a Hazardous Environmental Condition is encountered or alleged, by ENVIRONMENTAL CONSULTANT or ENVIRONMENTAL CONSULTANT's employees and Other Consultants or subcontractors, ENVIRONMENTAL CONSULTANT has the obligation to notify PCCA and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

C. The Parties acknowledge that ENVIRONMENTAL CONSULTANT's Scope of Services may include Services related to a Hazardous Environmental Condition and that the project site(s) may contain hazardous or toxic substances, constituents, contaminants, materials, or pollutants. ENVIRONMENTAL CONSULTANT knowingly and voluntarily assumes all risks of injury and damage to ENVIRONMENTAL CONSULTANT, its Other Consultants, employees, agents, subcontractors and others working for the ENVIRONMENTAL CONSULTANT, and damage to property caused by exposure to these materials. ENVIRONMENTAL CONSULTANT agrees to advise fully all of its Other Consultants, employees, agents, subcontractors, and others working for ENVIRONMENTAL CONSULTANT, of such risks and of all necessary environmental, safety, and health procedures required by Governmental Requirements. ENVIRONMENTAL CONSULTANT will continuously inspect its work, materials, and equipment to identify and promptly correct unsafe conditions.

D. PCCA acknowledges that ENVIRONMENTAL CONSULTANT is performing Professional Services for PCCA and that ENVIRONMENTAL CONSULTANT is not and will not be required to become an "operator" or "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental

Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENVIRONMENTAL CONSULTANT's activities under this Agreement.

6.11 Indemnification and Release

A. As used in this paragraph, each of the following terms will have the meanings set forth in this Section.

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 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 reasonable and incurred 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 PCCA, its Port Commissioners, directors, managers, employees, and agents.

6. "ENVIRONMENTAL CONSULTANT Parties" means the ENVIRONMENTAL CONSULTANT, its agents, employees, owners, Other Consultants and subcontractors under contract, or other entities over which the ENVIRONMENTAL CONSULTANT exercises control.

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, ENVIRONMENTAL CONSULTANT will Defend and Indemnify the Indemnified Persons from and against all Claims to the extent caused by or resulting from, or alleged to have been caused by or resulted from, any of the following matters (these Claims being referred to herein as the "Indemnified Claims"):

1. The negligent conduct of ENVIRONMENTAL CONSULTANT's business on the Project;

2. ENVIRONMENTAL CONSULTANT's breach of this Agreement; or

3. Any negligent act, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by any ENVIRONMENTAL CONSULTANT Party, including the sole, joint, concurrent, or comparative negligence of any ENVIRONMENTAL CONSULTANT Party in connection with or pertaining to this Agreement.

C. The Indemnities, Waivers and obligation to Defend in this Section will 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; 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, 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 ENVIRONMENTAL CONSULTANT Parties, then the ENVIRONMENTAL CONSULTANT's obligation to the Indemnified Persons will extend only to the percentage of the total responsibility of the ENVIRONMENTAL CONSULTANT Parties in contributing to such Indemnified Claim.

E. In Claims against any Indemnified Person by or for an employee of an ENVIRONMENTAL CONSULTANT Party, the ENVIRONMENTAL CONSULTANT's indemnification obligation under this Section will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the ENVIRONMENTAL CONSULTANT Party under the Workers' Compensation Act, disability benefit acts, or other employee benefit acts.

F. Except as otherwise expressly limited in this Section, 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.

G. If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this Section, the Indemnified Person will be represented by its general counsel or another attorney selected by the Indemnified Person and approved by ENVIRONMENTAL CONSULTANT, which approval will not be unreasonably withheld, and ENVIRONMENTAL CONSULTANT shall indemnify the Indemnified Person for attorney's fees actually incurred.

H. If ENVIRONMENTAL CONSULTANT should fail or refuse, after written notice to ENVIRONMENTAL CONSULTANT 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 ENVIRONMENTAL CONSULTANT will constitute a settlement of the proportionate fault including, but not limited to, negligence of both ENVIRONMENTAL CONSULTANT and the Indemnified Person, which settlement may later be apportioned between Indemnified Person and ENVIRONMENTAL CONSULTANT.

I. ENVIRONMENTAL CONSULTANT agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage; provided, however, PCCA acknowledges that ENVIRONMENTAL CONSULTANT's professional liability insurance will not provide for defense coverage.

J. To the fullest extent provided by this Section, ENVIRONMENTAL CONSULTANT hereby Waives all Claims against the Indemnified Persons caused by or resulting from any of the Indemnified Claims.

6.12 Notices

Any notice required under this Agreement must be submitted in writing, addressed to the appropriate party at its address on the signature page or on the written change of address as outlined in paragraph one on page one of this Agreement, and sent by registered or certified mail postage prepaid, by facsimile transmission, or by a reputable commercial courier service. All notices will be effective upon the date of receipt.

6.13 Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon PCCA and ENVIRONMENTAL CONSULTANT, who agree that the Agreement will be revised to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

Non-enforcement of any provision by either party will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

6.17 Public Meetings/Records

PCCA is a political subdivision of the state of Texas 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, PCCA 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, ENVIRONMENTAL CONSULTANT 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 PCCA as required by the Texas Open Meetings Act, Texas Public Information Act, or any other law will not expose PCCA (or any party acting by, through or under PCCA) to any claim, liability, or action by ENVIRONMENTAL CONSULTANT.

6.18 Confidentiality

ENVIRONMENTAL CONSULTANT will keep confidential all information in whatever form produced, prepared, observed or received from PCCA to the extent that such information is: (a) confidential by law; (b) marked or designated "Confidential" or words to that effect; or (c) information that ENVIRONMENTAL CONSULTANT is otherwise required to keep confidential by this Agreement. Notwithstanding the above, ENVIRONMENTAL CONSULTANT will be permitted to disclose any information required by law or court order. In addition, ENVIRONMENTAL CONSULTANT will not advertise it is doing business with PCCA or use this Agreement as a marketing or sales tool without the prior written consent of PCCA.

6.19 Relationship of the Parties

ENVIRONMENTAL CONSULTANT is associated with PCCA only for the purposes and to the extent specified in this Agreement and in respect of the contracted Services pursuant to this Agreement. ENVIRONMENTAL CONSULTANT is and will be an independent contractor and, subject only to the terms of this Agreement, will have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement is deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for PCCA whatsoever with respect to the indebtedness, liabilities or obligations of ENVIRONMENTAL CONSULTANT or any other party. ENVIRONMENTAL CONSULTANT will be solely responsible for, and PCCA has no obligation with respect to:

- A. Withholding of income taxes, FICA, or any other taxes or fees;
- B. Industrial or Workers Compensation insurance coverage;
- C. Participation in any group insurance plans available to employees of ENVIRONMENTAL CONSULTANT;
- D. Accumulation of vacation leave or sick leave; or
- E. Unemployment compensation coverage provided by the State of Texas.

ARTICLE 7
DEFINITIONS

7.01 Defined Terms

Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda.* Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the Bid Documents.
2. *Additional Services.* The Services to be performed for or furnished to PCCA by ENVIRONMENTAL CONSULTANT in accordance with Exhibit A, Part 2, and the corresponding Service Order attached to this Agreement.
3. *Agreement.* This “Master Agreement between PCCA and ENVIRONMENTAL CONSULTANT for Professional Services,” including those Exhibits listed in Article 8 hereof and any Service Orders that may be attached to and incorporated in this Agreement by reference for all purposes.
4. *Application for Payment to Contractor.* The form acceptable to PCCA and agreed upon by ENVIRONMENTAL CONSULTANT that is to be used by Contractor in requesting progress or final payments for the completion of the Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos.* Any material that contains more than one percent (1%) Asbestos and is friable or is releasing Asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Consultant Services.* The Services to be performed for or furnished to PCCA by ENVIRONMENTAL CONSULTANT in accordance with Exhibit A, Part 1, and the corresponding Service Order attached to this Agreement.
7. *Bid.* The offer or proposal of the bidder submitted on the PCCA-prescribed form setting forth the prices for the Work to be performed.
8. *Bid Documents.* The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the bid bond, if any, the Contract Documents, and all Addenda, if any.
9. *Change Order.* A document recommended by ENVIRONMENTAL CONSULTANT, which is signed by Contractor and PCCA, to authorize an addition to, deletion from, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
10. *Construction Agreement.* The entire and integrated written agreement between PCCA and Contractor concerning the Work.
11. *Cost(s) of the Project.* The cost to PCCA of those portions of the entire Project designed or specified by ENVIRONMENTAL CONSULTANT. The Cost(s) of the Project does not include costs of Services of ENVIRONMENTAL CONSULTANT or other design professionals and Other Consultants; costs of land, rights-of-way, or compensation for damages to properties; or PCCA’s costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project; or the costs of services to be provided to PCCA by others pursuant to Exhibit B of this Agreement.

12. *Contract Documents.* The documents described in the Construction Agreement between PCCA and Contractor as the Contract Documents. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price.* The moneys payable by PCCA to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

14. *Contract Times.* The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion and (ii) complete the Work so that it is ready for final payment as evidenced by ENVIRONMENTAL CONSULTANT's written recommendation of final payment.

15. *Contractor.* An individual or entity with which PCCA enters into a Construction Agreement.

16. *Correction Period.* The time after Substantial Completion during which Contractor must correct, at no cost to PCCA, any Defective Work; normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

17. *Defective.* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents; does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or has been damaged prior to ENVIRONMENTAL CONSULTANT's recommendation of final payment.

18. *Documents.* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENVIRONMENTAL CONSULTANT to PCCA pursuant to this Agreement.

19. *Drawings.* That part of the Contract Documents prepared or approved by ENVIRONMENTAL CONSULTANT that graphically shows the scope, extent, and character of the Work to be performed or was performed by ENVIRONMENTAL CONSULTANT or Contractor. Shop drawings are not Drawings as so defined.

20. *Effective Date of the Construction Agreement.* The date indicated in the Construction Agreement on which it becomes effective; but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

21. *Effective Date of the Agreement.* The date indicated in this Agreement on which it becomes effective; but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Other Consultants.* Individuals or entities having a contract with ENVIRONMENTAL CONSULTANT to furnish Services with respect to any Project pursuant to this Agreement as ENVIRONMENTAL CONSULTANT's independent professional associates. The term ENVIRONMENTAL CONSULTANT includes ENVIRONMENTAL CONSULTANT's Other Consultants.

23. *Field Order.* A written order issued by ENVIRONMENTAL CONSULTANT which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

24. *Final Acceptance.* That point in the Project wherein ENVIRONMENTAL CONSULTANT considers the Project complete and PCCA issues a Certificate of Final Acceptance.

25. *General Conditions.* That part of the Contract Documents that sets forth the terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition.* The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Substance, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Substance.* The term Hazardous Substance will have the meaning provided in Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended from time to time or to the extent the laws of the state of Texas establish a meaning for Hazardous Substance which is broader than that specified in CERCLA, such broader meaning will apply.

28. *Laws and Regulations; Laws or Regulations.* Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCBs.* Polychlorinated biphenyls.

30. *PCCA's Representative.* The PCCA's Representative is David L. Krams, P.E., Director of Engineering Services for the Port of Corpus Christi Authority of Nueces County, Texas, or his duly authorized representative.

31. *Petroleum.* Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60° Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other Non-Hazardous Waste and crude oils.

32. *Project.* The Project consists of the design, implementation or construction, and management of the Work.

33. *Radioactive Materials.* Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 *et seq*) as amended from time to time.

34. *Record Drawings.* The Drawings as issued for construction on which the ENVIRONMENTAL CONSULTANT, upon completion of the Work, has shown changes due to Addenda, Field Orders, and Change Orders and other information that ENVIRONMENTAL CONSULTANT considers significant based on record documents furnished by Contractor to ENVIRONMENTAL CONSULTANT and which were annotated by Contractor to show changes made during construction.

35. *Reimbursable Expenses.* The expenses incurred directly by ENVIRONMENTAL CONSULTANT in connection with performing or furnishing Basic and Additional Services for the Project for which PCCA will pay ENVIRONMENTAL CONSULTANT as indicated in Exhibit C.

36. *Samples.* Physical examples of soil, groundwater, materials, equipment, or workmanship that are representative of some portion of the Work and are used for comparison to existing standards by which such portion of the Work will be judged.

37. *Services.* Professional consulting provided by ENVIRONMENTAL CONSULTANT as described in this Agreement and each Service Order attached to this Agreement.

38. *Service Order.* The Service Order is the document that describes the Project (see Exhibit M) and defines the Scope of Services, Service Schedule, deliverables, and compensation to be paid to ENVIRONMENTAL CONSULTANT.

39. *Shop Drawings.* All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by ENVIRONMENTAL CONSULTANT for Contractor and are used to illustrate some portion of the Work.

40. *Site.* Lands or areas indicated in this Agreement or the Drawings as being furnished by PCCA upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by PCCA that are designated for use by Contractor.

41. *Specifications.* That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Substantial Completion.* That point in the Project wherein ENVIRONMENTAL CONSULTANT, unless PCCA has designated someone other than ENVIRONMENTAL CONSULTANT as its representative, recommends and PCCA determines that the Project is suitable for use or occupancy for its intended purpose but may still require minor miscellaneous work or adjustment.

43. *Special Conditions.* That part of the Contract Documents which amends or supplements the General Conditions.

44. *Total Project Costs.* The sum of the Construction Cost; allowances for contingencies; the total costs of Services of CONSULTANT or other design professionals and Other Consultants; costs of land, rights-of-way, or compensation for damages to properties; PCCA's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project; and the cost of services to be provided to PCCA by others pursuant to Exhibit B of this Agreement.

45. *Work.* The entire completed construction or the various separately identifiable parts thereof required to be provided by Contractor pursuant to the Contract Documents in the Construction Agreement for construction with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

46. *Work Change Directive.* A written directive to Contractor, issued on or after the Effective Date of the Construction Agreement and signed by PCCA upon recommendation of the ENVIRONMENTAL CONSULTANT, ordering an addition to, deletion from, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiation by the parties as to its effect, if any, on the Contract Price or Contract Times.

47. *Written Amendment.* A written amendment of the Contract Documents signed by PCCA and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8

EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- | | | |
|----|--|--------------------------|
| A. | Exhibit A, "CONSULTANT's Services and Responsibilities." | (Consisting of 10 Pages) |
| B. | Exhibit B, "PCCA's Responsibilities." | (Consisting of 3 Pages) |
| C. | Exhibit C, "Payments to CONSULTANT for Services and "Reimbursable Expenses." | (Consisting of 3 Pages) |
| | Appendix 1, "Reimbursable Expenses Schedule." | (Consisting of 1 Pages) |
| | Appendix 2, "Standard Hourly Rates Schedule." | (Consisting of 1 Pages) |
| | Appendix 3, "Application/Certification for Payment." | (Consisting of 2 Pages) |
| D. | Exhibit D, "Duties, Responsibilities, and Limitations | |

- of Authority of Resident Project Representative.” (Consisting of 4 Pages)
- E. Exhibit E, “Duties, Responsibilities, and Limitations of Authority of Resident Project Representative on Abatement Projects.” (Consisting of 4 Pages)
- F. Exhibit F, “Notice of Acceptability of Work.” (Consisting of 2 Pages)
- G. Exhibit G, “Insurance.” (Consisting of 1 Pages)
- Appendix 1, “PCCA Certificate of Insurance.” (Consisting of 1 Pages)
- H. Exhibit H, “Service Order Form.” (Consisting of 4 Pages)

8.02 Total Agreement

This Agreement (consisting of pages 1 to 21 inclusive, together with the Exhibits identified above) constitutes the entire Agreement between PCCA and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.


PCCA:

CONSULTANT:

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

Alan Plummer Associates, Inc.

By: _____

By:  _____Name: John P. LaRueName: Rex H. Hunt, P.E.Title: Executive DirectorTitle: Principal

Date Signed: _____

Date Signed: 2/1/2016

Address for giving notice:

Address for giving notice:

222 Power Street
Corpus Christi, Texas 78401
Attention: Director of Engineering Services

6300 La Calma, Suite 400
Austin, TX 78752

Designated Representative (§ 6.02):

Designated Representative (§ 6.02):

Sarah L. GarzaRex H. Hunt, P.E.

Title: Director of Environmental Planning
& Compliance

Title: PrincipalPhone Number: 361-885-6163Phone Number: 512-452-5905Facsimile Number: 361-881-5161Facsimile Number: 512-452-2325E-Mail Address: sarah@pocca.comE-Mail Address: rhunt@apaienv.com

ENVIRONMENTAL CONSULTANT's Services and Responsibilities

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENVIRONMENTAL CONSULTANT will provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A-1.01 Study and Report Phase

A. ENVIRONMENTAL CONSULTANT will:

1. Consult with PCCA to define and clarify PCCA's requirements for the Project and available data.
2. Advise PCCA as to the necessity of PCCA's providing data or services of the types described in Exhibit B, which are not part of ENVIRONMENTAL CONSULTANT's Basic Services, and assist PCCA in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the Project or portions of the Project including, but not limited to, mitigating measures identified in any environmental assessment, permitting requirements, characterization of subsurface conditions relative to probable constituents of concern or hazardous substance and remediation of identified constituents of concern or hazardous substances, and assessments for identifying the presence of asbestos, PCBs or lead paint and the development plan for the abatement or appropriate handling of identified asbestos, PCBs or lead paint.
4. Identify and evaluate the number of alternate solutions stated in the Service Order available to PCCA and, after consultation with PCCA, recommend to PCCA those solutions which in ENVIRONMENTAL CONSULTANT's judgment meet PCCA's requirements for the Project.
5. ENVIRONMENTAL CONSULTANT has examined all project sites involved in performing the Services stated in the Agreement and Service Order(s) and has knowledge of all conditions under which the Services are to be executed and completed, including but not limited to, soil and groundwater conditions to the extent applicable, approaches to the project sites and the space available for work areas, storage and temporary buildings. ENVIRONMENTAL CONSULTANT is responsible for preparing and implementing a Health and Safety Plan / Program in accordance with the applicable Occupational Safety and Health Administration (OSHA) standards appropriate for the Services being performed and the site conditions, including any PCCA site specific requirements.
6. ENVIRONMENTAL CONSULTANT will immediately notify PCCA regarding any condition that threatens to adversely affect quality assurance and control of the Services being performed. Additionally, ENVIRONMENTAL CONSULTANT will immediately notify PCCA if it becomes aware of any pending or threatened governmental or third party action or claim relating to: (i) the Services being performed, (ii) the status of any of ENVIRONMENTAL CONSULTANT's or PCCA's permits or licenses related to the project site(s) or the Services being performed, or (iii) a violation or alleged violation of Governmental requirements.
7. Conduct Phase I Environmental Site Assessment in accordance with ASTM Standard 1527-E and recommendations for a Phase II Environmental Site Assessment, as appropriate, in preparation for property transactions that PCCA may be considering.
8. Conduct subsurface investigation activities as is necessary to delineate and characterize subsurface conditions at the site in accordance with applicable rules and regulations. To the extent this includes laboratory, sampling or field work; ENVIRONMENTAL CONSULTANT will maintain complete records of the chain of custody and deliver the records to PCCA.

9. Prepare a report ("Report"), including but not limited to, permit application(s) and regulating agency standard report forms/documents, which will, as appropriate, contain figures, summary tables, schematic layouts, sketches and/or conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to PCCA which ENVIRONMENTAL CONSULTANT recommends. This Report will be accompanied by ENVIRONMENTAL CONSULTANT's opinion of Costs of the Project with each component separately itemized, including the following, which will be separately itemized: recommended options (whether this includes remediation activities or additional assessment costs); allowances for contingencies and for the estimated total costs of design, professional, and related Services provided by ENVIRONMENTAL CONSULTANT; and, on the basis of information furnished by PCCA, allowances for other items and services included within the definition of Total Project Costs.

10. Perform or provide additional study and report phase tasks or deliverables stated in the Service Order.

11. Coordinate proper disposal of investigation derived wastes, prepare for PCCA an agreement between PCCA and the company detailing the work to be done and the cost and submit to PCCA for approval; and maintain complete records of chain of custody and control of handling, transporting and final disposal of all hazardous and/or waste materials and deliver the records to PCCA.

12. Furnish one complete electronic copy in PDF format (unless a different number and format is stated in the Service Order) of the Report to PCCA within the number of days of authorization to begin Services and review it with PCCA as provided in the Service Order.

13. Revise the Report in response to PCCA's and other parties' comments, as appropriate, and furnish one complete electronic copy in PDF format (unless a different number or format is stated in the Service Order) of the revised Report to PCCA within the number of days after completion of reviewing it with PCCA as provided in the Service Order. On behalf of PCCA, submit final Report to regulating governmental authority for review and approval.

B. ENVIRONMENTAL CONSULTANT's Services under the study and report phase will be considered complete on the date the final copies of the revised Report have been delivered to and accepted by PCCA.

A-1.02 Preliminary Design Phase

A. After acceptance by PCCA of the Report, selection by PCCA of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by PCCA, and upon written authorization from PCCA, ENVIRONMENTAL CONSULTANT will:

1. On the basis of the above acceptance, selection, and authorization, prepare preliminary design phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project and where required, complete applicable governmental authority standard report forms/documents.

2. Conduct additional subsurface investigation activities as approved to further delineate and characterize subsurface conditions including any groundwater plume at the site. To the extent this includes laboratory, sampling, or field work, ENVIRONMENTAL CONSULTANT will maintain complete records of the chain of custody and deliver records to PCCA.

3. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

4. Advise PCCA if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist PCCA in obtaining such reports, data, information, or services.

5. Coordinate proper disposal of investigation derived wastes and maintain complete records of chain of custody and control of handling, transporting and final disposal of all hazardous and/or waste materials and deliver the records to PCCA.

6. Based on the information contained in the preliminary design phase documents, submit a revised opinion of Construction Cost and any adjustments to Total Project Costs known to ENVIRONMENTAL CONSULTANT, which will be itemized as provided in paragraph A-1.01.A.5.

7. Perform or provide additional preliminary design phase tasks or deliverables stated in the Service Order.

8. Furnish the preliminary design phase documents to and review them with PCCA.

9. Submit to PCCA one complete electronic copy in PDF format (unless a different number and format is stated in the Service Order) of the preliminary design phase documents and revised opinion of Costs of the Project within the number of days after authorization to proceed with this phase as provided in the Service Order. On behalf of PCCA, submit final design phase documents to regulating governmental authority for review and approval.

B. ENVIRONMENTAL CONSULTANT's Services under the preliminary design phase will be considered complete on the date final copies of the preliminary design phase documents have been delivered to and accepted by PCCA and applicable governmental authority.

A-1.03 Final Design Phase

A. After acceptance by PCCA of the preliminary design phase documents and revised opinion of Costs of Project, and where required, after receipt of governing authorities approval of final design documents, as determined in the preliminary design phase, but subject to any PCCA- or governing authorities-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from PCCA, ENVIRONMENTAL CONSULTANT will:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Associated technical specifications will be prepared, where appropriate, in general conformance with the most recent Master Format of the Construction Specifications Institute.

2. Provide technical criteria, written descriptions, and design data for PCCA's use in filing applications for other related permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project or portions of the Project, and assist PCCA in consultations with appropriate authorities.

3. Advise PCCA of any adjustments to the opinion of Costs of the Project and any adjustments to Total Project Costs known to ENVIRONMENTAL CONSULTANT, itemized as provided in paragraph A-1.01.A.5.

4. Perform or provide additional final design phase tasks or deliverables stated in the Service Order.

5. Prepare and furnish Bid Documents for review and approval by PCCA, its legal counsel, and other advisors, as appropriate, and assist PCCA in the preparation of other related documents.

6. Submit one final copy in original editing format and one complete PDF copy (unless a different number and format is stated in the Service Order) of the Bid Documents, a revised opinion of Costs of Project, and final CAD file and micro station drawings to PCCA within the number of days after authorization to proceed with this phase as provided in the Service Order.

B. In the event the Work designed or specified by ENVIRONMENTAL CONSULTANT is to be performed or furnished under more than one prime contractor if ENVIRONMENTAL CONSULTANT's Services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), PCCA and ENVIRONMENTAL CONSULTANT will, prior to commencement of the final design phase, develop a schedule for performance of ENVIRONMENTAL CONSULTANT's Services during the final design, bidding or negotiating, construction, and post-construction phases in order to sequence and coordinate properly such Services as are applicable to the Work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the Work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENVIRONMENTAL CONSULTANT upon which the ENVIRONMENTAL CONSULTANT's compensation has been established under this Agreement is one (1) unless otherwise specified in each Service Order.

D. ENVIRONMENTAL CONSULTANT's Services under the final design phase will be considered complete on the date the submittals required by paragraph A-1.03.A.6 have been delivered to and accepted by PCCA and applicable governmental authority.

PART 2 – ADDITIONAL SERVICES

A-1.04 Bidding or Negotiating Phase

A. After acceptance by PCCA of the Bid Documents and the most recent opinion of Costs of the Project as determined in the final design phase and upon written authorization by PCCA to proceed, ENVIRONMENTAL CONSULTANT will:

1. Assist PCCA in advertising for and obtaining Bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bid Documents have been issued; attend pre-Bid conferences, if any; and receive and process bidders' deposits or charges for the Bid Documents.
2. Prepare Addenda as appropriate to clarify, correct, or change the Bid Documents.
3. Consult with PCCA as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work for which acceptability is required by the Bid Documents.
4. Determine the acceptability of substitute materials and equipment proposed during the bidding or negotiating phase when substitution prior to award of the contract is allowed by the Bid Documents.
5. Perform or provide additional bidding or negotiating phase tasks or deliverables stated in the Service Order.
6. Attend the Bid opening, prepare Bid tabulation sheets, and assist PCCA in evaluating Bids and in assembling and awarding contracts for the Work.

B. The bidding or negotiating phase will be considered complete upon commencement of the construction phase or upon cessation of negotiations with prospective Contractors.

A-1.05 Construction Phase

A. Upon successful completion of the bidding and negotiating phase, and upon written authorization from PCCA, ENVIRONMENTAL CONSULTANT will:

1. *General Administration of Construction Contract.* Consult with PCCA and act as PCCA's Representative as provided in the General Conditions relative to the section entitled "OWNER-ENGINEER RELATIONSHIP. The extent and limitations of the duties, responsibilities and authority of ENVIRONMENTAL CONSULTANT as assigned in said General Conditions will not be modified, except as ENVIRONMENTAL CONSULTANT may otherwise agree in writing. PCCA's instructions to Contractor can be issued through ENVIRONMENTAL CONSULTANT, who has authority to act on behalf of PCCA in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Selecting Independent Testing Laboratory.* Assist PCCA in the selection of an independent testing laboratory to perform the services identified in paragraph B-2.01.O.

3. *Pre-Construction Conference.* Participate in a pre-construction conference prior to commencement of Work at the Site.

4. *Baseline and Benchmarks.* Establish baselines and benchmarks for locating the Work as ENVIRONMENTAL CONSULTANT deems necessary to enable Contractor to proceed.

5. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work in progress while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENVIRONMENTAL CONSULTANT deems necessary, in order to observe as an experienced and qualified design professional the progress and performance of the Work. Such visits and observations by ENVIRONMENTAL CONSULTANT are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to ENVIRONMENTAL CONSULTANT in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENVIRONMENTAL CONSULTANT's exercise of professional judgment. Based on information obtained during such visits and such observations, ENVIRONMENTAL CONSULTANT will determine in general if Contractor's Work is proceeding in accordance with the Contract Documents, and ENVIRONMENTAL CONSULTANT will keep PCCA informed of the progress of the Work.

b. The purpose of ENVIRONMENTAL CONSULTANT's visits to the Site will be to enable ENVIRONMENTAL CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by ENVIRONMENTAL CONSULTANT during the construction phase, and, in addition, by the exercise of ENVIRONMENTAL CONSULTANT's efforts as an experienced and qualified design professional, to provide for PCCA a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Except when specified in the Service Order for projects that include abatement activities, ENVIRONMENTAL CONSULTANT will not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor will ENVIRONMENTAL CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor; provided, however, if ENVIRONMENTAL CONSULTANT observes a condition at the Project Site or Work being performed that in ENVIRONMENTAL CONSULTANT's opinion involves a matter

of safety at the Project, ENVIRONMENTAL CONSULTANT will promptly notify Contractor and PCCA about such matter for safety precautions and programs incident to Contractor's furnishing and performing the Work. Accordingly, ENVIRONMENTAL CONSULTANT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

6. *Project Monitoring.* ENVIRONMENTAL CONSULTANT will provide air monitoring activities for Project and/or Contractors employees as specified in applicable protocol or procedure documents.

7. *Defective Work.* ENVIRONMENTAL CONSULTANT will have the authority to reject Contractor's Work while it is in progress if, on the basis of such observations, ENVIRONMENTAL CONSULTANT believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENVIRONMENTAL CONSULTANT may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to PCCA, as appropriate, and prepare Change Orders and Work Change Directives as authorized by PCCA.

10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approval or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENVIRONMENTAL CONSULTANT has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENVIRONMENTAL CONSULTANT.

11. *Substitutes and "Or-Equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, subject to the provisions of paragraph A-2.02.B of this Exhibit A.

12. *Inspections and Tests.* Require such special inspections or tests of Contractor's Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENVIRONMENTAL CONSULTANT's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENVIRONMENTAL CONSULTANT is entitled to rely on the results of such tests.

13. *Disagreements between PCCA and Contractor.* If the Service Order provides, or is amended to provide, that ENVIRONMENTAL CONSULTANT will render a formal written decision on a particular disagreement, or on all claims of PCCA and Contractor relating to the acceptability of Contractor's Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's Work, then he will do so. In rendering such decision or decisions, ENVIRONMENTAL CONSULTANT will be fair and not show partiality to PCCA or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* Based on ENVIRONMENTAL CONSULTANT's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENVIRONMENTAL CONSULTANT recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENVIRONMENTAL CONSULTANT's representation to PCCA, based on such observations and review, that, to the best of ENVIRONMENTAL CONSULTANT's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled insofar as it is ENVIRONMENTAL CONSULTANT's responsibility to observe Contractor's Work. In the case of unit price Work, ENVIRONMENTAL CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENVIRONMENTAL CONSULTANT contained in paragraph A-1.05.A.5.a are expressly subject to the limitations set forth in paragraph A-1.05.A.5.b and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, ENVIRONMENTAL CONSULTANT will not thereby be deemed to have represented that observations made by ENVIRONMENTAL CONSULTANT to check the performance or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENVIRONMENTAL CONSULTANT in this Agreement and the Contract Documents. Neither ENVIRONMENTAL CONSULTANT's review of Contractor's Work for the purpose of recommending payment nor ENVIRONMENTAL CONSULTANT's recommendation of any payment including final payment will impose on ENVIRONMENTAL CONSULTANT a responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose a responsibility on ENVIRONMENTAL CONSULTANT to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to PCCA free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between PCCA and Contractor that might affect the amount that should be paid.

15. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents; certificates of inspection, tests and approvals; Shop Drawings; Samples; and other data approved as provided under paragraph A-1.05.A.10; and the annotated record documents assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENVIRONMENTAL CONSULTANT's review will be limited as provided in paragraph A-1.05.A.9.

c. ENVIRONMENTAL CONSULTANT will transmit these documents to PCCA.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with PCCA and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If ENVIRONMENTAL CONSULTANT considers the Work Substantially Complete, ENVIRONMENTAL CONSULTANT will prepare a Notice of Substantial Completion and submit same to PCCA for its review and approval.

17. *Additional Tasks.* Perform or provide additional construction phase tasks or deliverables stated in the Service Order.

18. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENVIRONMENTAL CONSULTANT may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENVIRONMENTAL CONSULTANT will also provide a notice in the form attached hereto as Exhibit F, "Notice of Acceptability of Work," that the Work is acceptable (subject to the provisions of paragraph A-1.05.A.14.b) to the best of ENVIRONMENTAL CONSULTANT's knowledge, information, and belief and based on the extent of the Services provided by ENVIRONMENTAL CONSULTANT under this Agreement.

B. *Duration of Construction Phase.* The construction phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENVIRONMENTAL CONSULTANT for final payment to Contractor. If the Project involves more than one prime contract as indicated in paragraph A-1.03.C, construction phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENVIRONMENTAL CONSULTANT is not responsible for the acts or omissions of any Contractor or of any of Contractor's subcontractors, suppliers, or of any other individual or entity performing or furnishing any portion of the Work. ENVIRONMENTAL CONSULTANT is not responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A-1.06 Post-Construction Phase

A. Upon written authorization from PCCA, ENVIRONMENTAL CONSULTANT, during the post-construction phase, will:

1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.
2. Assist PCCA in training PCCA's staff to operate and maintain Project equipment and systems.
3. Assist PCCA in developing procedures for control of the operation and maintenance of and recordkeeping for Project equipment and systems.
4. Together with PCCA, visit the Project Site to observe any apparent defects in the Work, assist PCCA in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
5. Perform or provide additional post-construction phase tasks or deliverables stated in the Service Order.
6. In company with PCCA or PCCA's Representative, provide an inspection of the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.

B. Post-construction phase Services may commence during the construction phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the correction period.

A-2.01 Additional Services Requiring PCCA's Authorization in Advance.

If authorized in the Service Order by PCCA, ENVIRONMENTAL CONSULTANT will furnish or obtain from others Additional Services of the types listed below. These services will be paid for by PCCA as indicated in Article 4 of the Agreement.

A. Preparation of applications and supporting documentation (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

B. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of Drawings or other information furnished by PCCA.

C. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENVIRONMENTAL CONSULTANT or its design requirements including, but not limited to, changes in size, complexity, PCCA's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENVIRONMENTAL CONSULTANT's control.

D. Services resulting from PCCA's request to evaluate additional study and report phase alternative solutions beyond those identified in paragraph A-1.01.A.4.

E. Services required as a result of PCCA's providing incomplete or incorrect Project information with respect to Exhibit B.

F. Providing renderings or models for PCCA's use.

G. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting PCCA in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by PCCA.

H. Furnishing Services of ENVIRONMENTAL CONSULTANT's Other Consultants for other than Basic Services, including such things as hiring an independent cost estimator at PCCA request.

I. Services attributable to more prime construction contracts than specified in paragraph A-1.03.C.

J. Services during out-of-town travel required of ENVIRONMENTAL CONSULTANT other than for visits to the Site or PCCA's office.

K. Preparing for, coordinating with, participating in, and responding to structured independent review processes including, but not limited to, construction management, cost estimating, project peer review, and constructability review requested by PCCA, and performing or furnishing Services required to revise studies, reports, Drawings, Specifications, or other Bid Documents as a result of such review processes.

L. Preparing additional Bid or Contract Documents for alternate bids or prices requested by PCCA for the Work or a portion thereof.

M. Assistance in connection with Bid protests, re-bidding or renegotiating contracts for construction, materials, equipment, or services.

N. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A-1.05.A.5, and any type of property surveys or related consulting needed for the transfer of interests in real property; and providing other special field surveys.

O. Providing construction phase Services beyond the Contract Times set forth in Exhibit H.

P. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.

Q. Preparing and furnishing to PCCA Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

R. Preparation of operation and maintenance manuals.

S. Preparing to serve or serving as a consultant or witness for PCCA in any litigation, arbitration, or other dispute resolution process related to the Project.

T. Providing more extensive Services required to enable ENVIRONMENTAL CONSULTANT to issue notices or certifications requested by PCCA under paragraph 6.01.G of the Agreement.

U. Other Services performed or furnished by ENVIRONMENTAL CONSULTANT not otherwise provided for in this Agreement.

A-2.02 Required Additional Services

ENVIRONMENTAL CONSULTANT will perform or furnish, without requesting or receiving specific advance authorization from PCCA, the Additional Services of the types listed below. ENVIRONMENTAL CONSULTANT will advise PCCA in writing promptly after starting any such Additional Services.

A. Services in connection with Work Change Directives and Change Orders to reflect changes requested by PCCA so as to make the compensation commensurate with the extent of the Additional Services rendered.

B. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items and Services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

C. ENVIRONMENTAL CONSULTANT agrees that, at the request of PCCA, the persons performing services in association with the attached Services Orders will be made available as witnesses in any litigation, hearing or proceeding to which PCCA is or may become a party, to explain or defend, as appropriate, any methods used by ENVIRONMENTAL CONSULTANT, or results or conclusions developed by Consultant, in connection with the Work. The fee or bill rate for these services shall be as set forth in the rate schedule attached as Exhibit C.

PCCA's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B-2.01 In addition to other responsibilities of PCCA as set forth in this Agreement, PCCA will:

A. Provide ENVIRONMENTAL CONSULTANT with criteria and information as to PCCA's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; furnish copies of all design and construction standards that PCCA will require to be included in the Drawings and Specifications; and furnish copies of PCCA's standard forms, conditions, and related documents for ENVIRONMENTAL CONSULTANT to include in the Bid Documents, when applicable.

B. Furnish to ENVIRONMENTAL CONSULTANT any other available information known to be in PCCA's possession pertinent to the Project including reports and data relative to previous designs or investigations at the Site, and PCCA is able to retrieve such information from its records.

C. Following ENVIRONMENTAL CONSULTANT's assessment of initially available Project information and data and upon a reasonable request, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable ENVIRONMENTAL CONSULTANT to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land-use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at the Site, or hydrographic surveys with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, impact statements, and other environmental or cultural studies relevant to the Project and the Site.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENVIRONMENTAL CONSULTANT whenever PCCA observes or otherwise becomes aware of any defect or nonconformance in ENVIRONMENTAL CONSULTANT's Services.

E. Authorize ENVIRONMENTAL CONSULTANT to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for access to and make all provisions for ENVIRONMENTAL CONSULTANT to enter upon public and private property as required for ENVIRONMENTAL CONSULTANT to perform Services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENVIRONMENTAL CONSULTANT (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as PCCA deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENVIRONMENTAL CONSULTANT and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required, for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as PCCA requires, Contractor raises, or ENVIRONMENTAL CONSULTANT reasonably requests including, but not limited to, the review of Contract Documents supplied by ENVIRONMENTAL CONSULTANT.

3. Such auditing services as PCCA requires to ascertain how or for what purpose Contractor has used the moneys paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise ENVIRONMENTAL CONSULTANT of the identity and scope of services of any independent consultants employed by PCCA to perform or furnish Services in regard to the Project including, but not limited to, cost estimating, project peer review, value engineering, and constructability review unless such Services are related to an issue under legal review.

K. Furnish to ENVIRONMENTAL CONSULTANT data as to PCCA's anticipated costs for Services to be provided by others for PCCA so that ENVIRONMENTAL CONSULTANT may make the necessary calculations to develop and periodically adjust ENVIRONMENTAL CONSULTANT's opinion of Total Project Costs.

L. ENVIRONMENTAL CONSULTANT will act as the PCCA Representative and Project Manager in accordance with the Agreement and the most current version of the PCCA Project Manual. However, David L. Krams, P.E., PCCA Director of Engineering Services, will, when Project circumstances or ENVIRONMENTAL CONSULTANT's Services require, have final authority over all decisions to be made by PCCA relative to the Project. If PCCA designates a construction manager or any individual or entity other than or in addition to ENVIRONMENTAL CONSULTANT to represent PCCA at the Site, the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENVIRONMENTAL CONSULTANT will be defined and set forth in the Service Order or an appendix to the Service Order.

M. If more than one prime contract is to be awarded for the Work designed or specified by ENVIRONMENTAL CONSULTANT, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set the duties, responsibilities, and authority of ENVIRONMENTAL CONSULTANT as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such Services begin.

N. Attend the pre-Bid conference, Bid opening, pre-construction conferences, construction progress and other Project-related meetings, and Substantial Completion and Final Acceptance inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of PCCA prior to their incorporation into the Work with appropriate professional interpretation thereof:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.

2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

P. Provide ENVIRONMENTAL CONSULTANT with the findings and reports generated by the entities providing services pursuant to paragraphs B-2.01.O.

Q. Perform or provide Additional Services stated in the Service Order.

Payments to ENVIRONMENTAL CONSULTANT for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 – PAYMENTS TO THE ENVIRONMENTAL CONSULTANT

C-4.01 Basic Services Having a Determined Scope – Standard Hourly Rates Method of Payment.

PCCA will pay ENVIRONMENTAL CONSULTANT for Basic Services set forth in Exhibit A as follows:

A. An amount equal to the cumulative hours charged to the Project by each class of ENVIRONMENTAL CONSULTANT's employees' times Standard Hourly Rates for each applicable billing class for all Services performed on the Project, plus Reimbursable Expenses and ENVIRONMENTAL CONSULTANT's Other Consultant's charges, if any.

B. ENVIRONMENTAL CONSULTANT's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.

C. The total compensation for Services under paragraph C-4.01 will be stated in each Service Order issued pursuant to this Agreement.

D. The total compensation for ENVIRONMENTAL CONSULTANT's Services incorporates all labor, overhead, profit, equipment, Reimbursable Expenses, and ENVIRONMENTAL CONSULTANT's Other Consultant's charges.

E. With approval of the PCCA's Director of Engineering Services, ENVIRONMENTAL CONSULTANT may alter the distribution of compensation between individual phases of the work noted herein to be consistent with Services actually rendered. ENVIRONMENTAL CONSULTANT will not exceed the total estimated compensation amount unless approved in writing by PCCA.

F. The Standard Hourly Rates method of payment is established for the primary term of this Agreement. Should the time to complete the Work be extended beyond this period without fault on the part of ENVIRONMENTAL CONSULTANT, the total compensation to ENVIRONMENTAL CONSULTANT will be appropriately adjusted.

C-4.02 Additional Services

PCCA will pay ENVIRONMENTAL CONSULTANT for Additional Services of ENVIRONMENTAL CONSULTANT's employees engaged directly on the Project, pursuant to paragraph A-2.01 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENVIRONMENTAL CONSULTANT's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project plus Reimbursable Expenses and ENVIRONMENTAL CONSULTANT's Other Consultant's charges, if any.

C-4.03 Reimbursable Expenses

A. When included as a part of Basic Services (Exhibit A, Part 1) or Additional Services (Exhibit A, Part 2), PCCA will pay ENVIRONMENTAL CONSULTANT for Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Reimbursable Expenses include the categories described in Appendix 1 to this Exhibit C and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by PCCA, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

C. The amounts payable to ENVIRONMENTAL CONSULTANT for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by ENVIRONMENTAL CONSULTANT. All invoiced external Reimbursable Expenses allocatable to the Project may be invoiced with a markup of 10% of actual cost to ENVIRONMENTAL CONSULTANT.

D. The Reimbursable Expenses Schedule is established for the primary term of this Agreement; provided, however, if the primary term of this Agreement is longer than one year, the Reimbursable Expenses Schedule may be adjusted annually to reflect equitable changes in the compensation payable to ENVIRONMENTAL CONSULTANT.

C-4.04 Standard Hourly Rates

The Standard Hourly Rates set forth in Appendix 2 to this Exhibit C are for salaries and wages paid to personnel in each billing class and the cost of customary and statutory benefits, general and administrative overhead, non-Project operating costs, and operating margin or profit.

C-4.05 Environmental Consultant's Other Consultant's Charges.

Whenever compensation to ENVIRONMENTAL CONSULTANT herein is stated to include charges of ENVIRONMENTAL CONSULTANT's Other Consultants, those charges will be the amounts billed by ENVIRONMENTAL CONSULTANT's Other Consultants to ENVIRONMENTAL CONSULTANT at actual cost to ENVIRONMENTAL CONSULTANT plus a markup of 5% . ENVIRONMENTAL CONSULTANT may use a markup of up to 10% if ENVIRONMENTAL CONSULTANT provides Professional Liability insurance that covers ENVIRONMENTAL CONSULTANT's Other Consultants in an amount approved by PCCA and can justify the additional markup.

C-4.06 Favored Rates

A. The execution of this Agreement by ENVIRONMENTAL CONSULTANT is a representation material to this Agreement that the hourly rates to be charged by ENVIRONMENTAL CONSULTANT set forth in this Exhibit C are equal to or less than the hourly rates charged by ENVIRONMENTAL CONSULTANT to public entities for the same or similar Services performed by ENVIRONMENTAL CONSULTANT within thirty (30) days prior to the effective date of this Agreement.

B. ENVIRONMENTAL CONSULTANT agrees that if, at any time after the effective date of the Agreement, ENVIRONMENTAL CONSULTANT agrees to charge or charges any other public entity in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area an hourly rate or hourly rates for the same or similar Services performed by ENVIRONMENTAL CONSULTANT pursuant to this Agreement that is, or are, less than any of the Standard Hourly Rates set forth in Appendix 2 to this Exhibit C, then ENVIRONMENTAL CONSULTANT will, effective the date ENVIRONMENTAL CONSULTANT agrees to charge such lower rate or rates, adjust its hourly rate or rates being charged PCCA pursuant to the Agreement to such lower hourly rate or rates. ENVIRONMENTAL CONSULTANT's invoices for payment for Services will include an Application and Certification for Payment signed by ENVIRONMENTAL CONSULTANT and ENVIRONMENTAL CONSULTANT's Consultants that the rates charged PCCA by ENVIRONMENTAL CONSULTANT (which, as defined in this Agreement, includes ENVIRONMENTAL CONSULTANT's independent associates, Other Consultants, subcontractors, or vendors) are equal to or less than hourly rates charged public entities in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area by ENVIRONMENTAL CONSULTANT for the same or similar Services provided by ENVIRONMENTAL CONSULTANT to PCCA. A sample Application and Certification for Payment form is attached to Master Agreement No. 08-16 as Appendix 3 to Exhibit C. If ENVIRONMENTAL CONSULTANT charges rates in excess of the rates agreed to be charged in this Agreement, then PCCA may recover from ENVIRONMENTAL CONSULTANT the excess charged and paid by PCCA to ENVIRONMENTAL CONSULTANT by deducting such excess from sums to be paid to ENVIRONMENTAL CONSULTANT by PCCA or by PCCA submitting an invoice to ENVIRONMENTAL CONSULTANT for the overcharges.

C-4.07 Other Provisions Concerning Payment

Revised 09/14

Exhibit C

Payments to ENVIRONMENTAL CONSULTANT for Services & Reimbursable Expenses

Master Agreement No. 08-16
Page 240/307

A. Progress Payments. During the billing period, the portion of the amounts billed for ENVIRONMENTAL CONSULTANT's Services that are related to the Services identified in paragraphs C-4.01 and C-4.02, will be based on the cumulative hours charged to the Project by each class of ENVIRONMENTAL CONSULTANT's employees times the Standard Hourly Rate for each class plus Reimbursable Expenses and ENVIRONMENTAL CONSULTANT's Other Consultant's charges, if any.

B. Extended Contract Times. Should the Contract Times to complete the Services be extended beyond the period identified in the Service Order, payment for ENVIRONMENTAL CONSULTANT's Services will be continued based on the Standard Hourly Rates method of payment in the Service Order.

Reimbursable Expenses Schedule

This Schedule of Reimbursable Expenses is subject to review and may be adjusted pursuant to Exhibit C to this Agreement. The Reimbursable Expenses Schedule for Services performed on the effective date of the Agreement is:

Fax	\$ <u>1.00</u> /Page
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Copies 8½" x 11" Black & White	\$ <u>0.05</u> /Page
Color	\$ <u>0.145</u> /Page

Copies of Drawings 24" x 36"	\$ <u>0.60</u> /Sheet
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Copies of Drawings 11" x 17" B&W	\$ <u>0.10</u> /Sheet
Color	\$ <u>0.29</u> /Sheet

Mileage	\$ <u>0.54</u> /Mile
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Confined Space Equipment	\$ <u>NA</u> /Hour
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CAD Charge	\$ <u>NA</u> /Hour
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Soil Gas Kit	\$ <u>NA</u> /Hour
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Laboratory	\$NA/Hour
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Outside Consultants	At Cost + 5% *
	At Cost + 10% **

* (If E&O Insurance Coverage is not provided)

** (If E&O Insurance Coverage is provided)

Long Distance Phone Calls	At Cost
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Meals & Lodging	At Cost
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Standard Hourly Rates Schedule

The Standard Hourly Rates Schedule is subject to review and may be adjusted pursuant to Exhibit C to the Agreement. The Standard Hourly Rates Schedule for Services performed on the effective date of the Agreement is:

<u>Title</u>	<u>Billing Rate</u>
Clerk	\$_____ 80.00 _____/Hour
Technical Assistant/Word Processor	\$_____ 105.00 _____/Hour
Technician	\$_____ 90.00 _____/Hour
Drafter/Illustrator	\$_____ 90.00 _____/Hour
Technical Editor	\$_____ NA _____/Hour
Senior Drafter/Illustrator	\$_____ 115.00 _____/Hour
Senior Technician	\$_____ 115.00 _____/Hour
Lab/Field Supervisor	\$_____ NA _____/Hour
Assistant Staff Professional	\$_____ 115.00 _____/Hour
Staff Professional	\$_____ 138.00 _____/Hour
Senior Staff Professional	\$_____ 153.00 _____/Hour
Assistant Project Professional	\$_____ NA _____/Hour
Project Professional	\$_____ 185.00 _____/Hour
Senior Project Professional	\$_____ 220.00 _____/Hour
Consulting Professional	\$_____ NA _____/Hour
Senior Consulting Professional	\$_____ NA _____/Hour
Principal/Senior Principal	\$_____ 270.00 _____/Hour

Application and Certification for Payment

See attached sample Application and Certification for Payment.

APPLICATION AND CERTIFICATION FOR PAYMENT

To PCCA:	Port of Corpus Christi Authority P. O. Box 1541 Corpus Christi, TX 78403	Project No.: _____ Project Title: _____ _____	Master Agreement No.: _____ Service Order No.: _____ Application Date: _____
From ENVIRONMENTAL CONSULTANT:	_____	_____	_____

ENVIRONMENTAL CONSULTANT'S APPLICATION FOR PAYMENT

Application is made for payment as shown below:

- | | | |
|--|----|-------|
| 1. Total Amount of Payment for this Service Order (If required) | \$ | _____ |
| 2. Total Amount of Payment for this Application | \$ | _____ |
| 3. Total Amount of Previous Payments for this Service Order | \$ | _____ |
| 4. Total Amount of Payment for this Service Order To Date
(Item 2 + Item 3) | \$ | _____ |

ENVIRONMENTAL CONSULTANT hereby certifies that the rates charged on this invoice are equal to or less than rates charged to public entities in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area by ENVIRONMENTAL CONSULTANT for the same or similar Services provided by ENVIRONMENTAL CONSULTANT to PCCA. If ENVIRONMENTAL CONSULTANT charges rates less than rates charged to public entities in the Coastal Bend area or a Port Authority or Navigation District in the Texas Gulf Coast area as agreed to in this Agreement, then PCCA may recover from ENVIRONMENTAL CONSULTANT the excess charged and paid by PCCA to ENVIRONMENTAL CONSULTANT by deducting such excess from sums to be paid to ENVIRONMENTAL CONSULTANT by PCCA or by PCCA submitting an invoice to ENVIRONMENTAL CONSULTANT for the overcharges.

By: _____

Name: _____

Title: _____

State of Texas §
 §
County of Nueces §

Sworn to and subscribed before me on the ____ day of _____ 20__.

(Seal)

ENVIRONMENTAL CONSULTANT'S CERTIFICATION FOR PAYMENT

Notary Public, State of Texas

**“Duties, Responsibilities, and Limitations of Authority
Of Resident Project Representative”**

Paragraph 6.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

D-6.02 Resident Project Representative

A. ENVIRONMENTAL CONSULTANT may, with prior written consent of PCCA, furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENVIRONMENTAL CONSULTANT in observing progress and performance of the Work. ENVIRONMENTAL CONSULTANT’s RPR, assistants, and other field staff may provide full-time representation or representation to a lesser degree.

B. Through such additional observations of Contractor’s Work in progress and field checks of materials and equipment by the RPR and assistants, ENVIRONMENTAL CONSULTANT will endeavor to provide further protection for PCCA against defects and deficiencies in the Work. However, ENVIRONMENTAL CONSULTANT or his PRP will not, during such visits or as a result of such observations of Contractor’s Work in progress, supervise, direct, or have control over the Contractor’s Work nor will ENVIRONMENTAL CONSULTANT or his PRP have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Section A-1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are limited to those of ENVIRONMENTAL CONSULTANT in the Agreement with PCCA and in the Contract Documents, and are further limited and described as follows:

1. *General.* RPR is ENVIRONMENTAL CONSULTANT’s agent at the Site, will act as directed by and under the supervision of ENVIRONMENTAL CONSULTANT, and will confer with ENVIRONMENTAL CONSULTANT regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s Work in progress will, in general, be with ENVIRONMENTAL CONSULTANT and Contractor, keeping PCCA advised as necessary. RPR’s dealings with Contractor’s subcontractors will only be through or with the full knowledge and approval of Contractor. RPR will generally communicate with PCCA with the knowledge of and under the direction of ENVIRONMENTAL CONSULTANT.

2. *Schedules.* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENVIRONMENTAL CONSULTANT concerning acceptability.

3. *Conferences and Meetings.* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison.*

a. Serve as ENVIRONMENTAL CONSULTANT’s liaison with Contractor, working principally through Contractor’s superintendent, and assist in understanding the intent of the Contract Documents.

b. Assist ENVIRONMENTAL CONSULTANT in serving as PCCA’s liaison with Contractor when Contractor’s operations affect PCCA’s on-site operations.

- c. Assist in obtaining from PCCA additional details or information, when required, for proper execution of the Work.
- 5. *Interpretation of Contract Documents.* Report to ENVIRONMENTAL CONSULTANT when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENVIRONMENTAL CONSULTANT.
- 6. *Shop Drawings and Samples.*
 - a. Record time of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor and notify CONSULTANT of availability of Samples for examination.
 - c. Advise ENVIRONMENTAL CONSULTANT and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENVIRONMENTAL CONSULTANT.
- 7. *Modifications.* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENVIRONMENTAL CONSULTANT. Transmit to Contractor in writing decisions as issued by ENVIRONMENTAL CONSULTANT.
- 8. *Review of Work and Rejection of Defective Work.*
 - a. Conduct on-site observations of Contractor's Work in progress to assist ENVIRONMENTAL CONSULTANT in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
 - b. Report to ENVIRONMENTAL CONSULTANT whenever RPR believes that any part of Contractor's Work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise ENVIRONMENTAL CONSULTANT of that part of the Work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- 9. *Inspections, Tests, and System Startups.*
 - a. Consult with ENVIRONMENTAL CONSULTANT in advance of scheduled major inspections, tests, and system startups of important phases of the Work.
 - b. Confirm that tests, equipment, systems startups, and operating and maintenance training are conducted in the presence of appropriate PCCA personnel and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to ENVIRONMENTAL CONSULTANT appropriate details relative to the test procedures and systems startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENVIRONMENTAL CONSULTANT.

10. *Records.*

a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENVIRONMENTAL CONSULTANT's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site; weather conditions; data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions; Site visitors; daily activities; decisions; observations in general; and specific observations in more detail as in the case of observing test procedures; send copies to ENVIRONMENTAL CONSULTANT.

c. Record names, addresses, and telephone numbers of all Contractors, their subcontractors, and major suppliers of materials and equipment.

d. Maintain complete records for use in preparing Project documentation including chain of custodies.

e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENVIRONMENTAL CONSULTANT.

11. *Reports.*

a. Furnish to ENVIRONMENTAL CONSULTANT periodic reports of the Work as required by the Project and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to ENVIRONMENTAL CONSULTANT proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Furnish to ENVIRONMENTAL CONSULTANT and PCCA copies of all inspection, test, and system startup reports.

d. Report immediately to ENVIRONMENTAL CONSULTANT the occurrence of any accidents at the Site, any Hazardous Environmental Conditions, emergencies, acts of God endangering the Work, and property damaged by fire or other causes.

12. *Payment Requests.* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENVIRONMENTAL CONSULTANT, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered to the Site but not incorporated into the Work.

13. *Certificates; Operation and Maintenance Manuals.* During the course of the Work, confirm that materials and equipment certifications, operations and maintenance manuals, and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENVIRONMENTAL CONSULTANT for review and forwarding to PCCA prior to payment for that part of the Work.

14. Completion:

a. Before ENVIRONMENTAL CONSULTANT issues a Notice of Substantial Completion for review and approval by PCCA, submit to Contractor a list of observed items requiring completion or correction.

b. Observe whether Contractor has arranged for inspections required by Laws and Regulations including, but not limited to, those to be performed by public agencies having jurisdiction over the Work.

c. Participate in a final inspection in the company of ENVIRONMENTAL CONSULTANT, PCCA, and Contractor and prepare a final list of items to be completed or corrected.

d. Observe whether all items on final list have been completed or corrected and make recommendations to ENVIRONMENTAL CONSULTANT concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of ENVIRONMENTAL CONSULTANT's authority as set forth in the Agreement or the Contract Documents.

3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of Contractor's Work unless such advice or direction are specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of PCCA or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENVIRONMENTAL CONSULTANT.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize PCCA to occupy the Project in whole or in part.

**“Duties, Responsibilities, and Limitations of Authority
Of Resident Project Representative on Abatement Projects”**

Paragraph 6.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

E-6.02 Resident Project Representative on Abatement Projects

A. ENVIRONMENTAL CONSULTANT will furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENVIRONMENTAL CONSULTANT in observing progress and performance of the Work. ENVIRONMENTAL CONSULTANT’s RPR, assistants, and other field staff may provide full-time representation or representation to a lesser degree as is determined appropriate by ENVIRONMENTAL CONSULTANT as is required by law for project management during abatement contracts.

B. Through such additional observations of Contractor’s Work in progress and field checks of materials and equipment by the RPR and assistants, ENVIRONMENTAL CONSULTANT will endeavor to provide further protection for PCCA against defects and deficiencies in the Work. However, ENVIRONMENTAL CONSULTANT will, during such visits or as a result of such observations of Contractor’s Work in progress, supervise, direct, or have control over the Contractor’s Work and ENVIRONMENTAL CONSULTANT will have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.

C. The duties and responsibilities of the RPR are limited to those of ENVIRONMENTAL CONSULTANT in the Agreement with PCCA and in the Contract Documents, and are further limited and described as follows:

1. *General.* RPR is ENVIRONMENTAL CONSULTANT’s agent at the Site, will act as directed by and under the supervision of ENVIRONMENTAL CONSULTANT, and will confer with ENVIRONMENTAL CONSULTANT regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s Work in progress will, in general, be with ENVIRONMENTAL CONSULTANT and Contractor, keeping PCCA advised as necessary. RPR’s dealings with subcontractors will only be through or with the full knowledge and approval of Contractor. RPR will generally communicate with PCCA with the knowledge of and under the direction of ENVIRONMENTAL CONSULTANT.

2. *Schedules.* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENVIRONMENTAL CONSULTANT concerning acceptability.

3. *Conferences and Meetings.* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Certify Training.* Review training certificates for Contractor and Contractor’s employees and subcontractors and their employees, and verify appropriate training received in accordance with applicable rules and regulations.

5. *Liaison.*

a. Serve as ENVIRONMENTAL CONSULTANT’s liaison with Contractor, working principally through Contractor’s superintendent, and assist in understanding the intent of the Contract Documents.

- b. Assist ENVIRONMENTAL CONSULTANT in serving as PCCA's liaison with Contractor when Contractor's operations affect PCCA's on-site operations.
 - c. Assist in obtaining from PCCA additional details or information, when required, for proper execution of the Work.
- 6. *Interpretation of Contract Documents.* Report to ENVIRONMENTAL CONSULTANT when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENVIRONMENTAL CONSULTANT.
- 7. *Review of Plans and Methodology.* Review abatement and/or removal plans and methodologies provided by Contractor for conformance to applicable standards. Review Hazardous Waste Management Plan provided by Contractor and monitor for compliance with applicable rules and regulations.
- 8. *Shop Drawings and Samples.*
 - a. Record time of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor and notify CONSULTANT of availability of Samples for examination.
 - c. Advise ENVIRONMENTAL CONSULTANT and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENVIRONMENTAL CONSULTANT.
- 9. *Modifications.* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENVIRONMENTAL CONSULTANT. Transmit to Contractor in writing decisions as issued by ENVIRONMENTAL CONSULTANT.
- 10. *Review of Work and Rejection of Defective Work.*
 - a. Conduct on-site observations of Contractor's Work in progress to assist ENVIRONMENTAL CONSULTANT in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
 - b. Report to ENVIRONMENTAL CONSULTANT whenever RPR believes that any part of Contractor's Work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise ENVIRONMENTAL CONSULTANT of that part of the Work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
 - c. Report to ENVIRONMENTAL CONSULTANT and Contractor when sampling results exceed permissible standards and verify Contractor takes immediate and appropriate measures to correct the situation.
- 11. *Inspections, Tests, and System Startups.*

- a. Consult with ENVIRONMENTAL CONSULTANT in advance of scheduled major inspections, tests, and system startups of important phases of the Work.
- b. Confirm that tests, equipment, systems startups, and operating and maintenance training are conducted in the presence of appropriate PCCA personnel and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to ENVIRONMENTAL CONSULTANT appropriate details relative to the test procedures and systems startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENVIRONMENTAL CONSULTANT.

12. *Records.*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENVIRONMENTAL CONSULTANT's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site; weather conditions; data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions; Site visitors; daily activities; decisions; observations in general; and specific observations in more detail as in the case of observing test procedures; send copies to ENVIRONMENTAL CONSULTANT.
- c. Record names, addresses, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain complete records for use in preparing Project documentation including chain of custodies.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENVIRONMENTAL CONSULTANT.

13. *Reports.*

- a. Furnish to ENVIRONMENTAL CONSULTANT periodic reports of the Work as required by the Project and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to ENVIRONMENTAL CONSULTANT proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to ENVIRONMENTAL CONSULTANT and PCCA copies of all inspection, test, and system startup reports.
- d. Report immediately to ENVIRONMENTAL CONSULTANT the occurrence of any accidents at the Site, any Hazardous Environmental Conditions, emergencies, acts of God endangering the Work, and property damaged by fire or other causes.

14. *Payment Requests.* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENVIRONMENTAL CONSULTANT, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered to the Site but not incorporated into the Work.

15. *Certificates; Operation and Maintenance Manuals.* During the course of the Work, confirm that materials and equipment certifications, operations and maintenance manuals, and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENVIRONMENTAL CONSULTANT for review and forwarding to PCCA prior to payment for that part of the Work.

16. *Completion:*

a. Before ENVIRONMENTAL CONSULTANT issues a Notice of Substantial Completion for review and approval by PCCA, submit to Contractor a list of observed items requiring completion or correction.

b. Observe whether Contractor has arranged for inspections required by Laws and Regulations including, but not limited to, those to be performed by public agencies having jurisdiction over the Work.

c. Participate in a final inspection in the company of ENVIRONMENTAL CONSULTANT, PCCA, and Contractor and prepare a final list of items to be completed or corrected.

d. Observe whether all items on final list have been completed or corrected and make recommendations to ENVIRONMENTAL CONSULTANT concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of ENVIRONMENTAL CONSULTANT's authority as set forth in the Agreement or the Contract Documents.

3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of Contractor's Work unless such advice or direction are specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of PCCA or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENVIRONMENTAL CONSULTANT.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize PCCA to occupy the Project in whole or in part.

Notice of Acceptability of Work

PROJECT TITLE:

PCCA PROJECT NUMBER:

MASTER AGREEMENT NO.:

SERVICE ORDER NO.:

DATE OF CONSTRUCTION AGREEMENT:

ENVIRONMENTAL CONSULTANT:

To: PCCA

And To: *(Insert name of Contractor)*

The undersigned (ENVIRONMENTAL CONSULTANT) hereby gives notice to the above PCCA and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, and the terms and conditions set forth on the reverse side hereof. ENVIRONMENTAL CONSULTANT further recommends PCCA issue a Notice of Final Acceptance to the Contractor.

Company: _____

By: _____

Name: _____

Title: _____

Date: _____

(See Reverse Side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the consulting profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENVIRONMENTAL CONSULTANT.
3. Said Notice is given as to the best of ENVIRONMENTAL CONSULTANT's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the Scope of Services ENVIRONMENTAL CONSULTANT has been employed by PCCA to perform or furnish during construction of the Project (including observation of the Contractor's Work) under ENVIRONMENTAL CONSULTANT's Agreement with PCCA and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENVIRONMENTAL CONSULTANT's knowledge or could reasonably have been ascertained by ENVIRONMENTAL CONSULTANT as a result of carrying out the responsibilities specifically assigned to ENVIRONMENTAL CONSULTANT under ENVIRONMENTAL CONSULTANT's Agreement with PCCA and the Construction Contract referenced on the reverse hereof.
5. Said Notice affirms Contractor's performance under the Construction Contract referenced on the reverse hereof but is not an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.
6. Said Notice affirms that the design of the Project complies with all City of Corpus Christi building codes regardless of whether or not the Project is located within the city limits of the City of Corpus Christi.

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties. A Certificate of Insurance must be issued upon issuance of each Service Order.

G-6.05 Insurance

The limits of liability for the insurance required by paragraph 6.05 of the Agreement are as follows:

<u>Type of Insurance</u>	<u>Limits of Liability</u>
A. Workers' Compensation	Statutory
B. Employer's Liability	\$1,000,000
C. Commercial General Liability	\$1,000,000 (<i>Any One Occurrence</i>) \$2,000,000 (<i>Aggregate</i>)
Such policy will provide evidence of contractual liability at the aforementioned limits. The Aggregate limit is per Project. The coverage will cover Products and Completed Operations.	
D. Business Automobile Liability	\$1,000,000 (<i>CSL, Each Accident</i>)
Automobile liability coverage will include <u>all</u> owned, non-owned, and hired vehicles.	
E. Professional Liability Insurance (E&O) Effective Through:	\$2,000,000 (<i>Per Claim</i>) Primary Term and Any Extension of this Agreement
CONSULTANT will procure and maintain professional liability insurance for protection from claims arising out of performance of Professional Services caused by a negligent error, omission, or act for which the insured is legally liable. Such professional liability insurance will provide and maintain in full force and effect coverage in such amounts with deductible provisions that must be approved by PCCA in writing and for such period of time as set forth above. If required, a copy of the policy will be delivered to PCCA.	
F. Umbrella Liability	\$5,000,000
Umbrella liability coverage will apply to Employer's Liability, Commercial General Liability, and Business Automobile Liability.	
G. Contractor's Pollution Legal Liability	\$5,000,000

PCCA Certificate of Insurance

An executed copy of the Certificate(s) of Insurance must be provided to PCCA for each Service Order which certificate(s) must be approved by, and on file with, the Texas Insurance Commission, and must be reasonably acceptable in their content, to PCCA.

Service Order Form

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS
SERVICE ORDER NO. *(Insert Service Order number)*
MASTER AGREEMENT NO. *(Insert Master Agreement number)*
PROJECT NO. *(Insert Project number)***

Pursuant to PCCA Master Agreement No. *(Insert Master Agreement number)* between Port of Corpus Christi Authority of Nueces County, Texas ("PCCA") and *(Insert name of ENVIRONMENTAL CONSULTANT)* ("ENVIRONMENTAL CONSULTANT"), ENVIRONMENTAL CONSULTANT will provide the Basic and Additional Services set forth in Exhibit A of Master Agreement No. *(Insert Master Agreement number)* in accordance with any additions or deletions to the same or any Services different from those described in the said Exhibit A, in this Service Order. This Service Order modifies or amends PCCA Master Agreement No. *(Insert Master Agreement number)*, the provisions of which not specifically amended by this Service Order will remain in effect.

Description of Project:

(Insert a brief paragraph that includes the Project number and title, a description of the Project, and list the amount specific to this Service Order. A more detailed description of the Project may be included if desired as Appendix I, attached hereto and included herein by reference for all purposes.)

Project Contact for PCCA:

Project Contact
For ENVIRONMENTAL CONSULTANT:

Project Manager: *(Insert name of Project Manager)*

Project Manger: *(Insert name of Project Manager)*

Phone Number: *(Insert Project Manager's phone number)*

Phone Number: *(Insert Project Manager's phone number)*

Scope of Services:

(Insert a detailed description of the Services to be performed.)

1. Study/Report Phase.
2. Preliminary Design Phase.
3. Final Design Phase.

Service Schedule:

(If deadlines are required, describe them here.)

Deliverables:

(Insert numbered list of deliverables to be provided by ENVIRONMENTAL CONSULTANT.)

Project Team:

The Project Team to be used on this project will include the following:

(List names and titles of individuals that will work on this Project.)

Subcontractors to be used on this project will include the following:

(List names and addresses of all Other Consultants and subcontractors ENVIRONMENTAL CONSULTANT will employ on this Project.)

Compensation:

In accordance with Article 4 of Master Agreement No. *(Insert Master Agreement number)* and negotiations between the parties, ENVIRONMENTAL CONSULTANT will be compensated pursuant to this Service Order as follows:

Report & Study Phase \$ _____

Preliminary Design Phase \$ _____

Final Design Phase \$ _____

Total Compensation for Services per Exhibit C-4.01 not to exceed \$ _____

Contingency (*PCCA Approval Required*) \$ _____

Reimbursement:

The following applies to expenses reimbursed under this Service Order:

Invoices: ENVIRONMENTAL CONSULTANT will submit invoices to PCCA *(Insert whether monthly, upon completion of each task, or other payment schedule)* in accordance with the fee schedule set forth in this Agreement. Requests for payment must be supported by documentation such as invoices, receipts, statements, stubs, tickets, time sheets, and any other documentation that, in the reasonable judgment of PCCA, provides complete substantiation of Reimbursable Expenses incurred by ENVIRONMENTAL CONSULTANT. All deliverables and reimbursement documents submitted to PCCA must prominently display PCCA Master Agreement No. *(Insert Master Agreement number)*, Service Order No. *(Insert Service Order number)*.

Funding Agency: *(Insert name of outside funding agency, if any)*

Termination or Interpretation of Services:

PCCA reserves the right to halt or defer all or any portion of the Services included in the Scope of Services for this Service Order at any time during the performance period. If the Services are halted or deferred, the parties agree that the schedule and budget may require renegotiation.

Amendments to Service Order:

Material changes to this Service Order may be made only by written agreement of the parties to the Agreement. All provisions of PCCA Master Agreement No. *(Insert Master Agreement number)* not specifically amended by this Service Order will remain in force and effect.

Material Changes to Master Agreement:

All provisions of PCCA Master Agreement No. *(Insert Master Agreement number)* are in full force and effect except for the following changes:

(Insert changes if applicable, if no changes end sentence and remove language "except for the following changes")

Effective on the date executed by the last party to this Service Order.

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

By: _____

Name: Sarah L. Garza

Title: Director of Environmental Planning & Compliance

Date of Execution: _____

“PCCA”

(Insert name of ENVIRONMENTAL CONSULTANT)

By: _____

Name: _____

Title: _____

Date of Execution: _____


“ENVIRONMENTAL CONSULTANT”

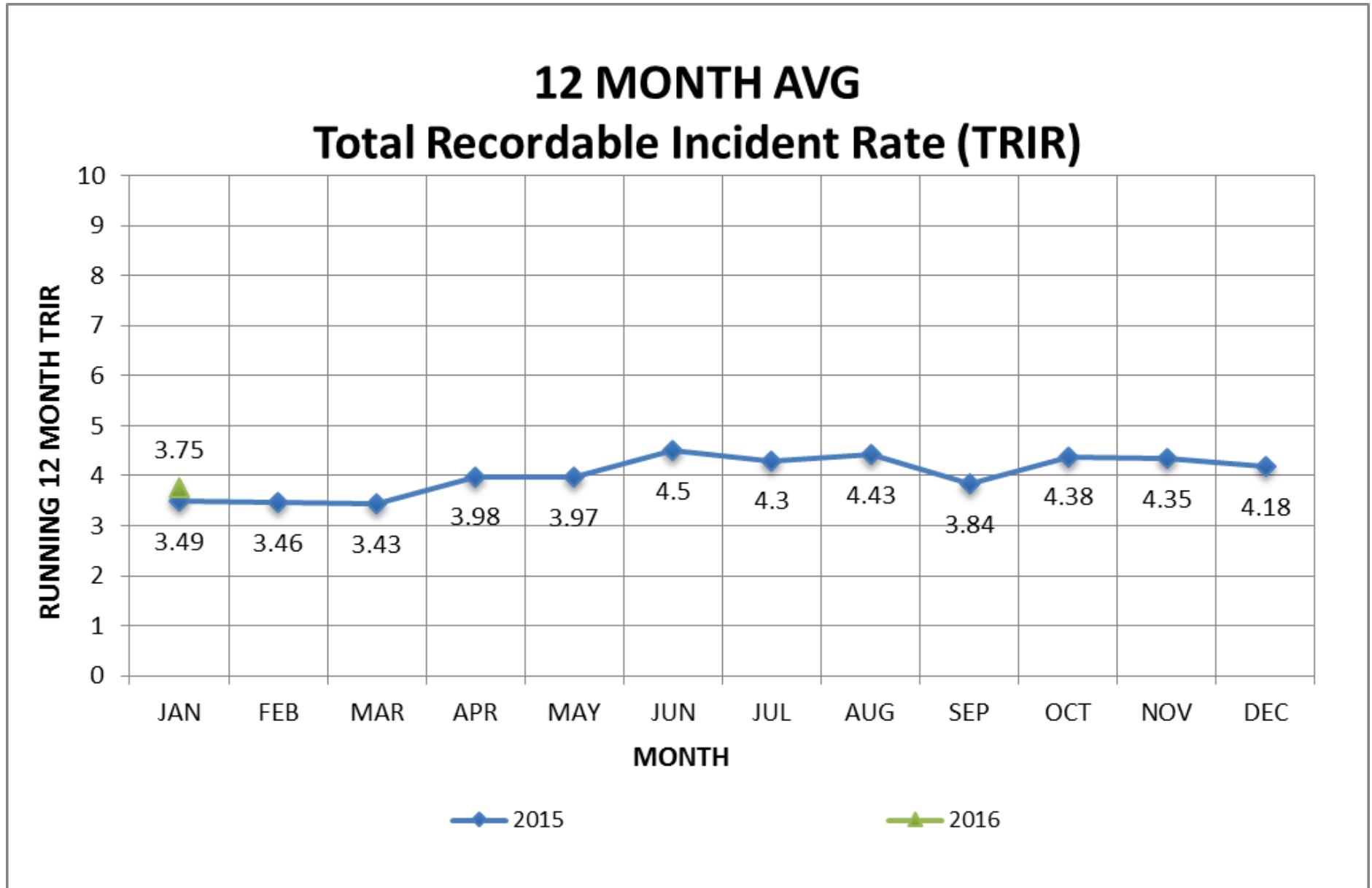
DATE: February 16, 2015

FROM: John LaRue; 885-6189; john@pocca.com

AGENDA ITEM NO. 15

EXECUTIVE DIRECTOR'S REPORT

<div><div><div>Port of Corpus Christi Authority</div><div>Monthly Safety Data Report</div><div>January 2016</div></div></div>										
	POCCA Employees		BMD		Maintenance		PD		Admin. & Annex	
	Total		Personnel		Personnel		Personnel		Personnel	
Safety	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD
Number of Employees	203		22		43		48		90	
Work Hours	29,066	29,066	3,521	3,521	5,492	5,492	7,810	7,810	12,243	12,243
First Aid Cases	1	1	0	0	0	0	1	1	0	0
Recordable Injuries	0	0	0	0	0	0	0	0	0	0
Recordable Illnesses	0	0	0	0	0	0	0	0	0	0
Lost Time Cases	0	0	0	0	0	0	0	0	0	0
Number of Days Lost	0	0	0	0	0	0	0	0	0	0
Restricted Cases	0	0	0	0	0	0	0	0	0	0
Number of Days Restricted	0	0	0	0	0	0	0	0	0	0
TOTAL RECORDABLES	0	0	0	0	0	0	0	0	0	0
INCIDENT RATE (YTD)		0.00		0.00		0.00		0.00		0.00
Types of Injuries										
Slips/Trips/Falls	1	1	0	0	0	0	1	1	0	0
Struck By	0	0	0	0	0	0	0	0	0	0
Strains/Sprains	0	0	0	0	0	0	0	0	0	0
Cuts/Lacerations/Punctures	0	0	0	0	0	0	0	0	0	0
Back Injuries	0	0	0	0	0	0	0	0	0	0
Heat Stress	0	0	0	0	0	0	0	0	0	0
Insect Bites	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
TOTAL	1	1	0	0	0	0	1	1	0	0
Days Since Last Lost Time Case Hours Since Last Lost Time Case Days Since Last Recordable Injury/Illness Hours Since Last Recordable Injury/Illness										
110 880 73 584										
Date of Last Lost Time Case Date of Last Recordable 12 Month Rolling Average										
Wednesday, October 14, 2015 Friday, November 20, 2015 February 2015 - January 2016: 373,279 Manhours Worked										
Total Recordable Incident Rate (TRIR): 3.75										





SAFETY COMMUNICATIONS



PORT CORPUS CHRISTI™



Effective Communication

Why are communication skills important? According to California Job Journal surveys of employers consistently show that communication skills are critical for effective job placement, performance, career advancement and organizational success.

Communication skills must be learned. We are not born with the ability to read, listen, speak and write. In the employee environment we must learn to communicate well. An example, to sharpen our skills is to identify the problem, gather information, evaluate the evidence, consider alternatives and implications, choose the best alternative and test it.

When it comes to safety effective communication plays a major role in how well we perform. We need to provide accurate, concise and clear information. This will ensure that the message intended is the message received. At the same time this minimizes the potential for making mistakes.

Whether you are communicating an important condition, operating or testing critical equipment, instructing from a formal work document, directing activities to others or being directed from specific organizational guidance, all have to do with how we communicate to others.

Safety is a value! If we see a potential hazard that may not harm us but may harm others, we must communicate to others of the potential hazard. For example if we see anyone that does not have appropriate PPE (personal protective equipment) please do not hesitate to visit your Safety Department.

Safety Incentive

First 10 employees to call, text or email the Safety Manager with the answer will have their name put into a drawing for a safety incentive. Please be sure to include YOUR NAME!!

Q: What is one example that will help us communicate effectively?

Did You KNOW? WINNER!

**Doug
Hanley**

Port TRIR: 4.18
2015 Injuries:
Slips/Trips/Falls = 8
Struck By = 5
Strain/Sp rain = 6
Cuts/Lacerations = 3

**Picture
This!**

JANUARY SAFETY SUGGESTION WINNER

IS:

Melinda Maldonado

Safety Suggestions



- Engineering to contract work to add stairs and hand rail to Water Street access behind Admin building.
Status: Complete
- H2S personal and area monitors has now developed into an overall response plan for suspicious odors.
Status: In process
- Clean cracks (in cement and pavement) of grass and dirt and seal to prevent having to weed-eat area
Status: In process
- Provide latex glove pouch holders for Police Officers that fit on duty belts.
Status: Under review
- Color code all electrical, extension and power cords on tools every quarter.
Status: 90% Complete
- Require all construction contractors awarded a contract to submit a safety plan prior to starting work.
Status: In process
- To replace soap dispensers with new automatic soap dispensers.
Status: Under review
- To change all restroom faucets to automatic.
Status: Considered, will not be implemented.
- To add a step ladder to PD boatlift.
Status: Under review
- To place a life ring on each side east and west of boatlift.
Status: Under review



Safety Program Monthly Report

SELECT INTERNATIONAL

Safety is in the process of modifying the current Safety Award Program to incorporate new safety initiatives that includes non-monetary incentives. The new Safety Program will focus more on long-term positive influences to encourage intrinsic behavioral based safety. To assist with this, we have hired *Select International*, a safety consultant that will be working with the Port staff to ensure we meet our goals. *Select International's* approach to safety focuses on developing the individual first to improve the safety performance of the entire group. *Select International* will be onsite in March, however we have already started the programs survey process. All staff will have varying levels of participation with 8 employees selected for the Train the Trainer program, 7 employees selected for the Leadership program and 90 additional staff participating in the individual safety assessment process.

LUNCH 'N LEARN

February 24th Safety will introduce the new safety initiatives at our first quarterly Safety Lunch 'N Learn for Port Staff at the Ortiz Center. Safety Lunch 'N Learns are intended to provide an open forum where all employees can discuss current safety initiatives, performance measurements, Port-wide safety topics relating to performance trends, as well as provide an opportunity for management to promote a positive Safety Culture through recognition of individuals and departments for safety participation and performance improvements.

PEER OBSERVATION

One of the initiatives we plan to implement is a Peer Observation program. This program is a way to open lines of communication between departments, get a 'new-eye' look at current processes and allows employees an opportunity to observe the activities of other departments. Observations must be pre-planned by submitting a request to the Safety Manager through their Supervisor/Manager. The employee will observe 15 minutes in which should include observing, communicating and documenting. Discussions will focus on positive feedback of the observation and the documentation will be submitted to Safety Manager.

RECOGNITION PROGRAM

Another initiative will be a recognition program referred to as 'On the Spot' (OTS). On the Spot programs is a process by which employees within a supervisory capacity can give immediate and spontaneous recognition of appreciation. Each employee within a supervisory role will be given a select number of OTS required each quarter which will be tracked by the Safety Department for trending purposes.

COMMUNITY RELATIONS

Internal events/ meetings

- Online Sponsorship application with Tyler Furken and Richard Hernandez
- Separate Phone line for Hillcrest concerns with Richard Hernandez
- Weekly Staff meeting with Liz Cantu
- Internship Program – Sandra Davis

Community events/meetings/sponsorships

- Corpus Christi Hispanic Chamber Merger Meetings
- Nueces County Commissioner Court Board Meeting
- CCREDC Annual Investors Luncheon
- Meeting with Humberto Almaraz, Toby Globy Eco Systems, Tina Ybarra, Gregory Portland ISD
- Mayor's Interagency Meeting (Liz Represented)
- Corpus Christi Hispanic Chamber/ Corpus Christi Chamber Infrastructure Meeting
- Corpus Christi Hispanic Chamber Monthly Board Meetings
- CCHC – State of the County Luncheon
- Celebrity Waiter Dinner
- Dr. Hector P. Garcia -
- Southside Corpus Christi Rotary Club Dinner (Barbara received an award)
- KEDT Food & Wine Classic
- New Life Refuge Celebration of Courage Banquet
- CCHC Embajador Monthly Meeting
- Met with Sara, RTA Meeting
- Gary Zacher – YWCA – Sponsorship request
- NAACP
- CC Chamber of Commerce Farewell Reception for Foster Edwards
- Leadership Corpus Christi – Port Presentation at CCAD
- Oveal Williams Senior Center Fundraiser Meeting
- CCHC Strategy Meeting with Dr. Ramirez
- GI Forum Breakfast – Port representation in giving out Port tablets to Title One schools including George Evans
- Hillcrest Voluntary Acquisition Meetings
- Fielding all calls from Hillcrest residents and forwarding all Hillcrest informational notices
- Keeping a log of all incoming and outgoing contacts regarding Hillcrest acquisition

- Directing all sponsorship requests to our Online Application form
- Hillcrest Meetings with Committee on Jan 21-23rd
- Hillcrest Neighborhood Real Estate Acquisition & Relocation Services RFP Committee Meeting
- TXDOT Bridge Replacement Meetings
- Fiesta de los Ninos (Liz Represented)
- Del Mar College Foundation Board Meeting
- Met with Andy Steavens – Hooks
- Masalachai & Café & Pan Dulce
- CCHC Ribbon Cutting – Z Connection
- CC Chamber of Commerce – Annette Medlin Breakfast Meeting

COMMUNICATIONS

January Staff & Employee Events:

- 2016 Marketing Plan and Creative
- Various PMOP Positive Engagement Campaign meetings
- Various Harbor Bridge Acquisition & Relocation Program related meetings
- Port Commission Mtg.
- Wellness Committee meetings, Luncheon and Health Assessment
- CVB monthly meeting
- VCS Board Meeting
- Planning of 1st Latin American Petroleum & Energy Summit
- Visit from voestalpine Austria - Jan
- Planning annual visit to BNSF - Feb
- Planning AAPA Environmental and PR Committees meeting in C.C. in March
- Planning Gulf Port's Environmental Summit - April
- Planning visit from UP - Feb

Multimedia Coverage for January:

- NEW MEDIA MARKETING MANAGEMENT
 - PortOfCorpusChristi.com
 - Our Broadcasts/SEACASTS news feed stories are original content; written to inspire organic growth with search engines.
 - [Texas Crude Oil Reaches Europe via Port Corpus Christi](#)
 - WEBSITE ANALYTICS (January 1 – 31, 2016) – **All doubled from last month.**
 - 22,329 Sessions
 - 40,683 Page Views
 - 14,802 Unique Users

➤ USER PROFILES

Country	Sessions	% Sessions
1. United States	20,697	92.69%
2. Canada	181	0.81%
3. United Kingdom	134	0.60%
4. India	129	0.58%
5. Mexico	98	0.44%
6. Colombia	91	0.41%

➤ TOP TRAFFIC SOURCES

Source	Sessions	%New Sessions
1. Organic Search	8,079	50.58%
2. Direct	6,879	43.31%
3. Social	6,194	96.06%
4. Referral	1,112	52.16%
5. Display	50	68.00%

○ Social Media – (January 1 – 31, 2016)

➤ Facebook

- 4,343 Likes
- 20 New Likes
- 34,388 Total Reach
- 34,388 Organic Reach

➤ Twitter

- 1,287 Followers
- 50 New Followers
- 6,815 Impressions (Organic)

• PHOTO | VIDEO | DOCUMENTARY

- Aerial Drone footage Inner Harbor, Cargo Docks, M&G, Rincon
- Safety Images
- New Port Commission
- Austrian Visitors
- New Ad images

• MEDIA, MARKETER, COMMUNITY AND PUBLIC RELATIONS

- Journalists visiting from Norwegian Dagens Naeringsliv
- Coordinate visits with other local medias, KORO, KIII, KRIS
- Coordinate January's Our Port newsletter
- Various commission and staff support for presentations local, regional, state, national and international.
- Final review for 2016 director
- Support to Coastal Bend Magazine story
- Coordinating visit upcoming from French News Les Echos
- Support planning of EDC & Port media trips to NY
- Designing CCREDC/PORT presentation
- Design of external website for Harbor Bridge Land Acquisition project
- Upgrading information for port's B2B website redesign
- Redesigning Port's main brochure and other marketing materials.
- Social media training for Port police
- Safety program posters photography

- MEDIA ADVISORIES/PRESS RELEASES
 - [M&G Chemicals Plans to Increase Capacity at Corpus Christi Facility Opening Second Half of 2016](#)
 - [Port Commission Welcomes a New Member and Elects New Executive Officers](#)
 - [Port Director to Receive NAACP Presidential Award](#)
 - [Port Commissioner Addresses Pipeliners on Crude Oil Exports](#)
 - [Harbor Bridge Replacement Project Moves Forward](#)
- MEDIA MENTIONS/WEB STORIES (January 1 – 31, 2016)
 - 63 Mentions (See attached PortCCNewsAndSocial1_2016)

Marketing – MDR:

With the support of MDR, we focused on implementing the new branding into some timely projects including: Open Carry/Concealed Weapon Signs, Safety Lunch n' Learn save the date (screenshot middle), Powerpoint templates for the Port and Port/EDC presentations, AWEA poster competition, BNSF Rail Reception evite, 90th Anniversary promotional items and media advertisements.

January 2016/ Media Editorial /Focus Ad Content

- *AAPA Seaports Directory*
- *Breakbulk Magazine / Breakbulk China and Breakbulk Africa Conferences*
- *Dry Cargo International /US Gulf Report (added value: editorial 900 words)*
- *Expansion Solutions Magazine /Logistics/Top 5 US Ports*
- *Journal of Commerce /Annual Review & Outlook*
- *North American Strategy for Competitiveness /Annual Review & Outlook*
- *SHALE Magazine / Feature on Cheniere*
- *Todo Logistica/Guia Logistica*
- *aapa-ports.com / homepage banner*
- *breakbulk.com /run of site (added value)*
- *expansionsolutionsmagazine.com / homepage banner*
- *Latin Trade / Daily eNewsletter banner*

February 2016 /Media Editorial/Focus Ad Content

Print:

- *Asociación Nacional De Importadores y Exportadores De La República Mexicana (Organization dedicated to creating an environment that facilitates entrepreneurship and the development of Mexican trade with the world.*
- *Coastal Bend Business Directory*
- *Business Directory for San Patricio County*

Digital:

- America Economia eNewsletter
- Inbound Logistics Digital Planner (screenshot right)
- Latin Trade Daily eNewsletter
- <http://www.aapa-ports.org>
- <https://www.ajot.com>
- <http://www.breakbulk.com>
- <http://www.expansionsolutionsmagazine.com>
- <http://www.heavyliftphi.com>
- <http://www.il-latam.com>
- <http://www.transportjournal.com/en/home.html> (screenshot left)

Current Marketing Developments



GOVERNMENT AFFAIRS**LOCAL**

- Attended State of the County.
- Attended Dr. Hector P. Garcia celebration.
- Attended Ingleside City Council meeting with Community Relations.
- Attended Harbor Bridge/Hillcrest relocation meetings.

STATE

- Hosted General Hill, Commander of the Southwestern Division, USCE at Port. Briefing and boat tour were provided.
- Held meeting with TXDOT regarding overweight/oversize permit implementation.
- Met with port staff to discuss projects for submission to the 2017-2018 Texas Port Capital Program-Phase 1 funding.
- Working with consultants to monitor Interim Committee charges that are of interest to Port.

FEDERAL

- Worked with consultants to advance our Channel Improvement Project and Corps meetings in January.
- Working with congressional offices and consultants to monitor FY 2017 budget, TIGER grant funding availability, FAST ACT implementation, Harbor Maintenance Trust Fund, WRRDA funding for energy ports, etc.

BORSKI ASSOCIATES, LLC

5023 South Convent Lane, Unit J Philadelphia, PA 19114
(215) 327-5600 (Cell)

805 15th Street, N.W. Suite 1101

Washington, DC 20005

(202) 459-0804 (Office)

MEMO

To: Port of Corpus Christi

From: Borski Associates Date:

February 2, 2016

Re: Monthly Report

FY17 Budget and FY16 Workplan

We met with the Army Corps of Engineers to discuss the potential for funding of the Corpus Christi Ship Channel Improvement Project FY17 budget and the FY16 Workplan. Prior to this meeting, we met with John LaRue and Dan Kosema to discuss options and strategy to get the project funded in the workplan.

We were advised by the Army Corps of Engineers that the FY16 Workplan and the FY17 budget will both be released on Tuesday, February 9th.

Surface Transportation Analysis

We provided an analysis of the surface transportation bill and its benefits to ports and advised on the funding streams through which POCCA can access these funds. We will monitor the announcement of Projects of National and Regional Significance, which is a new fully funded program for capital investments in freight and highway projects. This will be in addition to \$500 million provided this year for TIGER grants.

WRDA 2016

We have learned from contacts on Capitol Hill that both the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee are intent on passing a Water Resources Development Act this year. Both Committees' chairmen and ranking members are committed to a bill. The House should be moving on its bill in early March.



733 Tenth Street, N.W., Suite 400
Washington, DC 20001-4886

Tel: (202) 347-0773
Fax: (202) 347-0785
www.cassidy.com

Firm Client: Port of Corpus Christi Authority, Texas

Primary Client Team: Barry Rhoads, Steven McKnight, Andrew Forbes, and Kaleb Froehlich

Services Period: January 1-31, 2016

Summary of Services on behalf of Port of Corpus Christi Authority, Texas:

- Substantive consulting on federal government issues on behalf of PCCA
 - ▶ Participated in meeting with Corps of Engineers officials on impact of new Limited Reevaluation Report, status of Corps funding requests, and path forward [Project Partnership Agreement, etc.] if receives new funding
 - ▶ Provided information about status of release of FY2017 federal budget
 - ▶ Discussed impact of Federal Highway Administration's final approval for plans to replace Corpus Christi's Harbor Bridge.
- Legislative Liaison and Monitoring
 - ▶ Provided information about Congressional request for priorities for next Water Resources Development Act
 - ▶ Collaborated on talking points for Congressional interaction with Corps of Engineers officials
 - ▶ Scheduled meeting with Congressional committee staff to discuss Aids to Navigation funding and related issues
 - ▶ Provided information about passage of legislation to repeal ban on domestic oils exports as part of FY16 omnibus appropriations act
 - ▶ Reported on Congressional delegation positions on omnibus appropriations act, both prior to passage and recorded Congressional votes
- Client Contact and Team Coordination
 - ▶ Engaged in regular telephone and e-mail contact on PCCA matters with Executive Director John LaRue, Government Relations Manager Nelda Olivo, and Senior Project Engineer Dan Koesema
 - ▶ Hosted PCCA and consultants joint meeting in Washington, DC office on 2016 Port priorities
 - ▶ Attended and reported on AAPA meeting of Washington port representatives
 - ▶ Reviewed news media coverage of new developments at Port and other PCCA activities and discussed same with PCCA representatives

BUSINESS DEVELOPMENT

- Met with a Class I rail entity in Monterrey, Mexico to discuss future business opportunities in relation to “crude by rail” transportation from PCC down to the San Luis Potosi area of Mexico. Their business plan is to construct a rail-car loading facility, for gasoline and diesel. Unit trains will be transporting the finish product southbound and returning with crude oil, for a local refinery, northbound. In addition, met with owner and largest distributor of gasoline, diesel and gas for Pemex. Today, they have 24 storage facilities throughout Mexico with a 40 million cubic feet storage capacity. This entity is planning on expanding its gas operations by handling the product from this area into Mexico.
- Invited to participate within the UTSA-AEM Energy Committee who hosted a delegations of executives from Mexico’s Secretary of Hydrocarbons-Drilling & Exploration as well as from the Secretary of Environmental and Natural Resources. They are part of the governmental entities in charge of providing permits to those companies seeking to proceed with “frac-drilling explorations” in Northern Mexico. The COO for Lewis Energy Mexico was also in attendance.
- As candidate for AAPA’s PPM (Professional Port Manager Certification) participated within the “Shifting International Trade Routes” training conference. The future impact on global ocean trade routes; once the “new” Panama Canal is in operation, was one of the key topics.
- Continue lease negotiations for the warehouse in which bulk beans are bagged to final distribution. We should have the “building insurance” requirement in place within the first part of February.
- Continue receiving plant materials and raw steel pipe for TPCO.
- Continue coordinating the import shipments of plant equipment for M&G as well as in the support for the future logistics involving the receiving of raw materials to initiate product production.
- Were visited by the International Trade Center, from San Antonio. A port presentation and tour was provided. They were interested in the latest news of this Port exporting crude oil to international markets.
- We continue to work on the organization of the first Latin American Petroleum & Energy Summit which is to take place, within PCC, in February. The Colombian Petroleum Association is spearheading a delegation of energy companies who are interested in meeting with local entities to seek joint venture opportunities within this field of business. Also, Palermo Terminal and other companies engaging in the handling of chemicals will be attending. So far, we have received attendance confirmations from 10 Colombian companies and a similar number from local ones.
- Working within the Master Development Plan team for the BMD. We have met with some tenants and proceeding with guidelines to formulate this plan.

FOREIGN TRADE ZONE

A meeting with Foreign Trade Zone (FTZ) operators and local Customs and Border Protection (CBP) officers was held on Thursday, January 28. CBP provided information on year-end reports, 2016 compliance review schedules, and updates on FTZ systems and procedures.

Voestalpine continues to work on information required for CBP activation approval of their site.

ORTIZ CENTER

2015 was a tremendous year for the Ortiz Center. Sales were 15% higher than budget, while Gross Profit on Sales increased over 2%. While we had a great year financially, client satisfaction and guest services are the cornerstone of our business. Performance, Not Promises™ is Spectra's after event client survey system. We are pleased to report that satisfaction scores increased over 4% from the previous year to 96.75%. We are also honored to be a recipient of the Caller Times 2016 Best of the Best Readers Choice award for Special Occasions / Weddings Venue.

We are very excited to move into 2016 with several projects that will enhance the facility while increasing our ability to service our clients and increase our guest experiences.

In January, at no cost to the Port, Spectra contracted with an independent consultant, Metropolitan Interactive (MI) to evaluate and make recommendations on the audio and visual systems here at the Ortiz. MI was onsite during the State of the County event to evaluate our current audio and visual systems, as well as observe two of the three contractors in town that most groups contract with for AV support at larger events. MI recommendations for upgrades to the audio system, as well as additional opportunities for video capabilities were made, as well as feedback on vendor opportunities and are currently being evaluated.

As usual, January and February sales are slower than normal months. We are pleased to report that while January sales were slightly behind budget due to a large event moving into February, we will still be in the positive for the month with February projecting to as well.

As part of our continued commitment to the community, we are pleased to report that the Ortiz Center provided almost \$17,000 in discounts and sponsorships to various non-profit and Community Based Organizations in January. The support given by the Ortiz Center assists these wonderful organizations in their ability to generate the resources needed to provide services throughout the Coastal Bend region.

Below are 2015 totals and numbers to-date for 2016 activity. *Current month figures are estimated.

2015	Guest Attendance	Number of Events	Revenue	2016	Guest Attendance	Number of Events	Revenue
January	5,113	42	\$216,694	*January	4,945	44	\$149,751
February	2,639	27	\$75,227	February			
March	5,397	40	\$197,604	March			
1st Quarter	13,149	109	\$489,525	1st Quarter			
April	5,046	53	\$187,262	April			
May	5,727	42	\$187,077	May			
June	4,152	47	\$204,576	June			
2nd Quarter	14,925	142	\$578,915	2nd Quarter			

July	3,511	52	\$165,634	July	
August	2,521	31	\$92,649	August	
September	3,418	30	\$157,647	September	
3rd Quarter	9,450	113	\$415,930	3rd Quarter	
October	4,572	52	\$214,263	October	
November	6,907	56	\$257,904	November	
December	5,468	50	\$385,933	December	
4th Quarter	16,947	158	\$858,100	4th Quarter	
Totals	54,471	522	\$2,342,470	Totals	

HUMAN RESOURCES

General

- There were (8) random and (1) post-accident drug and alcohol tests conducted.
- Employee meetings were held to discuss the new provision of the Overtime Policy.
- Staff launched the Student Internship Program - The program provides opportunities for local college level students to enhance their education through participation in an internship with is both meaningful and related to their field of study. The program is designed to further build a student's skills and knowledge in a professional work environment which offers guidance and practical On-the-job training.

Recruitment

The following positions were posted in January 2016:

- Real Estate Services Specialist
- Environmental Engineer

Training & Development

- Engineer, Environmental and the Talent Development Manager attend the HAZWOPER Success Training at Texas A& M University in Corpus Christi.
- Assisting Safety with the survey for Select International with the Bulk Terminal and Maintenance Employees
- Implementation of a timeline of discussion in New Hire orientation
- Developing Flow Chart for Succession Planning
- Developed a Training Calendar
- Developing a training module for managers/supervisors at Del Mar and Dale Carnegie

There were also additional meetings held with staff to discuss:

- Staffing
- Human Relations
- Payroll Administration

**Port of Corpus Christi Authority
Organizational Chart
January 31, 2016**

DEPARTMENTS	Exempt	Non-Exempt	Temporary	Total
Executive Director	2	0	0	2
Director of Government Affairs	1	0	0	1
COO	2	0	0	2
CCO	1	1	0	2
Human Resources	3	3	0	6
Safety	1	1	0	2
Engineering Services	13	3	0	16
Environmental Services	4	1	0	5
Real Estate Services	2	1	0	3
Finance & Admin.	1	1	0	2
Accounting	3	7	0	10
Risk Management	2	0	0	2
Information Tech	13	0	0	13
Business Development	5	0	0	5
Community Relations	2	0		2
Communications	3	0	1	4
Operations	3	1	0	4
Maintenance	2	41	0	43
Harbormaster's Office	1	8	0	9
Bulk Handling Facility	3	18	0	21
Security/Police Dept.	4	44	0	48
TOTAL	71	130	1	202

E - EXEMPT

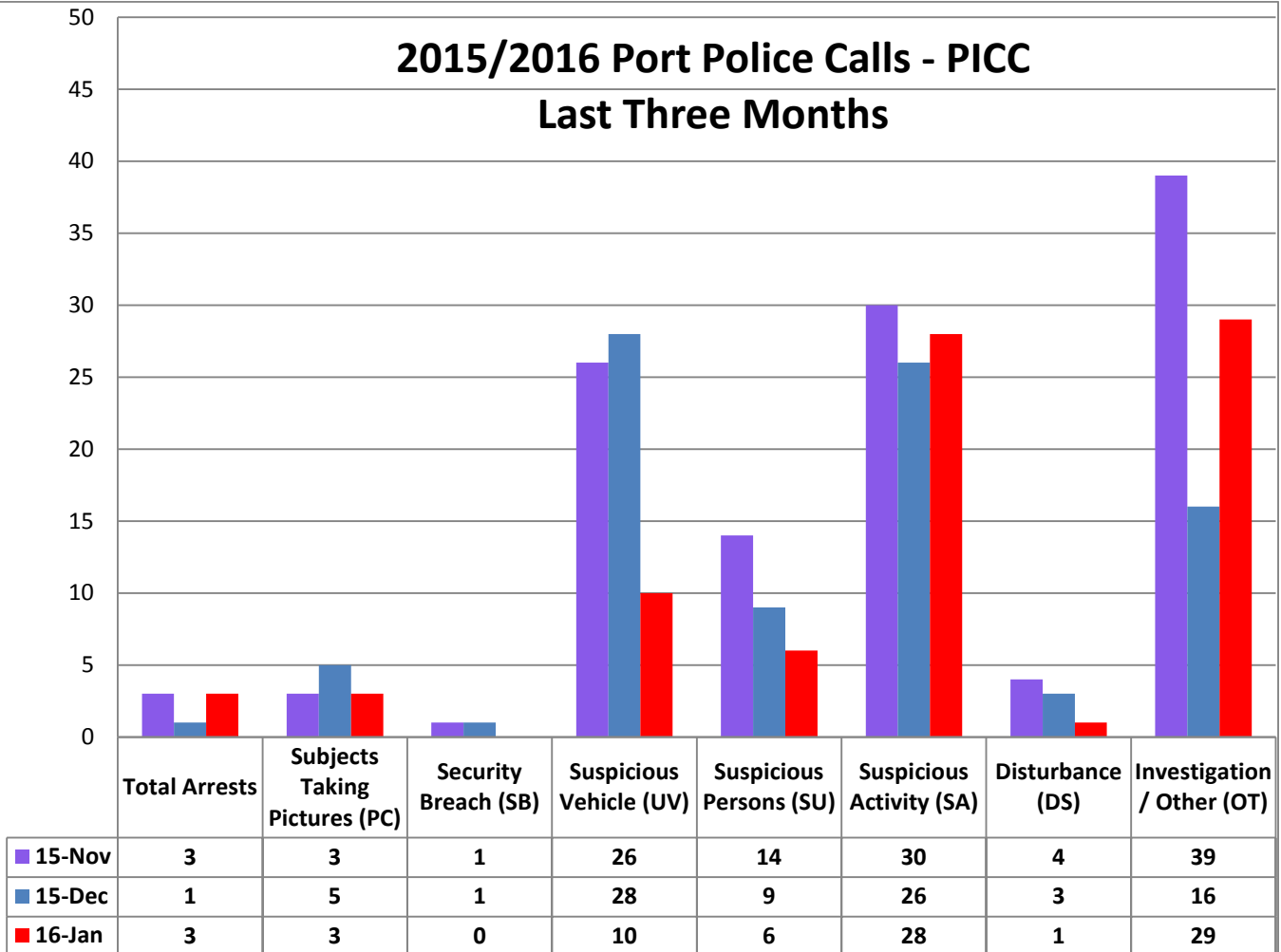
NE - NON-EXEMPT

H - HOURLY

T - TEMPORARIES

SECURITY

**2015/2016 Port Police Calls - PICC
Last Three Months**



OPERATIONS

Operational Projects & Outreach

- Developing Pilot Board Agenda for March 15, 2016.
- Liaison with Texas A&M for the Physical Oceanographic Real-Time System (PORTS ®). Team expects itemized, prioritized list by mid-February.
- Continued effort to promote navigation in La Quinta Channel, awaiting Waterways Assessment Report from the US Coast Guard – Report is expected by the end of February.

Personnel Status

- One Maintenance employee returned to full duty with restrictions on January 12, 2016.
- Another Maintenance employee returned to full duty with restrictions on January 11, 2016.



US Coast Guard

HARBORMASTER

Ship Arrivals	Tankers	Freighters	Year to Date Ships
January 2016	109	24	133
January 2015	113	34	147

Barge Arrivals	Tank Barges	Freight Barges	Year to Date Barges
January 2016	388	3	391
January 2015	492	65	557

Shifting	Tankers	Freighters	Tank Barges	Freight Barges
January 2016	25	4	826	3
January 2015	19	1	897	11

	Average Daily Ship Arrivals	Average Daily Barge Arrivals
2016	4.29	12.61
2015	4.74	17.97

Channel Disruptions January 2016

Channel Disruptions	Total Hours	Fog	Wind	Military/Other	Rig
January 2016	106.58	88.58	10.00	--	8.00
January 2015	76.17	76.17	--	--	--

Delays	Inbound Delays	Outbound Delays
January 2016	25	33
January 2015	19	16

BULK TERMINAL

Current Projects

- Replacing three-quarter belt covers with full belt covers 90% complete
- Dust control for all pads and roads
- Preparing for pad resurfacing
- Installing cable tray along CB# 2
- Storm Water Management-Working with engineers to develop run-off strategy
- Replacing belt cleaners on Ship Loader Conveyors 30% complete
- Replacing Idlers on Conveyors 75% complete. Awaiting purchase of remaining idlers scheduled for 2016
- Finished CB# 5 Idlers and belt covers
- Preparing to install access control gates along Kirksey Road and newly paved Kirby Access Road at Southwest end of Terminal

- Replaced Stevedore shed at BMD#1
- BT Office Renovation ongoing

Activity at Bulk Terminal (short tons)

Railcars

- Load rail cars: 0 railcars loaded for a total of 0 Pet coke
- Unload rail cars: 0 railcars unloaded for a total of 0 Pet coke

Bulk Dock #1

- 61,165.34 Barite

Bulk Dock #2

- 100,068.91 Pet coke
- 19,400.00 Sulfur

Pads

- 124,450.77 Pet coke
- 26,516.00 Sulfur

YARD & RAIL

- Rail traffic slow with exception of grain (milo maize/sorghum) picking up at ADM – 1442 milo rail cars dumped
- 2184 total revenue rail cars in December 2015. Year to date 33% off 2014 count
- Working on Agreements (CCPN 1997 Operating and M&G SIT agreement) with Welder, Pedersen and Stroot.
- Appraisal on two of Port locomotives, Gen Set at \$735,000.00 and 65 ton at \$50,000.00 as received. Waiting to see if any interest from GW or M&G
- Port Planning Order met in accordance with demands for December 2015
- North Bank storage yard wind components departing by truck, no issues
- North Storage yard project cargo and wind cargo departing by trucks no issue, FTZ areas set up for M&G cargo
- CD 14 still no cargo from M&G
- South side yard has plenty of room

CARGO DOCKS

- Freezer warehouse foundation being cleared by CAMACHO
- CD 8 – 8 vessels arrived Dec
- CD 9 – 9 vessels arrived Dec

MAINTENANCE

Maintenance Department

- Performed preventative maintenance (PM) on vehicles, safe boat, equipment and

Maintenance department

- Performed routine inspection and PM on lights, water outlet
- Performed ground keeping port wide
- Over saw janitorial service on all port facilities
- Purchased and installed new air compressor for shop 2, Installed emergency means of egress in Gilbert's office

Ortiz Center

- Repaired sink drain line piping, Trimmed trees and brush, repaired automatic door opener in front entrance
- Assisted Todd with computer chiller controls, reinforced access control communication wiring
- Monthly test and repairs to grounds irrigation

Commissioners Court

- Set up and tear down of stage. Attended commission meeting as requested by Operation Department

Guard houses

- Repaired flooring and sealed wall at Viola, adjusted/repaired and lubed door at Storman
- Purchased and installed new microwave oven for Voila, Re secured bird netting at Ave F
- Lubed lockset on door at BMD, installed traffic barricades and filled with sand at Stroman and Avery guardhouses
- Rerouted rain gutter to prevent damages to Viola guardhouse floor, repaired door knob and lock at OD6 guardhouse

Admin Building

- Repaired countertop in mail room, replaced 20 amp breaker for 1st floor kitchenette
- Replaced various burnt out lamps in various locations throughout building
- Monthly test and repairs to ground irrigation, monthly generator test and inspections

Annex building

- Investigated natural gas smell in building-smell came from weekly generator exercise
- Replaced exhaust fan on 3rd floor handicap restroom, replaced 3 gallon water heater in 1st floor ladies restroom
- Resurfaced table top in environmental office, replaced burned out lamps in various locations throughout building
- Replaced faucet aerator on 3rd floor ladies restroom sink, unclogged 1st floor kitchen drain

- Monthly test and repairs to ground irrigation, Monthly generator test and inspections

Port Security/PD

- Installed gun boxes in various locations as instructed by PD
- Fabricated mounts and installed bumper buoys on center pile of PD boat lift
- Repaired Freon leak and replaced high temperature control valve to condenser in computer room
- Repaired heater/ac on 31' safe boat, repaired closer to front entrance door at PD
- Unclogged drain line in ladies restroom
- Quarterly cleaning dusting and waxing of floors, replaced Texas flag pole rope and flag
- Monthly generator test and inspections, monthly test and repairs to grounds irrigation

BMD

- Delivered 10 x 16 storage shed

Cargo Docks:

- Monthly potable ship supply flush and inspection, monthly fire sprinkler alarm test and inspections
- Replaced 9 broken dome post bollards on east end of CD 9
- Repaired stadium lighting at CD 8

Oil Dock

- Serviced ac/heater unit at OD 6, Monthly potable ship supply flush and inspections
- Repaired ac unit at OD 8, inspected and serviced ac units on all oil docks
- Repaired door closer and lockset at OD 11

Gates, Fence and Roads:

- Filled in potholes in driveway at CD 9. Repaired entrance road to OD 1
- Swept debris from Joe Fulton Viola bridge, installed hot tape traffic arrows at Ave F
- Filled in potholes on west fishing area road

Property Other

- Repaired to Harbor Island generator oil leaks
- Repaired aviation pole lights at North Bank storage area
- Removed graffiti from light poles at water taxi area
- Monthly generator test and inspections at Harbor Island and La Quinta

Environmental Planning and Compliance Monthly Report

Environmental Stewardship Measurements

Program Area	Measured Environmental Improvements Year Ending 2015
Electrical Consumption	10% Green Energy – 894,000 KWHs
Spent Liquids Recycled	553 gallons
Paper/Cardboard Recycled	104,556 lbs
Components Recycled	1,414
Regional Air Quality	65 ppb (EPA standard of 70ppb)
Community Complaints	0
Notice of Violations	0
Tenant Audits Completed	12

Important Announcements

Proposals for Environmental Management Information Software were due on January 29, 2016, and five proposals were received for consideration. This is to provide recordkeeping and tracking software of environmental data and performance measures. A successful vendor is expected to be presented at the May 2016 Commission Meeting for Commission Approval after vendor demonstrations are completed and the final cost is negotiated. Additionally, Statements of Interest & Qualifications for Professional Services for Bulk Terminal Master Planning were due January 29, 2016, and eight proposals were received. Evaluation of the proposals received are underway and a final selection is expected to be presented at the March 2016 Commission Meeting following consultant interviews and final contract negotiations are completed.

A project for the Restore Act Funding has been identified and a request to submit an application is on this month's Commission Agenda for Commission approval.

A revised Environmental Policy is being presented to the Port Commission for approval this month. In addition, a series of workshops are being developed to aid Stevedores in development of an EMS program. This will be complimented with one on one meetings as necessary.

Status of Environmental Programs & Initiatives

Public Cargo Dock Environmental Performance – A schedule of workshops is being developed to assist Stevedores with the new tariff requirement to have an EMS program in place on January 1, 2017. The Stevedore that assisted with the recent army loadout has also contacted staff and intends to participate in the workshops. In addition, Port staff are reaching out to military contacts to make them aware of the new licensing requirements. It is expected that there will be four joint workshops with all the Stevedores

licensed by PCCA who are interested in PCCA assistance and then several one on one meetings with individual Stevedores and a Port environmental representative, as necessary.

Bulk Terminal Air Monitoring Network – Six air monitors have been installed at the Bulk Terminal and one air monitor off-site near Dona Park in coordination with the Bulk Terminal tenants through an air monitoring network agreement. The pilot program was completed January 31, 2016 and accumulated data and alerts are being reviewed. Upon final evaluation of the pilot test results, the results will be communicated to the public through an existing forum and then regularly through the same forum thereafter.

Environmental Management System – ISO Certification continues for the 8th year. Staff has provided a draft Environmental Policy for Commission approval at this month's Commission Meeting. This will replace the current Environmental Policy approved by the Port Commission on December 9, 2004. A new ISO 14001 standard was published in September 2015 and re-certification will require compliance with the new standard. The internal audit team will be assisting environmental staff with conducting a gap analysis in February to determine the status of the EMS program in compliance with the new standard and identify gaps to come into full compliance. An update to the 2007 EMS training video is underway and should be finished in 2016. The Annual Management Review Report for 2016 is also currently being developed. NQA has recently notified PCCA that our external auditor will be changed this year so an interview with the proposed auditor is being coordinated. Our reassessment audit is tentatively scheduled for late May/early June 2016, prior to expiration of our current certificate.

Tenant Audit Program – The tenant audit program involves auditing tenants annually and then conducting a lease ending audit in advance of the termination of the lease agreement. It may also include follow up audits as necessary to ensure noted non-compliances are resolved and quarterly audits in the event of continuing non-compliance issues. The program is being developed further to include an Environmental Performance Scorecard that will be communicated to the Port Commission. High achievers will be recognized for their efforts and poor performance will be a consideration in future amendments and agreements.

2015 Budgeted Projects

Purchase of Software Application for EMS Recordkeeping (15-057A) – A service order was negotiated with E2 ManageTech, Inc. to assist with development of specifications, the RFP process, and selection of a vendor to provide software for an Environmental Management Information System. The preliminary scoping workshop occurred in late May to identify requirements for the specification development. Request for proposal package was advertised on January 8 and 15 and the bid opening occurred on January 29, 2016, and five proposals were received. The selection process will take several months and staff expects to present a final selection to the Port Commission for approval in May 2016.

General Electrical Consumption Reduction Projects (13-013A) – A lighting study was completed at Al Speight Laydown Yard, Cargo Dock 15, and at the Ortiz Center to evaluate the lighting at these facilities. Recommendations were made to upgrade the lighting at these three facilities with LED technology. An electrical consultant is currently being negotiated with to develop the final drawings so the project can be advertised for bid. It is expected to award in early 2016.

Geographic Information System Maintenance and Upgrades (15-017A/B) – The scope of work for 2015 improvements and upgrades to the PCCA's GIS system were negotiated earlier in the year with Brown and Caldwell, Inc. under existing terms and conditions. The project was broken into two phases – Phase I was the development of specifications to convert PCCA's GIS from a customized application to a web based application using an off-the-shelf platform. Phase I was completed in July 2015 and Phase II was approved by the Port Commission in September 2015. A notice to proceed has been issued and the Consultant is working with Port staff on the conversion. The project is currently on schedule and within budget.

Investigation and Remediation of Contamination from La Quinta Pipeline Removal / Relocation (14-002B) – A service order with Golder Associates, Inc. for consulting services for performing additional groundwater sampling, sampling for fingerprint analyses of contamination, and the development of Affected Property Assessment Report was approved by the Port Commission at the June 2015 Commission Meeting. Fieldwork was completed in early July and the results of the work are being developed into a Groundwater Usability Summary and Drinking Water Report for submittal to the TCEQ. After approval of these reports by TCEQ, an Affected Property Assessment Report will be prepared and submitted to TCEQ for review and approval. Preliminary results indicate that groundwater usability is Class 3 and concentrations do not exceed applicable standards. If TCEQ agrees with our conclusions, then further remediation activities will not be necessary.

Investigation of Former J.I. Hailey Property (11-002B) – An Addendum to the Affected Property Assessment Report (APAR) was provided to TCEQ in July 2015. The Addendum also requested approval for closure with no institutional controls (i.e. deed recordation). TCEQ has reviewed the report and requested additional information. The additional information was provided to them for review in early November 2015. Additional fieldwork to collect a groundwater sample was requested prior to TCEQ approving case closure. The fieldwork was performed last month and an addendum to the APAR is being prepared to submit to the TCEQ.

Investigation of Property Near Tule Lift Bridge (14-002C) – Additional sampling to determine leaching characteristics of contaminants in soil was conducted in February 2015. Results indicated that further evaluation of the site is necessary. The site was approved for participation in the Voluntary Cleanup Program in TCEQ in September 2105. A Groundwater Water Usability Summary and Drinking Water Report were provided to the TCEQ for their review. TCEQ requested additional information in a follow up letter. This information has been provided. At this time, Apex TITAN, Inc. is proceeding with

closure based on Class 2 groundwater classification. Additional soil sampling to verify removal of surface staining and collection of groundwater samples to verify metals concentrations is needed. Apex TITAN, Inc. is preparing an Affected Property Assessment Report (APAR) to fully evaluate soil and groundwater concentrations compared to the relevant standard based on the Class 2 groundwater classification. The additional sampling of soil and groundwater are needed to complete the APAR. It is expected that at a minimum deed recordation will be necessary to restrict future use of the property to commercial/industrial land use.

Storm Water Drainage Study (15-013A) – A Master Agreement has been negotiated with IC Engineers and a service order to conduct the storm water drainage study is being developed. The study is necessary to update the storm water drainage information for the Port area from the 1993 study. This information will be used in the future planning of storm water management and runoff during design of new facilities and upgrades to existing facilities to ensure adequate infrastructure exists or determine what addition infrastructure should be installed.

Environmental Consultant Master Agreements and Service Orders

Listed below are the Environmental Consultant Master Agreements and associated Service Order values:

Consultant (MA#)	2014 Service Order Amounts	2015 Service Order Amounts
Golder & Associates (01-14)	\$45,300	\$79,949
RPS, Inc. (02-14)	\$101,300	\$59,083
Trinity Consultants (03-14)	\$44,000	\$54,600
Rosengarten Smith and Associates, Inc. (04-14)	\$195,758	\$306,414
E2 ManageTech Inc. (05-14)	\$82,043	\$38,530
Apex TITAN, Inc.	\$66,900	\$28,140

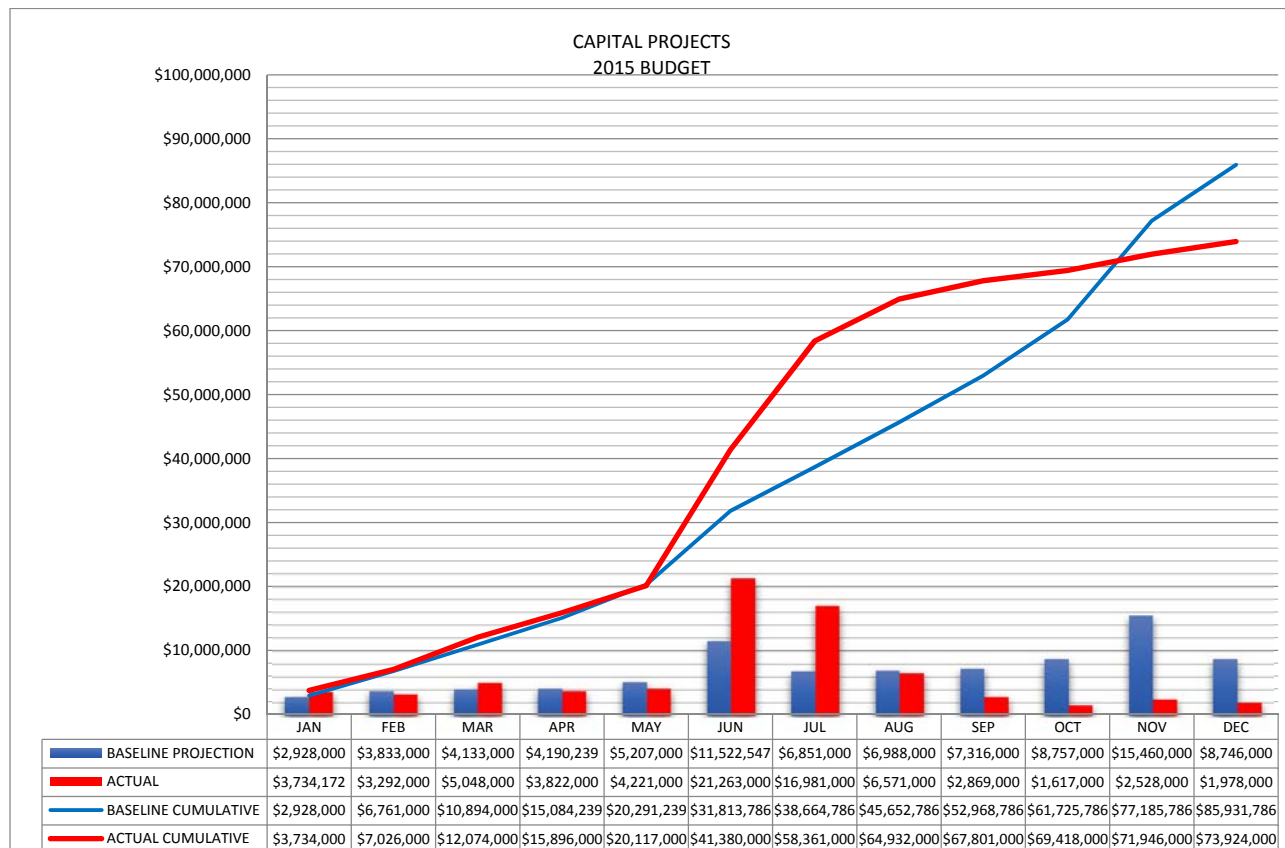
ENGINEERING SERVICES DEPARTMENT REPORT

Year-end 2015, the Port of Corpus Christi Authority Department of Engineering Services had completed 48 projects and had 131 projects in process. These projects consist of 76 Capital, 47 Maintenance, and 36 Professional Service projects. During December, \$2,170,000 was invoiced for ongoing work. In 2015, \$77,087,000 was invoiced for work performed. Below is a table detailing the 2015 budget amounts and final 2015 costs by capital, maintenance and professional services and also the 2016 Budget.

Engineering Services Year-End 2015 Report				
Project Type	No. of Projects	2015 Budget Amount	End of Year 2015	2016 Budget Amount
Capital	94	\$85,931,786	\$73,924,000	\$81,860,826
Maintenance	53	\$7,155,000	\$2,053,000	\$4,005,000
Professional Services	37	\$2,004,500	\$1,010,000	\$2,425,000
Total	184	\$95,091,286	\$77,087,000	\$88,290,826*

*Includes federal, state & other grants/funds by others.

Below is a graphic representation of the 2015 Capital Project Budget and a forecast of monthly Project expenditure of the capital projects throughout the year. An actual monthly project expenditure tracking line is included to follow the progress as the year develops.



**CORPUS CHRISTI SHIP CHANNEL PLANNING, DEVELOPMENT,
MAINTENANCE AND DESIGN**

Corpus Christi Ship Channel - Channel Improvement Project (CCSC-CIP)

- Authorized: WRDA 2007 and WRRDA 2014
- Project Elements:
 - Widening and deepening the CCSC to -52 feet MLT
 - Adding barge shelves on both sides of the ship channel across Corpus Christi Bay.
 - Extending the La Quinta Channel 1.4 miles at -39 feet MLT
 - Constructing ecosystem restoration features near Port Aransas and Ingleside on the Bay
- CCSC-CIP Status
 - La Quinta Extension Complete (2013) and Deepened to -45 feet MLT (2014)
 - Construction of Ecosystem Restoration Complete (2012)
 - Limited Reevaluation Report for widening and deepening completed (December, 2015)
 - Construction of remaining elements pending federal funding and entering into a new Project Partnership Agreement (PPA)

FY 2016 Corpus Christi Ship Channel Maintenance Dredging Schedule

- Corpus Christi Ship Channel Entrance Channel Project
 - Includes Entrance Channel, Jetty Channel, and Inner Basin near Port Aransas
 - Current Schedule:
 - Start Date: May 15, 2016
 - Estimated Completion Date: August 11, 2016
- Corpus Christi Ship Channel to Viola Turning Basin/La Quinta Channel Project
 - Includes Upper Bay (Corpus Christi Bay), Portions of Inner Harbor, Portions of La Quinta and Options for Port of Corpus Christi Authority Oil Dock's 1, 2, 4, 7, 8, & 11; Cargo Docks 8 & 9; and Bulk Terminal Dock 2
 - Start Date: September 2, 2016
 - Estimated Completion Date: January 25, 2017
- DMPA Maintenance Project
 - The U.S. Army Corps of Engineers will begin making minor levee repairs to Suntide DMPA and South Shore DMPA, Cell B in February, 2016. The repairs will include excavation and placement of material to repair low areas along the perimeter of the levees. Repairs are expected to take less than 45 days to complete.

ENGINEERING
MASTER AGREEMENTS AND SERVICE ORDERS

Listed below are the Master Agreements implemented including values of Service Orders issued per year:

	2014	2015
HDR, Inc. (13-01)	\$813,746	\$401,150
Freese and Nichols, Inc. (13-02)	\$407,191	\$278,077
Govind Development, LLC (13-03)	\$249,450	\$176,500
Naismith Engineering, Inc. (13-04)	\$45,000	\$93,780
CH2M Hill (13-05)	\$2,613,470	\$279,380
RVE, Inc. (13-06)	\$729,871	\$334,745
LNV, Inc. (13-07)	\$105,500	\$468,517
Lockwood, Andrews and Newnam, Inc. (14-01)	\$62,694	\$643,044
Maverick Engineering (14-02)	\$50,000	\$8,000
Coast & Harbor Engineering (14-03)	\$193,645	\$449,331
WKMC Architects (14-04)	\$139,500	\$50,000
Worley Parsons (15-01)	\$48,079	

UPCOMING PROJECTS/ REQUEST FOR PROPOSALS

2016 Major and Minor Engineering/Architectural Projects (16-001A)	February 9, 2016
Re-Roofing of PCCA Facilities (15-012A)	February 26, 2016
Replacement of Damaged Breasting Structure at Oil Dock 9 (15-070A)	February 26, 2016
Purchase and Installation of Conveyor Idlers (15-50A)	February 26, 2016
Electricity Supply and Associated Services (16-051A)	March 9, 2016

**Department of Engineering Services
Project Design Construction Status Report**

Design Projects

CAPITAL

Project No.	Project Title	Project Manager	% Completed
15-016A	Inner Harbor Rail Upgrades & Improvements	BFF	
14-028B	Equipment Storage Building at Bulk Terminal	BP	50
14-030A	Resurface of Bulk Terminal Public Storage Pads	BP	75
14-045B	Construction of 8-Inch Water Line at La Quinta Property	DJK	75
14-039A	Port Area Signage & Landscaping Improvements	DJK	75
13-036A	Relocation of Suntide DMPA Drainage to Viola Turning Basin	DJK	25
07-046C	Remove Tule Lake Lift Bridge Foundations	DLM	75
15-050A	Mike Carrell Road	DLM	75
15-061C	Security Grant 15 - Bulk Terminal Fencing	DLM	
14-037A	Construction Multi Purpose Ship & Barge Dock at La Quinta	DLM	75
14-060C	Security Grant 14 -Oil Dock 14 Access Control	DLM	50
15-055A	Purchase and Installation of Additional AEI Readers	EM	25
16-007A	Oil Dock 9 Breasting Structure Replacement	JEM	100
14-023A	Fire System Pressurization Upgrades at Oil Docks	JEM	50
15-040A	Concrete Paving Under Conveyor Belt 2	LD	50
15-065A	Joe Fulton International Trade Corridor Waterline Extension	NEF	100
15-041A	Improvements to Fire Protection Systems at Oil Docks 4, 7, 11	NEF	75
14-044A	New Public Oil Dock 18	NEF	25

MAINTENANCE

Project No.	Project Title	Project Manager	% Completed
15-053A	Reconstruction of Sam Rankin Road - Design	BP	50
15-012A	Re-Roofing of PCCA Facilities	BP	75
15-022A	Savage Lane Railroad Drainage Improvements	BP	100
14-036A	New Port Office Facility	BFF	25
09-019A	New Access Road to Good Hope DMPA	DJK	50
15-043A	New Operators Cab for Gantry Crane	DLM	25
15-037A	Repair Oil Dock 11 Bridges	EM	75
15-038A	Resurfacing on South Side Open Storage Areas	EM	50
15-035A	Upgrades and Repairs to Bulk Dock 2 Marine Structures	EM	50
15-039A	Fire Line Improvements at Oil Dock 2	JEM	75
15-030A	General Improvements to Oil Dock 6	JEM	50
15-032A	Bulk Dock 1 Storage Building Upgrades	LD	25
15-015K	Drainage Improvement for Nueces River Fishing Area	LD	50

**Department of Engineering Services
Project Design Construction Status Report**

Construction Projects

CAPITAL

Project No.	Project Title	Project Manager	% Completed
09-041A	Permian Yard Drainage Improvements	BP	75
14-028A	Bulk Terminal Office Renovation	BP	50
13-032A	Public Oil Dock 14	DLM	50
13-043A	Nueces River Rail Yard Phase II	DLM	25
14-041A	Replacement of Dock House at Oil Dock 10	JEM	75
15-015D	CNG Fueling Station	JEM	75
12-031A	La Quinta Terminal Mitigation - Aquatic Habitat	PDC	75

MAINTENANCE

Project No.	Project Title	Project Manager	% Completed
15-034A	Replacement of DC Drives in Ship Loader	DLM	75
15-036D	Replacement of Ortiz Center Kitchen Hood Fans	EM	75
15-049A	Maintenance Painting at Bulk Terminal	JEM	75
15-071A	Pedestrian Improvements at Avery and Stroman Gate	LD	50

AGENDA ITEM NO. 16

Comments from Port Commissioners

NO ATTACHMENT

AGENDA ITEM NO. 17

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 18

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 19

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 20

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 21

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 22

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 23

Executive Session

NO ATTACHMENT

AGENDA ITEM NO. 24

NO ATTACHMENT

DATE: February 16, 2016

TO: Port Commission

FROM: David L. Krams, P.E.
Krams@pocca.com
(361) 885-6134

AGENDA ITEM NO. 25

Approve a Service Order with CH2M Hill Engineers Inc., under its Professional Services Master Agreement No. 13-05, for engineering services associated with New Oil Dock 15

SUMMARY: Staff requests approval of a Service Order with CH2M Hill Engineers Inc. (CH2M), under an existing Professional Services Master Agreement, for engineering services associated with New Oil Dock 15. Design of this strategic capital project was included in the 2016 budget. A Service Order was previously approved in January 2016 for a not-to-exceed amount of \$150,000, and this new Service Order has a not-to-exceed amount of \$779,500. In addition, staff recommends approval of a \$300,000 allowance for engineering services during construction.

BACKGROUND: Negotiations between Martin Midstream Partners (Martin) and PCCA staff are ongoing with regard to the relocation of current oil transfer operations at Cargo Dock 10, which will be displaced by construction of the New Harbor Bridge, to a proposed new facility to be designated Oil Dock 15. The proposed dock location is west of Public Oil Dock 2, adjacent to the existing the NuStar Dock 16 (see attached exhibit).

In order to move forward with the project on a timetable that will meet the anticipated needs of our customer, staff negotiated a new Service Order with CH2M, under the existing Professional Services Master Services Agreement 13-05, to continue engineering and design services. CH2M previously initiated design and permitting efforts for the proposed dock through a separate contract with Martin. On January 19, 2016, the Commission approved a Service Order for the not-to-exceed amount of \$150,000, subject to PCCA staff and Martin reaching an agreement on the lease terms and conditions for Oil Dock 15. At that time, staff stated that a subsequent service order would be negotiated with CH2M and presented to the Commission for approval at a future meeting. As lease negotiations are still ongoing, this new Service Order will be implemented first to continue the design efforts started under the Martin contract. In the event an agreement with Martin is not reached, design efforts by CH2 will be terminated under the terms and conditions of the Master Agreement.

The scope of work for this Service Order includes additional engineering services to complete final designs of the ship dock, oil handling equipment, mechanical/electrical components, instrumentation, site access control, and upland infrastructure, as well as engineering support for project bidding and construction administration services. The project includes a pile supported oil dock and associated slip with the dock structure designed to accommodate ships transiting in a future 52-foot deep channel.

ALTERNATIVES: PCCA staff and Martin have evaluated and discussed several alternatives related to this project. Alternate locations and dock configurations have been evaluated as well as operational alternatives to accommodate Martin's throughput at existing public oil docks. Based on the current schedule for the construction of the new Harbor Bridge, Martin and PCCA operational requirements, and regulatory permitting stipulations, the proposed project is considered to be the preferred alternative.

CONFORMITY TO PORT POLICY: This project conforms to Port Policy and is included as a Strategic Capital Project in the 2016 Budget. In addition, the project is consistent a goal in the PCCA Strategic Plan, identified in Strategic Goal #2 – Provide Facilities & Services to Meet Customer Needs to provide surface infrastructure and services to support maritime and industrial development.

EMERGENCY: No.

FINANCIAL IMPACT: This project will maintain throughput levels with an existing PCCA customer by replacing capacity that will be impacted by construction of the new Harbor Bridge. PCCA's cost to design and construct the proposed dock will be recovered through operational fees and guaranteed throughput volume to be included in a new lease with Martin currently being negotiated.

STAFF RECOMMENDATION: Staff recommends approval of a Service Order with CH2M Hill Engineers Inc., under the existing Professional Services Master Agreement 13-05, for additional engineering services associated with new Oil Dock 15 at a cost not to exceed \$779,500.00. Professional services cost consists of approximately \$339,850.00 to complete the design of the marine and civil site work and \$439,650.00 for the design of electrical and mechanical systems. Staff further recommends that the Director of Engineering Services be granted a 5 percent contingency (\$38,975.00) to cover any minor change in the scope of work during design phase of the project. In addition staff recommends approval of an allowance of \$300,000.00 for engineering services during construction, if necessary and as requested and directed by PCCA staff.

DEPARTMENTAL CLEARANCES:

Originating Department	Engineering Services
Reviewed & Approved	David Krams Brett Flint
Legal	Jimmy Welder
Senior Staff	John LaRue Sean Strawbridge Jarl Pederson

LIST OF SUPPORTING DOCUMENTS:

Map of Proposed Oil Dock 15 Location

New Oil Dock 15

