



**Notice of Special Meeting of the Port Commission of the  
Port of Corpus Christi Authority of Nueces County, Texas, on  
Thursday, September 29, 2016, at 9:00 AM at the  
Ruben Bonilla Center for Global Trade  
222 Power Street, Corpus Christi, TX**

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*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.*

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**1. CALL TO ORDER and RECEIVE CONFLICT OF INTEREST AFFIDAVITS**

**2. SAFETY BRIEFING**

**3. OPEN AGENDA**

- 3.a. Appoint Barbara Canales to the United Corpus Christi Chamber of Commerce Board.
- 3.b. Approve a Resolution of Appreciation for Ann Vaughan, President/CEO, Port Aransas Chamber of Commerce & Tourist Bureau.
- 3.c. Approve a Professional Services Contract with AECOM in the amount of \$243,843 for a Waterway Planning Study of the Corpus Christi Ship Channel System.
- 3.d. Award a construction contract for construction of Oil Dock 15.

- 3.e. Approve an Assignment and Assumption Agreement with Martin Operating Partnership, L.P., and a Novation Agreement with Martin Operating Partnership, L.P., and John Zink, LLC, regarding a Purchase Contract for a Vapor Combustion Unit associated with construction of public Oil Dock 15.

#### **4. EXECUTIVE SESSION**

- 4.a The Commission will go into executive session pursuant to §551.071 and §551.072 of the Texas Government Code to deliberate the purchase and value of certain real property accessible to the La Quinta Channel and to receive legal advice from PCCA counsel regarding the acquisition of this property.
- 4.b The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to receive legal advice from PCCA's counsel regarding the enforcement of a PCCA contract.

#### **5. ADJOURN**



**DATE:** September 29, 2016  
**TO:** Port Commission  
**FROM:** John P. LaRue, Executive Director  
[John@pocca.com](mailto:John@pocca.com)  
885-6189

**AGENDA ITEM NO. 3.b**

***Approve a Resolution of Appreciation for Ann Vaughan, President/CEO, Port Aransas Chamber of Commerce & Tourist Bureau***

**RESOLUTION**

**WHEREAS**, Ann Bracher Vaughan, as a native Texan, has spent over 40 years living and working in and promoting South Texas; and

**WHEREAS**, Ann Vaughan, a graduate of Texas Tech University, has used her agricultural and business background to create, manage, and promote financial and business development and tourism programs in both the private and public sectors during her public life; and

**WHEREAS**, Ann Vaughan has held numerous positions of import and influence including Executive Director of the Uvalde Chamber of Commerce, Vice President of NBC Bank Uvalde, Economic Development Director of the Middle Rio Grande Development Council, Development Director of Adobe Eco-Systems, Ltd., and finally President/CEO of the Port Aransas Chamber of Commerce and Tourist Bureau (since 1998); and

**WHEREAS**, Ann Vaughan has been fully involved in the life of South Texas as a City Council Member for the City of Uvalde, Texas; Chair of the Leona River Park Improvement Project; member of the Bi-National Tourism Steering Committee, the Southwest Texas Junior College/Ford Foundation Rural Community College Initiative, and the Rotary Clubs in both Port Aransas and Uvalde; President of the Texas Coastal Bend Regional Tourism Council; Membership Chair of the Texas Travel Industrial Association Board of Directors; member of the Board of Directors for the Texas Association of Convention and Visitors Bureau; and advisor to the Port Aransas Art Center Board of Directors; and

**WHEREAS**, Ann Vaughan has received numerous awards and made many accomplishments including Port Aransas Boatmen Volunteer of the Year (three times); Texas Coastal Bend Regional Tourism Council Kay Wolfe/Rob Early Award (the only three-time recipient of this award); Texas Travel Industry Association Mark of Distinction and Nature Tourism Achievement Awards; Texas Chamber of Commerce Executives



Award (for 15 years of service); Texas Festivals & Events Association Marketing Award for the Whooping Crane Festival; Nueces County Commissioners Court Tourism Award; and the Texas Parks & Wildlife Department Vicennial Award for the Great Texas Birding Classic; and

**WHEREAS**, Ann Vaughan has created and worked projects locally, regionally, nationally, and internationally that have benefitted south Texas; and

**WHEREAS** Ann Vaughan's time and talents are responsible for the Coastal Bend's tremendous growth as one of the premiere destinations on the Texas Gulf Coast.

**NOW THEREFORE BE IT RESOLVED** that the Port Commission of the Port of Corpus Christi Authority expresses its sincere gratitude to Ann Vaughan for her 40 years of service to South Texas and the Coastal Bend Community and acknowledges its appreciation of her 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 Ann Vaughan. Unanimously adopted this 29<sup>th</sup> day of September 2016.

**DATE:** September 29, 2016

**TO:** Port Commission

**FROM:** Ray Harrison, Harbor Master  
[ray@pocca.com](mailto:ray@pocca.com)  
(361) 885-6152

**AGENDA ITEM NO. 3.c**

**Approve Professional Consulting Services Contract with AECOM in the Amount of \$243,843 for a Waterway Planning Study of the Corpus Christi Ship Channel System**

**SUMMARY:** Staff requests the approval of a Professional Consulting Services Contract in the amount of \$243,843.00 with AECOM to perform a Waterway Planning Study of the Corpus Christi Ship Channel System.

**BACKGROUND:** The Coastal Bend Region in general and the Port of Corpus Christi (“PCCA”) in particular are continuing to experience significant growth and diversification of industry. With the estimated \$35 billion in private industrial investment in the PCCA there are several new waterfront dock facilities either in permitting, design, or construction that will bring in new commodities, additional ship and barge traffic, and a change in the fleet distribution. These changes will undoubtedly impact channel traffic and vessel configurations in the coming years, the impacts of which are yet to be fully determined or evaluated.

The Corpus Christi Ship Channel System includes the Corpus Christi Ship Channel (29 miles) and the La Quinta Ship Channel (6 miles) with approximately 49 docks operated by the Port Authority or private industry. The Corpus Christi Ship Channel System is currently operated and maintained at an authorized depth of -45 feet mean lower low water (MLLW). Deepening of the Corpus Christi Ship Channel to a depth of -52 feet was authorized in the Water Resources Development Act (“WRDA”) of 2007, and reauthorized in the Water Resources Reform and Development Act (“WRRDA”) of 2014. The authorization also includes widening the channel across Corpus Christi and Redfish Bays to 530 feet and construction of 200 foot wide by 12 foot deep barge shelves on either side of the reach across Corpus Christi Bay, collectively referred to as the Corpus Christi Ship Channel – Channel Improvement Project (“CCSC-CIP”).

In 2015, the U.S. Army Corps of Engineers (“USACE”) updated the estimate of benefits and costs of deepening and widening of the Corpus Christi Ship Channel and construction

of the barge shelves using an updated HarborSym Modeling Analysis, previously completed in 2012 to support the WRRDA 2014 CCSC-CIP reauthorization. This updated analysis included evaluations with and without the CCSC-CIP using updated projected future fleet distributions and overall fleet forecasts based on present day market conditions and revised commodity forecasts. However, the update did not include anticipated changes in fleet distribution resulting from the introduction of new commodities, the repeal on the exportation ban of crude oil, and other contemplated operations expected in the coming years at the Port of Corpus Christi.

The Port of Corpus Christi Authority issued a Request for Proposals (“RFP”) seeking a qualified firm to work with the Port Authority, the Aransas-Corpus Christi Pilots Association, the 8<sup>th</sup> District United States Coast Guard, Port Authority customers, terminal operators, and other industry partners to perform a Waterway Planning Study of the Corpus Christi Ship Channel System (“Waterway Planning Study”). The selected firm will perform the Waterway Planning Study on behalf of the Port Authority and the Waterway Planning Committee (“WPC”), which is a subcommittee of the South Texas Waterway Advisory Committee (“STWAC”).

Of the RFP Respondents, AECOM submitted the overall most advantageous proposal to PCCA and the STWAC. An U.S. based multinational engineering firm that provides technical design, consulting, construction, and management services, AECOM has approximately 95,000 employees, and is number 156 on the 2016 Fortune 500 list. Fortune named AECOM as 2015 World’s Most Admired Companies, and Engineering News-Record ranked AECOM as Number 1 Global Design Firm.

**CONFORMITY TO PORT POLICY:** Yes

**EMERGENCY:** No

**FINANCIAL IMPACT:** \$283,843 expenditure over approximately 24 weeks

**STAFF RECOMMENDATION:** Approval of Professional Consulting Services Contract in the amount of \$ 243,843 with AECOM.

**DEPARTMENTAL CLEARANCES:**

|                        |                        |
|------------------------|------------------------|
| Originating Department | Harbor Master’s Office |
| Reviewed & Approved    | Ray Harrison           |
| Legal                  | Dane Bruun             |
| Finance                | Lynn Angerstein        |
| Senior Staff           | Sean Strawbridge       |

**LIST OF SUPPORTING DOCUMENTS:**

Professional Consulting Services Contract (Draft)

**PROFESSIONAL CONSULTING SERVICES CONTRACT**

**THIS CONTRACT** (the “Contract”) is made and entered into effective as of the 29<sup>th</sup> day of September, 2016 (“Effective Date”) by and between the Port of Corpus Christi Authority of Nueces County, Texas (“Authority”), and AECOM (“Consultant”), each a “Party” and collectively as “Parties”.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. CONTRACT:** Authority hereby engages the Consultant and the Consultant hereby accepts its engagement for the purpose of developing and providing to Authority a Waterway Planning Study of the Corpus Christi Ship Channel System (“Services”) as more particularly described in the scope of services set forth in Exhibit A to this Contract which is incorporated herein by reference.

**2. PERIOD OF SERVICE:** The Consultant shall complete the Services on or before February 16, 2017 (the “Deadline”), unless the Authority agrees to extend the Deadline for good reason; provided, however, that the Authority may terminate this Contract at any time in accordance with Section 14. Time is of the essence in performance of this Contract. There will be no obligation established between Authority and the Consultant for performance of the Services until Authority provides the Consultant with a written notice to proceed which shall be issued upon execution of this Contract and receipt by the Authority of appropriate Certificates of Insurance and other documentation as may be required herein. The term of this Contract (“Term”) shall begin on the Effective Date and shall end on the first to occur of the following: (1) the Deadline, as the same may have been extended by the Authority, (2) the date on which, in the opinion of Authority, all of the Services have been rendered, (3) the date on which this Contract is terminated by the Authority pursuant to Section 14, or (4) the date on which this Contract is terminated by the Consultant pursuant to Section 14.

**3. COORDINATION OF SERVICES BY AUTHORITY:** Authority shall designate a Project Representative who will, on behalf of Authority, coordinate with the Consultant and administer this Contract. It shall be the responsibility of the Consultant to coordinate all assignment-related activities with the Project Representative.

For the purposes of this Contract, the Project Representative shall be:

Ray Harrison, Harbor Master  
222 Power Street  
Corpus Christi, TX 78401  
361-885-6152  
(Email) [ray@pocca.com](mailto:ray@pocca.com)

Authority may change the Project Representative at any time by giving the Consultant written notice of such change.

**4. NOTICES:** Notices, demands, requests or other formal communication related to the Contract shall be deemed to have been given when received, whether delivered personally or mailed. E-mail communications may be considered as formal notification provided the e-mail message states the message is intended as a formal notice and the receiving Party acknowledges receipt of the message as a formal notification. Notices shall be addressed as follows:

If to the Authority: John P. LaRue, Executive Director  
Port of Corpus Christi Authority  
222 Power Street  
Corpus Christi, TX 78401  
E-mail: john@pocca.com

If to the Consultant: Abbas Sarmad, P.E., Senior Vice President  
Americas Ports & Marine Lead  
125 Broad St. 16<sup>th</sup> Floor  
New York, NY 10004  
E-mail: abbas.sarmad@aecom.com

Either Party may change the mailing or E-mail address for notifications by providing written notice of such change to the other Party.

**5. CHANGES:** This Contract may be changed or modified at the request of either the Consultant or the Authority, provided both Parties agree to the requested change, and a written amendment or modification of this Contract is prepared and executed by the Parties.

**6. CONSULTANT'S RESPONSIBILITIES:** In addition to all other obligations contained herein, the Consultant agrees, warrants, and represents that:

6.1 The Consultant will furnish all material, equipment, labor and supplies in such quantities and of the proper quality to professionally and timely perform the Services, except as otherwise mutually agreed by the Parties;

6.2 The Consultant shall perform the Services with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license;

6.3 The Consultant will comply with the provisions of all federal, state, and local laws, regulations, ordinances, requirements and codes which are applicable to its performance of Services;

6.4 The Consultant is not and will not be bound by any agreement and has not assumed nor will assume any obligation which would, in any way, restrict its ability to perform the Services or be inconsistent with the Services;

6.5 In performing the Services, the Consultant will not use any third party's confidential or propriety information without the third party's consent, or infringe the rights of another party, nor will the Consultant disclose to the Authority, or bring onto the Authority's premises, or induce the Authority to use any third party's confidential or proprietary information;

6.6 The Consultant does not have the authority to act for the Authority, bind the Authority in any respect, or incur any debts or liabilities in the name of or on behalf of the Authority, except as otherwise expressly authorized in writing by the Authority;

6.7 Consultant's Opinions of probable cost or other forms of cost estimates will be based on the Consultant's experience, the design, and current market conditions to the extent practicable. Authority hereby acknowledges that Consultant cannot warrant that estimates of probable cost provided by Consultant will not vary from actual market prices obtained by Authority;

6.8 Consultant is an independent contractor for the performance of his duties under this Contract. Accordingly, the Consultant shall be responsible for payment of all taxes including federal, state and local taxes arising out of the Consultant's activities in accordance with this Contract. Consultant is responsible for payment of the compensation, including any withholding, Social Security, or other taxes on such compensation, of any subcontractors retained by Consultant, or Consultant's employees performing Services consistent with its status as an independent contractor and in compliance with all applicable laws and regulations;

6.9 Consultant has and hereby retains full control of any supervision over the Consultant's obligations hereunder and over any persons employed or subcontracted by the Consultant for performing Services hereunder;

6.10 Consultant will in no way be considered an agent, partner, joint venturer, or employee of Authority at any time during the Term. Consultant will only consult and render advice to Authority and will not undertake to commit Authority to any course of action in relation to a third party unless expressly requested and authorized to do so by the Authority in writing.

6.11 As of the Effective Date and at all times while providing Services hereunder, the Consultant shall possess and maintain in good standing any and all licenses or other authorizations and approvals necessary to perform the Services.

**7. COMPENSATION:** The compensation to be paid Consultant for providing the Services shall be the compensation described in Exhibit B hereto, which is incorporated herein by reference; provided, however, the total paid to Consultant for the Services shall not exceed Two Hundred Forty-Three Thousand Eight Hundred Forty-Three and No/100 Dollars (\$243,843.00). Consultant will obtain the approval of Authority's Project Representative relative to incurring travel and other expenses before incurring such costs.

**8. INVOICE PROCEDURE AND PAYMENT:** Consultant shall submit invoices monthly to the Authority for work performed during the preceding calendar month. Such invoices shall be due and payable by Authority on or before thirty (30) days from receipt by Authority. Monthly compensation will be for the Services actually performed during the billing period, invoiced in accordance with the Fee Schedule included in Exhibit B. Invoices shall also describe any work performed by subcontractors retained by Consultant and reimbursable costs. Sub-consultant cost mark-up shall not exceed five percent (5%). Consultant will provide sufficient detail with each invoice to substantiate the requested amount of monthly payment. At the Authority's request, Consultant will provide additional backup such as signed time sheets, invoices for materials and subcontracted service or other documentation sufficient to establish the accuracy of the invoices. Invoices are to be submitted in a format previously approved by Authority.

**9. INSURANCE:** Consultant shall procure and maintain at its sole expense, for as long as Consultant is obligated to provide Services under this Contract, the policies of insurance described in Exhibit C attached hereto and in at least the minimum amounts specified in Exhibit C to protect Consultant from claims which may arise out of or result from Consultant's Services pursuant to this Contract, whether such operations be by Consultant, by any subcontractor of Consultant, by anyone directly or indirectly employed by Consultant or Consultant's subcontractor, or by anyone for whose acts Consultant or Consultant's subcontractor may be liable. At least five (5) days prior to execution of this Contract, Consultant will provide to Authority's Risk Program Manager certificates of insurance issued by each insurance company providing any of the required insurance coverage, and the text entered in each certificate must be acceptable to Authority. The requirement to provide acceptable certificates of insurance is a material condition of this Contract, and work under this Contract will not commence until certificates of insurance have been received, reviewed, and accepted by Authority. The minimum limits of liability and coverage for the insurance required are set forth in Exhibit C attached hereto, which is incorporated herein by reference.

**10. INDEMNIFICATION AND RELEASE.** Consultant hereby releases and discharges Authority and its agents, servants, representatives, employees, officers, directors, and Port Commissioners (collectively, the "Authority Parties") from liability for and assumes the risk of loss or damage to the property of Consultant and the injury or death of any person employed by Consultant. Consultant shall defend, indemnify and hold harmless the Authority Parties from and against all damages, losses, costs and expenses, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys' fees and the cost of defense), in connection with any action, proceeding, demand or claim but only to the extent caused by the negligent acts, errors, or omissions of the Consultant, its employees, agents, or subconsultants, or others for whom the Consultant is legally liable, in the performance of Services under this Contract. The Consultant is not obligated under this paragraph to indemnify the Authority Parties for the negligent acts of the Authority Parties.

Consultant's indemnity obligations under this Section 10 shall not be limited by a limitation on the amount or type of damages, compensation or benefits owed by Consultant to any employee of Consultant under workers' or workmen's compensation acts, disability benefit

acts, or other employee benefit acts. The obligations of the Consultant under this Section 10 shall survive the end of the Term of the Contract.

**11. LIMITATION OF LIABILITY:** Except as otherwise expressly provided herein, neither Party shall be liable or responsible to the other Party for any indirect, incidental or consequential loss or damage of any nature whatsoever (including, but not limited to, contract, negligence or tort liability) of the other Party, including without limitation, any actual or anticipated profits, loss of time, inconvenience, commercial loss or any other damages, even if the Party has advance notice of the possibility of such damages.

**12. DISCLOSURE OF INTERESTED PARTIES:** Consultant will comply with the provisions of Section 2252.908 of the Texas Government Code and Chapter 46 of the Texas Ethics Commission Rules by preparing a Texas Form 1295, "Certificate of Interested Parties" and submitting the signed and notarized form to Authority at the time Consultant submits the signed contract to Authority.

**13. ASSIGNMENT:** Neither Authority nor Consultant will assign or transfer its interest in this Contract without the written consent of the other.

**14. SUSPENSION OR TERMINATION:** Authority may suspend or terminate this Contract for convenience with seven (7) days prior written notice to Consultant of such action. Upon termination of this Contract in accordance with this paragraph, Authority will have no further obligation to the Consultant hereunder except to pay the Consultant unpaid fees and expenses which the Consultant can reasonably show to have been earned under this Contract. **Under no circumstances may Consultant claim or recover consequential damages from Authority.**

In the event of suspension of Services, the Consultant shall resume the full performance of the Services when directed in writing to do so by Authority. Suspension of the Services for reasons other than the Consultant's negligence or failure to perform shall not affect the Consultant's compensation as provided for in this Contract. The schedule for performance of the Services shall be amended by a mutually agreed, written modification to this Contract to reflect the suspension.

Either Party may terminate this Contract by giving written notice to the other Party if the other Party ("Defaulting Party"): (a) materially breaches any term, condition or provision of this Contract and fails to cure the breach to the satisfaction of the notifying Party within ten (10) days after the Defaulting Party receives a written notice of the breach from the notifying Party, or (b) becomes the subject of any proceedings under state or federal law for the relief of debtors or otherwise becomes insolvent, or bankrupt, or makes any assignments for the benefit of one or more creditors.

**15. DISPUTES:** Each Party agrees that any dispute between the Parties relating to this Contract will first be submitted in writing to a panel of two senior executives of the Authority and Consultant, 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 Contract or the existence, validity, breach or termination thereof, 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.

**16. ATTORNEY'S FEES, DEFAULT:** In the event Consultant or Authority breach any of the terms of this Contract and the Party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting Party agrees to pay reasonable attorney's fees and costs incurred by the prevailing Party.

**17. STAFFING:** Consultant will designate in writing to Authority its project representative, and the manner in which it will provide staff support for the project, which must be approved by Authority. Consultant must notify Authority's Project Representative of any change in personnel assigned to perform work under this Contract, and the Authority's Project Representative has the right to reject the person or persons assigned to fill the position or positions. The Authority's Project Representative shall also have the right to require the removal of the Consultant's previously assigned personnel, including Consultant's project representative, provided sufficient cause for such removal exists. The criteria for requesting removal of an individual will be based on, but not limited to, the following: technical incompetence, inability to meet the position's qualifications, failure to perform, poor attendance, ethics violation, unsafe work habits, or damage to Authority or other property. Upon notice for removal, Consultant shall replace such personnel with personnel substantially equal in ability and qualifications for the positions and shall submit the proposed replacement personnel qualification and abilities to the Authority, in writing, for approval.

**18. OWNERSHIP OF EVALUATION MATERIALS:**

18.1 Any notes, extracts, memoranda, computer files, documents, studies, plans, reports, surveys, drawings, specifications, computations and other information obtained by Consultant from the Authority's customers or other users of the Corpus Christi Ship Channel in connection with the Consultant's preparation of the Waterway Planning Study of the Corpus Christi Ship Channel System (collectively "Evaluation Materials") and any drafts of the Waterway Planning Study prepared by the Consultant and/or subconsultants under this Contract will remain the Consultant's property. Upon completion of the Waterway Planning Study, Consultant will submit a final report (as outlined in Exhibit A) which shall remain the property of Authority.

18.2 Consultant understands that Authority's customers or users may provide Consultant with written Evaluation Materials and Consultant agrees that it will not take any written Evaluation Materials from the offices of Authority's customers or users without the customer or user's permission.

18.3 No copies shall be made of Evaluation Materials unless Consultant represents that such copies are necessary for its review, and in such event, only for the number of copies specifically authorized by the Authority's customers or users.

18.4 If Consultant has any written Evaluation Materials in its possession, Consultant shall return it to the Authority customer or user no later than five (5) days after requested by customer or user to do so. Consultant's own notes, extracts, studies, memoranda or computer files that constitute the Evaluation Materials may be destroyed by Consultant in lieu of returning it to the Authority customer or user so long as an officer of Consultant certifies in writing that all such documents and copies of such documents have been destroyed. The written certification of destruction shall be delivered to the Authority customer or user within the five day period described above.

18.5 The following categories of information are not considered to be Evaluation Materials: (i) information which is, or subsequently becomes within the public knowledge generally through no fault of Consultant, its directors, officers, or employees; (ii) information which Consultant can show was known to it as of the date of this Agreement other than through a disclosure by Authority customers or users; (iii) information which Consultant can show was obtained lawfully from a third party which itself obtained the information lawfully and through no fault of Consultant, its directors, officers, or employees subsequent to the date of this Agreement; or (iv) information that was developed by or for Consultant independent of, and without reference to, the Evaluation Materials.

**19. CONFIDENTIAL INFORMATION:** It is understood that information developed by or communicated to Consultant in the performance of this Contract, as well as any and all Evaluation Materials in whatever form or medium supplied to Consultant in connection herewith which is not generally available to the public is confidential. Consultant will make no oral or written disclosure of such information to third parties either during or after the term of this Contract, except as approved in writing by the Authority's Project Representative or as otherwise required by law. In the event the Consultant becomes aware that confidential information must be disclosed under a legal requirement, Consultant will notify Authority of the requirement and the affected information.

**20. FORCE MAJEURE:** Neither Party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is delayed by any cause beyond the reasonable control of the affected Party. In the event of such a delay, the time for performance for the affected Party shall be extended for a period equal to the time lost during the delay, or the Contract may be terminated in accordance with terms herein should such delay be sufficient that termination is in the best interest of the Authority.

**21. SEVERABILITY and WAIVER:** If any part of this Contract is held to be invalid, illegal, or unenforceable in any respect, such determination shall not affect any other provision of this Contract, and this Contract shall then be construed as if the invalid, illegal, or unenforceable provision had not been included in this Contract. Further, the failure of either Party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms, provisions or options on any future occasion.

**22. GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The Parties agree that venue of all claims and lawsuits arising out of this Contract shall lie in Nueces County, Texas.

**23. OPEN RECORDS:** The Authority is a governmental body subject to the requirements of the Texas Public Information Act (Texas Government Code, chapter 552), and as such the Authority is required to disclose to the public (upon request) this Contract and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, the Consultant agrees that the disclosure of this Contract or any other information or materials related to the consummation of the transactions contemplated hereby to the public by the Authority as required by the Texas Public Information Act or any other applicable law will not expose the Authority (or any party acting by, through or under the Authority) to any claim, liability or action by the Consultant.

**24. NO ORGANIZATIONAL CONFLICT OF INTEREST:** Consultant hereby certifies that it has no actual or potential Organizational Conflict of Interest. “Organizational Conflict of Interest” means that because of other activities or relationships with other persons or entities, the Consultant is unable or potentially unable to render impartial assistance or advice to Authority or the Consultant’s objectivity in performing the services under this Contract is or might otherwise be impaired. Consultant agrees to immediately notify Authority of any actual or potential Organizational Conflict of Interest that develops during the term of this Contract. Consultant agrees that Authority may terminate this Contract immediately if it becomes aware of any Organizational Conflict of Interest during the term of the Contract.

**25. DEFAMATION:** The Parties covenant and agree that in no event, and at no time during the Term or at any time thereafter, shall either of them disparage, denigrate, slander, libel or otherwise defame the other or the other’s businesses, services, properties or assets, or employees, personnel, agents, or representatives.

**26. HEADINGS:** All Section headings or other titles used in this Contract are used solely for convenience and shall not affect or be used in connection with the interpretation or construction of this Contract.

**27. ENTIRETY OF CONTRACT:** This writing embodies the entire Contract and understanding between the Parties hereto, and there are no other contracts or understandings, oral or written, between them with reference to the subject matter hereof that are not merged herein

and superseded hereby. No alteration, change, or modification of the terms of this Contract shall be valid unless made in writing and signed by both Parties hereto.

**IN WITNESS WHEREOF**, this Contract is made effective as of the Effective Date.

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

**By:** \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

“Authority”

**By:** \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

“Consultant”

DRAFT

**EXHIBIT A**

**SERVICES**

The Consultant will perform the following services in accordance with the terms and conditions set forth in this Contract:

Work will include developing a Waterway Planning Study of the Corpus Christi Ship Channel System to determine impacts of future commodities and fleet distribution on existing and contemplated vessel traffic and customers, using Pilot Association existing and projected transiting rules and restrictions and with and without the CCSC-CIP. The services rendered in completing the Waterway Planning Study will include, but are not necessarily limited to the following activities:

- (1) Conduct confidential interviews with Port of Corpus Christi Stakeholders, including terminal operators, refiners, midstream companies, and beneficial cargo owners (“**BCO’s**”), both those already in operation and those expected to be in operation by 2020 (e.g. LNG vessels), to estimate inbound and outbound cargo volumes, vessel counts and fleet size distribution (ship characteristics (LOA, beam, DWT, draft, etc.), tank vessel, barges, etc.) that are expected in the 5, 10 and 20 year planning scope;
- (2) Provide projections of the additional cargo and the fleet distribution (ships, tank vessel, barges, etc.) that are expected in the 5, 10 and 20 year planning scope;
- (3) Using simulation modeling techniques and technologies, analyze the current and future Corpus Christi Channel navigation status, intensity of marine traffic, and potential rate of risks and accidents around the Port of Corpus Christi. The model shall include all cargo vessels and terminals using data from years 2011 through 2015 along with projected cargo and fleet distribution in the 5, 10 and 20 year planning scope;
- (4) Analyze and determine probabilities and frequencies of occurrence of channel meetings in up to six (TBD) locations within the ship channel system for various combined beam widths; with and without channel improvements in the 5, 10, and 20 year planning scope;
- (5) Conduct, among other stakeholders, interviews with Aransas-Corpus Christi Pilots Association and Corpus Christi Harbor Tug Operators to analyze and determine probabilities and projected hours of delays at the offshore sea buoy for various sized ships to transit to up to six locations within the ship channel system due to combined beam restrictions; with and without channel improvements in the 5, 10, and 20 year planning scope;

- (6) Analyze and determine probabilities and projected hours of delays from up to six locations within the ship channel system to depart due to combined beam restrictions: with and without channel improvements in the 5, 10, and 20 year planning scope;
- (7) Provide recommendations on channel improvements and transit rules to improve level of service and reduce delays and provide the respective sensitivities modeling demonstrating the recommendation's effectiveness;
- (8) Develop a summary of the possible and probable channel vessel restrictions (regulation, policy, pilot) new vessels/fleet/traffic could have on Port of Corpus Christi traffic/fleet/customers in the 5, 10, and 20 year planning scope;
- (9) Develop scenarios of probable bottlenecks that could occur around the Port of Corpus Christi in the 5, 10, and 20 year planning scope;
- (10) Research and present information on channel/vessel traffic management tools that could address identified constraints and determine if such systems are needed. Identify established management practices associated with such systems;
- (11) Compare scenarios and possible vessel traffic management systems:
  - a. With deepening and widening of the Corpus Christi Ship Channel and construction of barge shelves;
  - b. Without deepening and widening of the Corpus Christi Ship Channel and construction of barge shelves;
- (12) Evaluate the impact of the authorized deepening and widening of the Corpus Christi Ship Channel and construction of barge shelves on Port of Corpus Christi performance;
- (13) Prepare and submit a Final Report of the Waterway Planning Study describing:
  - a. The information gathering process, and an assessment of the completeness and applicability of data set acquired;
  - b. Data acquired including cargo volumes, vessel counts and fleet size distribution;
  - c. The simulation modeling process including a description of the software used, assumptions and parameters developed and used and an explanation of the reasoning for the assumptions and parameters used;
  - d. Results of the simulation modeling for the 5, 10, and 20 year planning scope to include but not limited to:
    - i. Related navigation status;

- ii. Intensity of marine traffic;
  - iii. Potential rate of risks, accidents and potential bottlenecks;
  - iv. Percent chance and frequency of occurrence of channel meetings;
  - v. Percent chance and projected hours of delays;
  - vi. and other vessel traffic characteristics that may be useful for planning;
- e. A comparison of the projected vessel traffic with and without the CCSC-CIP;
  - f. An assessment of the reliability and accuracy of the modeling results;
  - g. An assessment and recommendations of how the accuracy of the modeling results could be improved;
  - h. A summary of channel/vessel traffic management tools evaluated and recommendations on implementing modifications and upgrades to the current system used at the Port of Corpus Christi to address future needs;
  - i. An analysis of the impact of the proposed CCSC-CIP on vessel traffic and congestion and overall operations at the Port of Corpus Christi
  - j. Other information as mutually deemed relevant by the Firm, Port Authority, U.S. Coast Guard, Aransas-Corpus Christi Pilots, and WPC; and,
  - k. Submit final report in draft format for review by the Port Authority and WPC. Comments will be incorporated, as appropriate and the final report submitted in 10 hard copies, reproducible Portable Document File (PDF) Format, and in native file format for each element of the report (Microsoft Word, Microsoft Excel, AutoCAD, etc.).

**EXHIBIT B**

**FEE SCHEDULE**

The Consultant will perform the Services described in Exhibit A in accordance with the terms and conditions of this Contract on an hourly fee basis; provided, however, that the total fee for services rendered under this Agreement will not to exceed \$243,843.00, without Authority’s written approval. Services provided by Consultant will be billed at the hourly rates specified in Exhibit B. These fees will cover all of Consultant’s overhead costs, including but not limited to, office rent, long distance telephone charges, postage, payroll and copying charges.

Following table provides hourly rate categories:

| Categories   | Hourly Rates |
|--|--------------|
| Project Manager  | \$220        |
| Simulation Modeling Task Leader                          | \$220        |
| Coastal Engineering Expert                               | \$210        |
| Data Collection / Market Forecast Leader                 | \$190        |
| Quality Assurance  | \$190        |
| Deputy Project Manager                                   | \$160        |
| Vessel Management System and Real-time Simulation Expert | \$160        |
| Stakeholder Coordination                                 | \$160        |
| Simulation Analyst                                       | \$125        |
| Economist  | \$105        |
| CAD  | \$120        |
| Admin  | \$100        |

The Authority agrees to reimburse the Consultant for certain authorized and approved travel expenses incurred by the Consultant during the Term and directly resulting from the Consultant’s performance of the Services under this Contract. Reimbursement for lodging and meals may not exceed the maximum allowable per diem rates for domestic or foreign travel as set by the U.S. Department of Defense, Defense Travel Management Office. Lodging and meal per diem rates for specific locations (foreign and domestic) may be found at: <http://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Authority will also reimburse the Consultant for document production costs and other direct costs (collectively, “Direct Costs”) incurred by the Consultant in performing the Services. The Consultant shall submit proper documentation of any such approved travel expenses and Direct Costs to Authority from time to time, and such costs and expenses shall be billed to Authority at Consultant’s actual cost.

Not later than the twentieth (20th) day of each calendar month, Consultant shall submit to Authority detailed invoices for all services performed and Direct Costs incurred, if any, pursuant to this Agreement during the prior calendar month. The invoices shall describe in detail the

Services performed during the prior month and shall list the days and hours worked, the hourly rates charged, pre-approved Direct Costs, milestone achievements, tasks performed or completed, and the Services performed during each day of the prior month. Authority shall review the invoices and notify Consultant in writing (including email) within twenty (20) days of any disputed amounts.

Should this Contract be terminated for any reason, the Consultant will be paid all fees earned up to the termination date and any approved direct expenses incurred.

DRAFT

**EXHIBIT C**  
**INSURANCE**

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

|    | <u>TYPE OF INSURANCE</u>     | <u>LIMITS OF LIABILITY</u>                          |
|----|------------------------------|---|
| A. | Workers' Compensation        | Statutory   |
| B. | Employer's Liability         | \$500,000 per Occurrence<br>\$500,000 Aggregate     |
| C. | Commercial General Liability | \$1,000,000 per Occurrence<br>\$2,000,000 Aggregate |

The CGL Policy will provide contractual liability coverage at the aforementioned limits.

|    |                               |                          |
|----|-------------------------------|--------------------------|
| D. | Business Automobile Liability | \$500,000 per Occurrence |
|----|-------------------------------|--------------------------|

Automobile liability insurance coverage will include all owned, non-owned, and hired vehicles.

|    |                        |             |
|----|------------------------|-------------|
| E. | Professional Liability | \$1,000,000 |
|----|------------------------|-------------|

Consultant will procure and maintain professional liability insurance for protection from claims arising out of performance of its Services under this Contract caused by any error, omission, or act for which the Consultant is legally liable. Policies written on a claims-made basis shall have an extended reporting period of at least two (2) years beyond termination of the Contract.

Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the Authority, its Port Commissioners, officers and employees ("Authority Parties"). Additionally, the Authority Parties shall be designated as an Additional Insured either by a blanket additional insured or a specific endorsement on all policies, except for Worker's Compensation, Employer's Liability, and Professional Liability. In the event that the work of Consultant's employees fall within the purview of the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or the Federal Employer's Liability Act, Consultant shall extend its insurance coverage to provide insurance against the liabilities imposed under the applicable Act or Acts.

Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insureds with respect to claims arising under this Contract.

The insurance required as listed above, shall apply to any contractor or subcontractor performing for or on behalf of Consultant, and Consultant shall ensure that any such subcontractor is aware of and is in compliance with the insurance requirements during any period such contractor is performing work under this Contract.

The minimum insurance required may be increased periodically upon request by Authority to commercially reasonable limits. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least "A-, VII".

Consultant's liability shall not be limited to the specified amounts of insurance required herein.

DRAFT



**DATE:** September 29, 2016  
**TO:** Port Commission  
**FROM:** David L. Krams, P.E., Director of Engineering Services  
[Krams@pocca.com](mailto:Krams@pocca.com)  
(361) 885-6134

**AGENDA ITEM NO. 3.d**

**Award a Construction Contract for Construction of Oil Dock 15**

**SUMMARY:** Staff is currently soliciting bids to perform the construction of Oil Dock 15 per the Port's Lease Agreement with Martin Operating Partnership L.P. (Martin). Due to the recent construction contract addendum issued for the project, the bid date was delayed until Tuesday, September 27, 2016 to give bidders additional time to prepare accurate bids. Given the Port's commitment to Martin to take action on this construction project in September 2016 to better ensure the timely relocation of their operations from Cargo Dock 10 to the new Oil Dock 15 related to construction of the new Harbor Bridge, staff requests permission to receive bids, evaluate, and provide a recommendation to the Commission the day before the Special Commission meeting scheduled on September 29, 2016. Staff anticipates making a recommendation to award a construction contract to the bidder submitting the lowest and best evaluated bid.

**BACKGROUND:** On May 17, 2016, the Commission approved a lease agreement (Lease) with Martin for the construction and operation of a new oil dock, Oil Dock 15. This new oil dock, which will be owned by the PCCA and used exclusively by Martin, will support Martin's liquid bulk loading operations that will cease at Cargo Dock 10 due to the construction of the New Harbor Bridge. The proposed Oil Dock 15 will be located just west of NuStar Oil Dock 16. Per the terms of the Lease, the PCCA is responsible for constructing the dock structure, slip, and loading / unloading equipment. The dock is designed to accommodate a future authorized dredge depth of -52 ft. MLT.

The contract documents for the Construction of Oil Dock 15 project were structured with a Base Bid and five Additive Bid Items. The Base Bid generally includes the construction of the dock, a 750' long slip, ship breasting and mooring structures, piping, security fence, lighting, utilities, and the fabrication, installation and commissioning of electrical and mechanical systems to support ship loading operations. The Additive Bid Items consist of:

- Additive Bid Item 1: Construction of two additional monopile mooring structures. These structures are designed and positioned to accommodate larger oceangoing vessels. The PCCA has the option to delay award of this bid item for up to 60 calendar days after the contract's notice of award.
- Additive Bid Item 2: Installation of an independent barge and fender system with swing down gangway and barge access stairs, catwalk, and safety ladders to accommodate barges at the dock.



- Additive Bid Item 3: Dredging approximately 32,085 cubic yards of additional dredge material and expand the slip from 750-feet to 1100-feet long.
- Additive Bid Item 4: Additional costs associated with placement of dredge material into the South Shore DMPA Cell B in lieu of DMPA No. 1 or No. 2. This Additive Bid Item is to be awarded should DMPA No. 1 and No. 2 become unavailable for use on the project.
- Additive Bid Item 5: A unit cost (per cubic yard) adjustment for dredging volumes above the dredge volumes required in Base Bid dredging and Additive Bid Item 3 dredging, if awarded, to a depth of -49 feet MLT.

Contract award will be based on an Evaluated Bid, which is a predetermined combination of the Base Bid and Additive Bid Items. Martin and the PCCA will review the bids received, and in coordination with Martin, the PCCA will recommend contract award.

**ALTERNATIVES:** N/A

**CONFORMITY TO PORT POLICY:** Design of this project was included in the 2016 Capital Budget. The project is consistent with a goal in the PCCA 2025 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:** Although this is not an emergency action, construction and commissioning of Oil Dock 15 is a time critical activity to meet the needs of PCCA's customer.

**STAFF RECOMMENDATION:** Staff anticipates receiving bids on September 27, 2016, notifying the Commission with a recommendation to award a construction contract to the bidder providing the lowest and best evaluated bid, further recommending award of the Base Bid and possibly various Additive Bid Items, and further recommending that the Director of Engineering Services be granted a contingency in accordance with the PCCA's standard contingency guidelines for marine construction projects and to accommodate the award of Additive Bid Items, should it be needed during construction.

**DEPARTMENTAL CLEARANCES:**

|                        |  |
|------------------------|--|
| Originating Department | Engineering Services   |
| Reviewed & Approved    | David Krams<br>Brett Flint<br>Dave Michaelsen<br>Natasha Fudge |
| Legal                  | Staff will use PCCA's standard Construction Contract.          |
| Senior Staff           | John LaRue<br>Sean Strawbridge<br>Jarl Pedersen                |

**LIST OF SUPPORTING DOCUMENTS:** None.



**DATE:** September 29, 2016  
**TO:** Port Commission  
**FROM:** David Krams, P.E., Director of Engineering Services  
[Krams@pocca.com](mailto:Krams@pocca.com)  
(361) 885-6134

**AGENDA ITEM NO. 3.e**

**Approve an Assignment and Assumption Agreement with Martin Operating Partnership, L.P., and a Novation Agreement with Martin Operating Partnership, L.P., and John Zink, LLC, Regarding a Purchase Contract for a Vapor Combustion Unit Associated with Construction of Public Oil Dock 15**

**SUMMARY:** Staff requests approval of an Assignment and Assumption Agreement with Martin Operating Partnership, L.P., for transfer of interest and ownership of a pre-ordered vapor combustion unit; approval of a Novation Agreement with Martin Operating Partnership, L.P., and John Zink, LLC, to transfer the purchase agreement with John Zink, LLC, from Martin Operating Partnership, L.P., to the Port of Corpus Christi Authority; and approval to pay John Zink, LLC, an amount not to exceed \$270,750 as final payment for the purchase of the vapor combustion unit for the construction of public Oil Dock 15.

**BACKGROUND:** On May 17, 2016, the Commission approved a lease agreement with Martin Operating Partnership, L.P., (Martin) for the construction and operation of a new oil dock, Oil Dock 15. This new oil dock, which will be owned by the PCCA and used exclusively by Martin, will support Martin's liquid bulk loading operations that will cease at Cargo Dock 10 due to the construction of the new Harbor Bridge. The proposed Oil Dock 15 will be located just west of NuStar Oil Dock 16 (see attached exhibit). Per the terms of the Lease, the PCCA is responsible for constructing the dock structure, slip, and loading/unloading equipment.

To better ensure the timely relocation of Martin's operations to the new oil dock, some long manufacture and delivery time equipment was necessary to be ordered before finalizing the Oil Dock 15 construction contract documents. These include the purchase of three (3) dock loading arms awarded by the Commission in June 2016 and are scheduled to be delivered in February 2017. Similarly, Martin had pre-ordered and provided partial payments for the purchase and delivery of a 30,000 barrel per hour vapor combustion unit (VCU) from the manufacturer, John Zink, LLC; and per the Lease, Martin agreed to donate its interest in the VCU to the PCCA while the PCCA agreed to pay the remainder due, \$270,750, to purchase the VCU from John Zink. Payment of the remaining balance of the VCU purchase price is required for delivery of the VCU to the Oil Dock 15 project site in October 2016, meeting the project construction schedule.

The PCCA, Martin, and John Zink have finalized the Assignment and Assumption Agreement, as well as the Novation Agreement, which are included and attached for Port Commission

consideration. PCCA staff requests that the Executive Director be authorized to execute these agreements.

**ALTERNATIVES:** None.

**CONFORMITY TO PORT POLICY:** Design of this project was included in the 2016 Capital Budget. The project is consistent with a goal in the PCCA's Strategic Plan (Strategic Goal #2 – Provide facilities and services to meet customer needs to provide surface infrastructure and services to support maritime and industrial development).

**EMERGENCY:** Although this is not an emergency action, the construction and commissioning of Oil Dock 15 is a time critical activity to meet the needs of PCCA's customer.

**FINANCIAL IMPACT:** This project will maintain throughput levels with an existing customer by replacing capacity that will be impacted by the construction of the new Harbor Bridge. The PCCA's cost to design and construct the proposed dock will be recovered through capital recovery and operational fees contained in the terms and conditions of the Lease with Martin.

**STAFF RECOMMENDATION:** Staff recommends approval of an Assignment and Assumption Agreement with Martin Operating Partnership, L.P., for Martin's donation of a vapor combustion unit to the PCCA. Staff further recommends approval of a Novation Agreement with Martin Operating Partnership, L.P., and John Zink, LLC, for transfer of Martin's purchase agreement with Zink from Martin Operating Partnership, L.P., to the Port of Corpus Christi Authority. Lastly, staff recommends approval of the payment of the remainder of the vapor combustion unit purchase price to the manufacturer, John Zink, LLC, in an amount not to exceed \$270,750, associated with construction of public Oil Dock 15.

**DEPARTMENTAL CLEARANCES:**

|                        |                      |
|------------------------|----------------------|
| Originating Department | Engineering Services |
| Reviewed & Approved    | David Krams          |
|                        | Brett Flint          |
|                        | Natasha Fudge        |
| Legal                  | Jimmy Welder         |
| Senior Staff           | John LaRue           |
|                        | Sean Strawbridge     |
|                        | Jarl Pedersen        |

**LIST OF SUPPORTING DOCUMENTS:**

Map Exhibit  
Assignment and Assumption Agreement  
Novation Agreement



**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Assignment and Assumption Agreement”) is made and entered into this 27 day of September, 2016 by and between MARTIN OPERATING PARTNERSHIP L.P. (“MOP”) and the PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS (the “Port”).

**Witnesseth:**

WHEREAS, MOP, as buyer, and John Zink Company LLC, as seller (“Seller”), entered into a contract (“Contract”) for the purchase and sale of a Marine Vapor Destruction Unit (“MVDU”) for a total purchase price of \$1,083,000 (“Purchase Price”); and

WHEREAS, the Contract consists of Purchase Order #304584 dated September 23, 2014, and General Terms and Conditions of Sale (Goods and Services) Martin Midstream Partners, LP 9/19/14, a copy of which is attached hereto as Exhibit “A” and made a part hereof for all purposes; and

WHEREAS, MOP has paid \$812,250 of the Purchase Price to Seller; and

WHEREAS, in that certain Lease Agreement between the Port and MOP dated effective June 1, 2016 (“Lease Agreement”), MOP agreed to donate and assign its interest in the MVDU to the Port and have it delivered to the Port by a date and to a location reasonably determined by the Port; and

WHEREAS, in the Lease Agreement the Port agreed to pay the remainder of the Purchase Price (\$270,750) to Seller within 30 days after the date of delivery of the MVDU and to install the MVDU on the leased premises; and

WHEREAS, MOP is executing and delivering this Assignment and Assumption Agreement for the purpose of donating, assigning and transferring to the Port all its rights, title and interest in and to the MVDU and the Contract as provided in the Lease Agreement; and

WHEREAS, the Port is executing and delivering this Assignment and Assumption Agreement for the purpose of assuming all obligations of MOP under the Contract, subject to the limitations described herein, and no others.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MOP hereby DONATES, ASSIGNS, TRANSFERS, CONVEYS, DELIVERS and SETS OVER unto the Port all its right, title and interest in and to the MVDU and the Contract, and the Port hereby assumes all obligations of MOP under the Contract, except as expressly excluded or limited hereunder. Except as expressly assumed herein, the Port assumes no liabilities and no other obligations of MOP whatsoever.

Notwithstanding anything herein to the contrary, MOP agrees that the maximum amount that the Port shall be required to pay for the purchase and delivery of the MVDU under the Contract is \$270,750, and MOP agrees to pay on behalf of the Port any additional amounts due under the Contract applicable to the purchase and delivery of the MDVU.

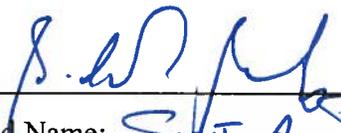
The parties agree to execute such other and additional legal instruments, consents, ratifications and other matters as may be reasonably required in order to effectuate the intent of this Assignment and Assumption Agreement. The terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns.

*(The remainder of this page has been intentionally left blank)*

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed by their duly authorized officers as of the date first above written.

**MARTIN OPERATING PARTNERSHIP L.P.**

By: Martin Operating GP LLC, its general partner  
By: Martin Midstream Partners L.P., its sole member  
By: Martin Midstream GP LLC, its general partner

By:  9/27/2014  
Printed Name: SCOTT A. SOUTHARD  
Title: VP Commercial Development

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

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit "A"  
Contract**



# - PURCHASE ORDER -

PO number changed to 304584

|           |    |      |   |
|-----------|----|------|---|
| AMENDMENT | 00 | PAGE | 1 |
|-----------|----|------|---|

- ✓ Purchase order number **MUST** appear on all invoices
- ✓ Enter this order in accordance with the terms and conditions on file
- ✓ Notify us immediately if unable to ship as specified

| PO#           | DATE       | ACTIVITY # |
|---------------|------------|------------|
| <u>304241</u> | 09/23/2014 | 40481      |

|  |   |
|--|---|
| <b>VENDOR:</b> ATTN: Gavan Jenkinson<br>JOHN ZINK COMPANY LLC<br>P O BOX 915001<br>DALLAS, TX 75391-5001 | <b>SHIP TO:</b> ATTN: Martin Operating Partnership<br>Corpus Christi Crude Terminal<br>3009 W. Causeway Blvd.<br>Corpus Christi, TX 78402 |
|--|---|

**SHIP VIA:**

**SPECIAL INSTRUCTIONS:**  
 Per proposal VC-201408-47244-A and negotiated terms as shown below and in the attached Terms and Conditions. PO number must appear on all invoices. Please sign and return a copy of the PO for our files.

| QUANTITY | DESCRIPTION  | DUE                           | UNIT PRICE | UOM | EXTENDED PRICE |
|----------|--|-------------------------------|------------|-----|----------------|
| 994,000  | #0 - Marine Vapor Destruction Unit - MVDU<br>Comments: JOHN ZINK® Model ZCM-12- 60-4/8-4/8-4/8 Marine Vapor Combustion System per Proposal # VC-201408-47244-A Rev 1 dated 3 Sep 2014 Sug. Com Grp: Operations   | <del>4/01/15</del><br>4/14/15 | 1.00       | EA  | 994,000.00 T   |
| 89,000   | #0 - Marine Vapor Destruction Unit - MVDU<br>Comments: Option to Increase the VCU Stack Size from 12 OD x 60 OAH to 13 OD x 70 OAH. Increasing the size of the combustion stack allows the system to be rated for a higher heat release which in turn allows the facility to load products with higher vapor pressure than what is expressed in the current design section of the proposal. Sug. Com Grp: Operations | <del>4/01/15</del><br>4/14/15 | 1.00       | EA  | 89,000.00 T    |
| 1        | Verbiage<br>Comments: Per agreement FOB Destination and John Zink amended Terms and Conditions as agreed attached. Per Agreement between our Tom Kelly and Gavan Jenkinson - Due to possible delays in environmental permitting, the John Zink Performance Guarantee and Warranty are to be adjusted to 24 months after shipment or 12 months after start-up, whichever ends first.                                  | <del>4/01/15</del><br>4/14/15 | .00001     | EA  | T              |

Vendor is required to sign below and return to buyer.

Purchase Order and any/all attachments accepted by:

Gavan Jenkinson Applications Engineering Manager  
 Print name & Title

Gavan Jenkinson  
 Signature

Date: 10/8/14

|   |  |                              |
|---|--|------------------------------|
| <b>BILL TO:</b><br>Martin Terminals<br>Engineering<br>PO Box 191<br>Kilgore, TX 75662 | <b>BUYER CONTACT:</b><br>Michael Scrimshire<br>903-988-4611, Ext. 4611 (Office)<br>mike.scrimshire@martinmlp.com | <b>TOTAL</b><br>1,083,000.00 |
|---|--|------------------------------|

T = Taxable  
 N = Non-Taxable

**GENERAL TERMS AND CONDITIONS OF SALE  
(GOODS AND SERVICES)  
Martin Midstream Partners L.P.  
09/19/14**

1. **APPLICATION.** These General Terms and Conditions of Sale (“**Terms and Conditions**”) will apply to all quotations and sales for goods, material, equipment and services by John Zink Company, LLC (“**Seller**”) and are hereby incorporated into the quotation, invoice or other document to which they are attached (“**Order**”) and, together with the Terms and Conditions, the “**Contract**”). All purchases by customer, owner or its agent (“**Buyer**”) are expressly limited and conditioned upon acceptance of the Terms and Conditions. Seller objects to and rejects any provision additional to or different from the Terms and Conditions that may appear in Buyer’s purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in a writing signed by Seller. For the purposes of these Terms and Conditions, the term “**Goods**” shall refer to the goods, material and equipment listed on the Order as well as all equipment or other materials provided in connection with any Services, and the term “**Services**” shall refer to the services listed on the Order as well as all ancillary services provided with any Goods. Terms not defined herein shall have the meanings set forth in the Order.
2. **QUOTATIONS.** Unless otherwise stated in the Order, any quotation from Seller is valid for 30 days from the date of the quotation. The quotation supersedes all previous quotations or correspondence concerning the same transaction or inquiry. Quotations contain proprietary information of Seller and are provided to Buyer solely for Buyer’s internal purposes. Quotations may not be disclosed to any third party or used in preparation of any request for quotation for goods similar to, or as a substitution for, Goods quoted by Seller.
3. **PRICE MODIFICATION AND OTHER CHARGES.** Unless otherwise stated in the Order, Seller’s price does not include: (a) transportation, handling, crating or packaging charges, or (b) sales, harmonized sales, goods and services, use or value-added tax or any other tax, excises, duties, tariffs, fees or other governmental charges that Seller may be required to pay or collect under any existing or future law, with respect to the import/export, sale, transportation, delivery or storage of any Goods or the provision of any Services sold by Seller.
4. **PAYMENT TERMS.** (a) Unless otherwise specified in the Order, payment must be received by Seller net 30 days from invoice date. (b) All payments shall be made in the currency listed in the Order, or, if not so listed, then in U.S. dollars. (c) If the payment due date is not a business day, Seller must receive such payment on the next business day after such due date. (d) Each shipment of Goods and each provision of Services is a separate transaction and payment shall be made accordingly. (e) Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to the prevailing EURIBOR rate of interest, expressed as an annual percent, plus 3% from the payment due date until paid in full, or the highest interest rate allowed by applicable law, whichever is less.
5. **CREDIT TERMS.** If, in Seller’s judgment, the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may suspend performance hereunder. Buyer will be responsible for any costs associated with such suspension (including charges for reactivation). In addition, Seller may, for any reason, (a) require prepayment by wire transfer at least two business days prior to a scheduled shipment of Goods or provision of Services, and/or (b) require Performance Assurance at least three business days prior to a scheduled shipment of Goods or provision of Services. “**Performance Assurance**” means collateral in the form of either cash or letter(s) of credit in a form, and from an issuing bank, acceptable to Seller.
6. **DELIVERY.** (a) Unless otherwise stated in the Order, all Goods will be delivered to Buyer EX Works the manufacturing facility of the Goods (the “**Facility**”). (b) If Buyer has not issued inspection and shipping instructions by the time the Goods are available to Buyer, Seller may either, at its sole discretion, (i) store the Goods at Buyer’s risk and cost, or (ii) select any reasonable method of shipment, without liability by reason of its selection, costs and risk of shipment to be paid for by Buyer. (c) Shipments or Goods in storage may be insured at Buyer’s expense, and Seller will not place a valuation upon shipments or Goods stored unless specifically requested in writing by Buyer or required for export purposes. (d) Unless otherwise stated in the Order, the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference.
7. **TITLE/RISK OF LOSS.** Title in the Goods shall pass to Buyer only upon payment in full. The risk of loss or damage to the Goods shall pass to Buyer upon delivery in accordance with the Contract.
8. **INSPECTION/REJECTION OF GOODS.** All Goods shall be received subject to Buyer’s reasonable inspection and rejection. If Buyer finds any of the Goods not to comply with any of the specifications contained in the Contract, Buyer, may, at its sole election, reject that portion of the Goods that fail to comply. Rejected Goods will be held at Seller’s risk for a reasonable time, to be returned or disposed of by Buyer at Seller’s written instruction and at Seller’s sole cost and expense. A failure by Buyer to reject the Goods in writing within 30 days after receipt shall constitute an unqualified acceptance of such Goods by Buyer and a waiver by Buyer of all claims with respect thereto, except for latent damages which are not apparent upon delivery but become exposed upon closer inspection or during installation or startup. Buyer will promptly notify Seller of any such issues.
9. **WARRANTY.** (a) Seller warrants that (i) the Goods shall be new and good quality and shall conform to the specifications specifically set forth in the Order and title to the Goods shall be free from any security interest, lien or encumbrance upon Seller’s receipt of full payment for the Goods, and (ii) Seller shall perform the Services in a workmanlike manner in accordance with the specifications specifically set forth in the Order. (b) The foregoing warranties will last for the following period (the “**Warranty Period**”): (i) for Goods, 18 months after the date that the Goods are available for shipment or one year after first start-up, whichever occurs first, and (ii) for Services, three months after completion of the Services. If during the Warranty Period any Goods or Services prove upon examination by Seller not to meet the warranties set forth above, Seller will repair the Goods or supply identical or substantially similar replacement Goods EX Works the Facility, at Seller’s sole discretion, or re-perform the Services (as applicable). Any replacement Goods or re-performed Services will be warranted for the unexpired portion of the Warranty Period applicable to the particular Goods or Services. (c) Seller will not be responsible for transportation costs or for the costs of removal, installation, re-installation or making of access of any Goods or items, where such transportation, removal, installation, re-installation or making of access is required to repair or replace any defective Goods or to re-perform Services. Furthermore, Seller will not be responsible for and assumes no liability for materials or workmanship, labor costs or other related expenses for any work performed by third parties in the repair or replacement of defective Goods or the re-performance of Services. (d) This warranty will be voided if (i) the Goods or the subject of the Services have not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by Seller; (ii) the Goods or the subject of the Services have been subjected to any accident, misapplication, environmental contaminant, corrosion, damage, debris, improper passivation, abuse or misuse; (iii) Buyer has modified the Goods or the subject of the Services without Seller’s prior written consent; (iv) Buyer has used or repaired the Goods or the subject of the Services after discovery of the defect without Seller’s prior written consent; (v) Buyer refuses to permit Seller to examine the Goods or the subject of the Services and operating data to determine the nature of the defect claimed, or (vi) Buyer fails to meet its obligations. (e) Goods not manufactured by Seller are subject only to warranties of Seller’s vendors and Seller hereby assigns to Buyer all rights in such vendor’s warranties, however, Seller shall furnish to Buyer reasonable assistance in enforcing such rights. (f) Inexpensive items requiring repair or replacement and routine maintenance-related or consumable items shall be outside the scope of these limited warranties. (g) Seller’s performance guarantees, if any, shall be deemed to be met by a satisfactory demonstration of the guaranteed performance parameters during a performance test, which shall be the responsibility of Buyer and to be based on test procedures as specified in the Order or, if not specified in the Order, to be based on test procedures mutually agreed upon by Seller and Buyer. In the absence of a performance test within 60 days of first startup, unless otherwise specified in the Order, Seller’s performance guarantees are deemed to have been met. (h) ALL WARRANTIES OR REPRESENTATIONS NOT SPECIFICALLY INCLUDED IN THE TERMS AND CONDITIONS, INCLUDING THOSE WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHETHER EXPRESSED, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING, USAGE OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY GOODS OR SERVICES, ARE EXPRESSLY EXCLUDED. NO EXPRESS OR IMPLIED WARRANTY IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF ANY GOODS, EXCEPT AS MAY BE PROVIDED IN A SEPARATE WRITTEN AGREEMENT SIGNED BY SELLER. (i) BUYER’S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE GOODS OR THE RE-PERFORMANCE OF THE SERVICES, AS APPLICABLE, DURING THE WARRANTY PERIOD, AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE AMOUNT PAID BY BUYER TO SELLER UNDER THE CONTRACT SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.
10. **OBLIGATION OF BUYER.** Buyer is solely responsible for identifying and defining all processes and mechanical considerations and site requirements, which may affect the performance, reliability or operation of the Goods. Seller’s quotation and any sale is based upon the covenant by Buyer that all information and data provided to Seller by or for Buyer is current, complete, accurate and does not contain information which is misleading.
11. **LIMITATION OF LIABILITY.** (a) THE LIABILITY OF SELLER AND ITS AFFILIATES IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS OR SERVICES DETERMINED DEFECTIVE, AND IN NO EVENT WILL THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES BE IN EXCESS OF THE TOTAL PAYMENTS RECEIVED FROM BUYER UNDER THE CONTRACT, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, TORT, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. ALL INSURANCE, BOND AND BANK GUARANTEE OR LETTER OF CREDIT PROCEEDS WHICH MAY BE PAID TO BUYER BY THE INSURERS, SURETIES OR BANKS OF SELLER OR ITS AFFILIATES WILL BE CREDITED AGAINST THE LIMITATION STATED ABOVE AND REDUCE THE AMOUNT OF THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES. (b) NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES OR OTHER ECONOMIC LOSSES, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, TORT OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE BY OPERATION OF LAW OR OTHERWISE. (c) THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BUYER’S REMEDIES ARE LIMITED TO THOSE REMEDIES STATED HEREIN AND THESE REMEDIES SHALL NOT FAIL THEIR ESSENTIAL PURPOSE BECAUSE BUYER IS LIMITED TO THE EXCLUSIVE REMEDIES AS STATED HEREIN. THIS SECTION 11 SHALL APPLY TO ANY ADDITIONAL PURCHASES OF EQUIPMENT (INCLUDING SPARE PARTS AND AFTER MARKET PARTS) BY BUYER FROM SELLER AFTER THE DATE OF THE ORDER.
12. **DEFAULT.** Upon the occurrence of any of the following events: (a) Seller, or any affiliate of Seller, shall not have received a payment due from Buyer, or any affiliate of Buyer, hereunder by the date such payment is due under the Contract, and such failure shall remain uncured for a period of three business days after Buyer’s receipt of written notice from Seller of such non-payment, (b) the failure of Buyer or Seller to perform any other obligation in the Contract (excluding Section 5, CREDIT TERMS, which is subject to (d) below) and such failure is not excused or cured within 30 days after written notice thereof; (c) the occurrence of a Bankruptcy Event; or (d) the failure of Buyer to timely provide prepayment or Performance Assurance as set forth in Section 5, CREDIT TERMS, then the non-defaulting party, in its sole discretion and without prior notice (other than as provided above) to the defaulting party, may do any one or more of the following: (x) suspend performance under the Contract; or (y) terminate the Contract, whereby any and all obligations of the defaulting party, including payments or deliveries due, will, at the option of the non-defaulting party, become immediately due and payable or deliverable, as applicable. If, as a result of a default by Buyer, Seller suspends performance and withholds delivery of the Goods as permitted above, it may sell the Goods to a third party and deduct from the proceeds of such sale the purchase price and all reasonable costs resulting from Buyer’s default as identified above, including all costs associated with the transportation (including demurrage and other vessel or shipping related charges), storage, and sale of the Goods. The foregoing rights, which shall include specific performance, shall be cumulative and alternative and in addition to any other rights or remedies to which the non-defaulting party may be entitled at law or in equity. The non-defaulting party shall be entitled to recover from the defaulting party all court costs, reasonable attorneys’ fees and expenses incurred by the non-defaulting party in connection with the defaulting party’s default, and interest on past due amounts as set forth in Section 4, PAYMENT TERMS. In addition, Seller will have the right to maintain a lien on the Goods until payment in full is received by Seller. “**Bankruptcy Event**” means the occurrence of any of the following events with respect to either Buyer or Seller: (a) filing of a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (b) making of an assignment or any general arrangement for the benefit of creditors; (c) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within 30 days after such filing; (d) otherwise becoming bankrupt or insolvent (however

## AGENDA ITEM NO. 3e

- evidenced); (e) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) being generally unable to pay its debts as they fall due.
13. **INTELLECTUAL PROPERTY.** (a) Seller will defend and indemnify Buyer from any claim, suit or proceeding brought against Buyer based on a claim that the Goods as manufactured and furnished by Seller and used in the manner for which it was intended and sold to Buyer constitutes an infringement of any United States, Canadian or European Union-member patent, if Seller is notified promptly in writing and given authority, information and assistance for the defense of such claim, suit or proceeding. All aspects of the defense and settlement of any such claim, suit or proceeding shall be within Seller's sole discretion. Buyer remains solely responsible for its own costs, including all fees and expenses of its own counsel, if any, or its personnel, which are incurred in conjunction with the defense of such claim, suit or proceeding. Should it be held that the Goods constitute infringement and the use of the Goods is enjoined, Seller will, at its sole discretion and at its own expense, either procure for Buyer the right to continue using the Goods, replace the Goods with noninfringing goods, modify the Goods to become noninfringing or refund the purchase price for the infringing Goods. This indemnification does not apply to any liability for infringement (i) of any method patent where the Goods are used with other apparatus for carrying out a process resulting in a combination of steps which is deemed to infringe a method patent or patent directed to a combination of steps, (ii) the Goods are modified by Buyer, (iii) the Goods are used by Buyer in a manner different than the use communicated to and understood by Seller at the time the Goods were sold to Buyer and such use constitutes infringement, or (iv) with respect to claims of infringement where the Goods were designed and manufactured in accordance with the design or specifications furnished or required by Buyer. Seller's obligations under this indemnity, including all of its costs associated with the defense of any such suit or proceeding, shall in no event exceed the purchase price of the infringing Goods. (b) Buyer will indemnify and hold harmless Seller from any suit or proceeding brought against Seller by any third party based on claims resulting from exceptions (i), (ii), (iii) or (iv) as stated above. (c) Seller retains all intellectual property rights, whether registered or un-registered, including trademarks, patents, and copyright of all documents, drawing rights, design rights, developed programs, software, models and other data provided or developed in the course of the Contract. Seller will, if so required by Buyer, grant Buyer a non-exclusive, non-assignable royalty free license to use the same only for the purposes of operating or maintenance of the equipment by Buyer. (d) Buyer represents and warrants to Seller that Buyer has all necessary rights and permissions to provide all information provided by or on behalf of Buyer to Seller and shall indemnify Seller from any third party with respect to Seller's use of such information in connection with the Contract.
14. **DELIVERY DATE.** Seller shall use reasonable efforts to meet Buyer's requested delivery date, but Seller does not guarantee a specific delivery date.
15. **BACKCHARGES.** No backcharges will be paid or allowed by Seller unless: (a) Seller is notified in writing of any defect claim or omission pursuant to Section 9, WARRANTY, and (b) Seller provides prior approval of such backcharges in writing.
16. **CANCELLATION FEE.** Buyer may not cancel any part of the Contract except upon written notice and payment to Seller of: (a) all reasonable costs arising from the Order prior to the date of cancellation. (b) all reasonable costs arising due to the cancellation, plus (c) a cancellation fee. Unless otherwise specified in the Order, the cancellation fee shall be the higher of 35% of the total price of the Contract or \$250.00. The parties agree that Seller's damages following a termination of any part of the Contract by Buyer are difficult to determine and that the cancellation fee provided by this provision is a genuine pre-estimate of loss and not a penalty and is reasonable in light of the circumstances. Seller shall be entitled to the payments set forth above if Seller terminates the Contract pursuant to Section 12, DEFAULT, or Section 17, SUSPENSION. Title to all works in progress and all materials not delivered to Buyer prior to the date of cancellation will remain with Seller.
17. **SUSPENSION AND DELAYS.** (a) Buyer may only suspend an Order upon receipt of Seller's prior written consent, which may be withheld by Seller for any reason. (b) If Buyer or any of its agents delays Seller's performance due to failure to promptly approve drawings or procedures or due to any other action or non-action on part of Buyer or its agents: (i) Buyer shall reimburse Seller for all costs incurred by Seller as a result of such delay (including costs of reactivation), (ii) the delivery time shall be adjusted, and (iii) milestone payments (if applicable) will be adjusted to keep Seller whole for verifiable costs incurred up to the date of delay or suspension. (c) If, due to any action or non-action on the part of Buyer or its agents, Seller is delayed for more than 45 days, or such longer period of time as deemed reasonable by Seller in its sole discretion, Seller may elect to terminate the Agreement, such termination to be at Seller's sole discretion. Seller will be entitled to the payments provided in Section 16 following any such termination.
18. **FORCE MAJEURE.** Force Majeure means any circumstances beyond the reasonable control of either party, including fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, acts of terrorism or war, riots or other civil disturbances or voluntary or involuntary compliance with any law, order regulation, recommendation or request of any governmental authority, inability to obtain materials necessary for manufacturer of the Goods, total or partial failure of any of Seller's usual means of transportation of the Goods, or for failure to obtain necessary governmental approvals, permits or licenses. Neither party will have any liability, other than for the payment of monies owing, for their failure to perform any of their contractual obligations arising out of or in connection with events of Force Majeure.
19. **ASSIGNABILITY.** The rights and duties under the Contract are not assignable or transferable by Buyer, in whole or in part, by operation of law or otherwise, without the prior written consent of Seller that may be granted or withheld in its sole discretion. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, shall be considered a breach of the Contract and shall permit Seller, in addition to any other rights which it may have, to terminate the Contract. Seller shall have the right to assign any rights or obligations under the Contract to any third party.
20. **GOVERNING LAW.** The Contract and its execution, performance, interpretation, construction and enforcement shall be governed by the law, both procedural and substantive, of the State of ~~Kansas~~ Texas, without regard to its conflicts of law rules. Any action or proceeding between Buyer and Seller relating to the Contract shall be commenced and maintained exclusively in the State or federal courts in ~~Wichita, Kansas~~ Houston, Texas, and Buyer submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. **BUYER AND SELLER EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE CONTRACT.**
21. **NOTICE.** All notices, consents, communications or transmittals under the Contract shall be in writing and shall be deemed received on the day of delivery if personally hand delivered or sent by facsimile or electronic transmission (with written confirmation of the completed transmittal), or within two business days if mailed as certified or registered mail with return receipt, postage prepaid addressed to the party to whom such notice is given at the address of such party stated in the Contract.
22. **ENTIRE AGREEMENT; AMENDMENT; WAIVERS.** The Contract shall supersede all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this Agreement. Neither party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and signed by both parties. No waiver by Buyer of any breach of any terms, conditions or obligations under the Contract shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.
23. **ELECTRONIC TRANSACTIONS.** The Contract may be digitally copied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form and neither party shall object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.
24. **COMPLIANCE.** (a) Buyer and Seller shall comply fully with all applicable laws and regulations in their respective performances of the Contract and shall neither take nor refrain from taking any action that could result in liability for either Buyer or Seller under applicable law, including the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, or those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control (31 C.F.R. Chapter V) or the U.S. Commerce Department's Bureau of Industry and Security (15 C.F.R. Parts 730 et. Seq.). Neither Buyer nor Seller shall be required to take or refrain from taking any action impermissible or penalized under United States or other applicable laws. (b) Without restricting the generality of the foregoing: (i) Buyer does hereby acknowledge that any distribution, sale, transfer or re-export of the Goods is governed by and subject to the trade control laws of the United States. (ii) Buyer will not distribute, sell, transfer or re-export the Goods, except in conformance with United States law. (iii) If Buyer knows or has reason to know that any of its customers intends to distribute, sell, transfer or re-export the Goods, either directly or through incorporation into other products, then Buyer shall inform the customer that the customer is responsible for obtaining any licenses or other approvals from the U.S. Government before such distribution, sale, transfer or re-export, by including the following language in Buyer's purchase order acknowledgement or other appropriate documentation to its customer: *NOTICE: The products, technical data, and/or software included in this Order were provided in compliance with the laws and regulations of the United States. Customer is responsible for obtaining all licenses, permits or other approvals that may be necessary under the laws of the United States before any distribution, sale, transfer or re-export of such items and for ensuring that the end-user and end use of these products are permitted under U.S. law. Re-export, diversion, transshipment, or use contrary to U.S. law is prohibited and is cause for cancellation of this [purchase order].* (c) Buyer's breach of this Section shall constitute cause for immediate termination of the Contract by Seller.
25. **INDEPENDENT CONTRACTORS.** Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Contract or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under the Contract or otherwise at law.
26. **NO THIRD PARTY BENEFICIARIES.** The Contract is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.
27. **SEVERABILITY.** The invalidity or unenforceability of any provision of the Contract shall not affect the validity or enforceability of its other provisions and the remaining provisions shall remain in full force and effect.
28. **CONFIDENTIALITY.** All information that Buyer acquires from Seller hereunder, directly or indirectly, and all information that arises out of the sale of the Goods or Services hereunder, concerning such Goods, Services, and/or proprietary processes involved, including information concerning Seller's current and future business plans, information relating to Seller's operations, know-how, and other Seller-furnished information shall be deemed Seller's "Proprietary Information". Buyer shall (a) hold Seller's Proprietary Information in strictest confidence, (b) not disclose it to others, (c) use it solely for purposes of this Agreement and (d) upon Seller's request, either promptly deliver to Seller all such Proprietary Information that is in written, electronic or other form, including copies and summaries, or, at Seller's option, destroy such Proprietary Information and provide Buyer certification of such destruction. The obligations under this Section shall survive the expiration or termination of the Contract.
29. **MISCELLANEOUS.** The captions and section headings set forth in the Contract are used for convenience only and shall not be used in defining or construing any of the terms and conditions set forth in the Contract. The term "days", as used herein, shall mean actual days occurring, including, Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "business days" shall mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicate otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

[End of General Terms and Conditions of Sale]

## NOVATION AGREEMENT

**John Zink Company, LLC** ("Company"), a limited liability company duly organized and existing under the laws of the United States with its principal office located at 11920 East Apache St., Tulsa, OK 74116; **Martin Operating Partnership L.P.** ("Transferor"), a limited partnership duly organized and existing under the laws of Delaware with its principal office located at 4200 Stone Rd., Kilgore, Texas 75662; and **Port of Corpus Christi Authority of Nueces County, Texas** ("Transferee"), a political subdivision of the State of Texas with its principal office located at 222 Power Street, Corpus Christi, Texas 78401, enter into this Agreement as of September 27, 2016 (the "Effective Date").

## (a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

1. Company, as seller, and Transferor, as buyer, have entered into that certain agreement ("Original Contract") for the purchase and sale of a Marine Vapor Destruction Unit ("MVDU") for a total purchase price of \$1,083,000 ("Purchase Price"). The Original Contract consists of Purchase Order #304584 dated September 23, 2014 and the General Terms and Conditions of Sale (Goods and Services) Martin Midstream Partners, LP 9/19/14 ("General Terms and Conditions"), a copy of which is attached as Exhibit "A". The term "Contract" as used in this Agreement means the Original Contract as well as all modifications to the Original Contract made by Company and Transferee on or after the Effective Date of this Agreement.
2. Transferor warrants and the Company acknowledges that the Original Contract has not been amended or supplemented.
3. Transferor warrants and the Company acknowledges that Transferor has paid \$812,250 of the Purchase Price to the Company prior to the Effective Date.
4. Transferor warrants and the Company acknowledges that the balance of the Purchase Price payable under the Contract upon delivery of the MVDU is \$270,750.
5. Transferor warrants and the Company acknowledges that the Company is responsible for shipping the MVDU to a tract of land located on the north side of the Corpus Christi Turning Basin of the Corpus Christi Ship Channel in the Inner Harbor of the Port of Corpus Christi, Corpus Christi, Texas, FBO destination, freight prepaid and allowed.
6. Transferor warrants and the Company acknowledges that upon execution of this Agreement, all storage fees related to the MVDU agreed to between the Company and the Transferor are paid in full.
7. By the signing of this Novation Agreement, Transferor has novated and transferred to Transferee all of the rights, obligations, liabilities, and interests of Transferor in the Contract.

8. By the signing of this Novation Agreement, Transferee has accepted and assumed by this novation all the rights, obligations, liabilities, and interests of Transferor in the Contract, subject to the limitations described herein.
9. Transferee is in a position to fully perform all obligations as they may exist under the Contract.
10. It is consistent with Company's interests to recognize Transferee as the successor party to the Contract in the same manner as if Transferee was the original party to the Contract and Company does so, and in doing so, hereby consents to this novation.

**(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:**

1. Transferor confirms the novation and transfer to Transferee, and transfers to Transferee any rights and obligations that Transferor now has or may have in the future in connection with the Contract.
2. Transferee agrees to be bound by and to perform the Contract in accordance with the terms and conditions contained in the Contract, subject to the limitations described herein. Transferee also assumes all obligations of Transferor under the Contract as if Transferee was the original party to the Contract, subject to the terms, conditions, and warranties of the parties contained herein.
3. Transferee ratifies all previous actions taken by Transferor with respect to the Contract, with the same force and effect as if the action had been taken by Transferee.
4. After the Effective Date, the term "Buyer" as used in the Contract, shall refer to Transferee and Company shall look solely to Transferee for the performance of any and all obligations that Transferor was or is obligated to perform under the Contract as if Transferee were the original party to the Contract. Notwithstanding anything herein to the contrary, the Company agrees that the maximum additional amount that the Transferee shall be required to pay for the purchase of the MVDU under the Contract is \$270,750, and Transferor hereby agrees to pay on behalf of Transferee any additional amounts due under the Contract applicable to the purchase and delivery of the MVDU.
5. The Company agrees that the Transferee will incur no price modification or other charges under paragraph 3 of General Terms and Conditions unless the Contract is amended to specifically identify and quantify such price modification or charges.
6. The Transferee agrees to comply with the confidentiality obligations stated in paragraph 28 of the General Terms and Conditions to the extent permitted by law.
7. Within 30 days of the Effective Date, the Company agrees to pay to the Transferor an amount equal to the sum of all sales tax previously paid to the Company by the Transferor less \$27,500.

- 8. The Contract shall remain in full force and effect, except as modified by this Agreement.
- 9. This Agreement may be executed in separate counterparts, and all such counterparts will constitute one and the same instrument.
- 10. Each party has executed this Agreement as of the Effective Date written above.

(Signature page to follow)

**TRANSFEROR:**

**MARTIN OPERATING PARTNERSHIP L.P.**

By: Martin Operating GP LLC, its general partner

By: Martin Midstream Partners L.P., its sole member

By: Martin Midstream GP LLC, its general partner

By: [Signature] 9/27/2014

Name: Scott A. SOUTHWARD

Title: V.P. COMMERCIAL DEVELOPMENT

**TRANSFereeE:**

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

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

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

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

**COMPANY:**

**JOHN ZINK COMPANY, LLC**

By: [Signature]

Name: TERRY McELROY

Title: PRODUCT DIRECTOR

**Exhibit A  
Contract**



# - PURCHASE ORDER -

PO number changed to 304584

|           |    |      |   |
|-----------|----|------|---|
| AMENDMENT | 00 | PAGE | 1 |
|-----------|----|------|---|

- ✓ Purchase order number **MUST** appear on all invoices
- ✓ Enter this order in accordance with the terms and conditions on file
- ✓ Notify us immediately if unable to ship as specified

| PO#           | DATE       | ACTIVITY # |
|---------------|------------|------------|
| <u>304241</u> | 09/23/2014 | 40481      |

|  |   |
|--|---|
| <b>VENDOR:</b> ATTN: Gavan Jenkinson<br>JOHN ZINK COMPANY LLC<br>P O BOX 915001<br>DALLAS, TX 75391-5001 | <b>SHIP TO:</b> ATTN: Martin Operating Partnership<br>Corpus Christi Crude Terminal<br>3009 W. Causeway Blvd.<br>Corpus Christi, TX 78402 |
|--|---|

**SHIP VIA:**

**SPECIAL INSTRUCTIONS:**  
 Per proposal VC-201408-47244-A and negotiated terms as shown below and in the attached Terms and Conditions. PO number must appear on all invoices. Please sign and return a copy of the PO for our files.

| QUANTITY | DESCRIPTION  | DUE                           | UNIT PRICE | UOM | EXTENDED PRICE |
|----------|--|-------------------------------|------------|-----|----------------|
| 994,000  | #0 - Marine Vapor Destruction Unit - MVDU<br>Comments: JOHN ZINK® Model ZCM-12- 60-4/8-4/8-4/8 Marine Vapor Combustion System per Proposal # VC-201408-47244-A Rev 1 dated 3 Sep 2014 Sug. Com Grp: Operations   | <del>4/01/15</del><br>4/14/15 | 1.00       | EA  | 994,000.00 T   |
| 89,000   | #0 - Marine Vapor Destruction Unit - MVDU<br>Comments: Option to Increase the VCU Stack Size from 12 OD x 60 OAH to 13 OD x 70 OAH. Increasing the size of the combustion stack allows the system to be rated for a higher heat release which in turn allows the facility to load products with higher vapor pressure than what is expressed in the current design section of the proposal. Sug. Com Grp: Operations | <del>4/01/15</del><br>4/14/15 | 1.00       | EA  | 89,000.00 T    |
| 1        | Verbiage<br>Comments: Per agreement FOB Destination and John Zink amended Terms and Conditions as agreed attached. Per Agreement between our Tom Kelly and Gavan Jenkinson - Due to possible delays in environmental permitting, the John Zink Performance Guarantee and Warranty are to be adjusted to 24 months after shipment or 12 months after start-up, whichever ends first.                                  | <del>4/01/15</del><br>4/14/15 | .00001     | EA  | T              |

Vendor is required to sign below and return to buyer.

Purchase Order and any/all attachments accepted by:

Gavan Jenkinson Applications Engineering Manager

Print name & Title

Signature

Date: 10/8/14

|   |  |                              |
|---|--|------------------------------|
| <b>BILL TO:</b><br>Martin Terminals<br>Engineering<br>PO Box 191<br>Kilgore, TX 75662 | <b>BUYER CONTACT:</b><br>Michael Scrimshire<br>903-988-4611, Ext. 4611 (Office)<br>mike.scrimshire@martinmlp.com | <b>TOTAL</b><br>1,083,000.00 |
|---|--|------------------------------|

T = Taxable  
 N = Non-Taxable

**GENERAL TERMS AND CONDITIONS OF SALE  
(GOODS AND SERVICES)  
Martin Midstream Partners L.P.  
09/19/14**

1. **APPLICATION.** These General Terms and Conditions of Sale (“**Terms and Conditions**”) will apply to all quotations and sales for goods, material, equipment and services by John Zink Company, LLC (“**Seller**”) and are hereby incorporated into the quotation, invoice or other document to which they are attached (“**Order**”) and, together with the Terms and Conditions, the “**Contract**”). All purchases by customer, owner or its agent (“**Buyer**”) are expressly limited and conditioned upon acceptance of the Terms and Conditions. Seller objects to and rejects any provision additional to or different from the Terms and Conditions that may appear in Buyer’s purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in a writing signed by Seller. For the purposes of these Terms and Conditions, the term “**Goods**” shall refer to the goods, material and equipment listed on the Order as well as all equipment or other materials provided in connection with any Services, and the term “**Services**” shall refer to the services listed on the Order as well as all ancillary services provided with any Goods. Terms not defined herein shall have the meanings set forth in the Order.
2. **QUOTATIONS.** Unless otherwise stated in the Order, any quotation from Seller is valid for 30 days from the date of the quotation. The quotation supersedes all previous quotations or correspondence concerning the same transaction or inquiry. Quotations contain proprietary information of Seller and are provided to Buyer solely for Buyer’s internal purposes. Quotations may not be disclosed to any third party or used in preparation of any request for quotation for goods similar to, or as a substitution for, Goods quoted by Seller.
3. **PRICE MODIFICATION AND OTHER CHARGES.** Unless otherwise stated in the Order, Seller’s price does not include: (a) transportation, handling, crating or packaging charges, or (b) sales, harmonized sales, goods and services, use or value-added tax or any other tax, excises, duties, tariffs, fees or other governmental charges that Seller may be required to pay or collect under any existing or future law, with respect to the import/export, sale, transportation, delivery or storage of any Goods or the provision of any Services sold by Seller.
4. **PAYMENT TERMS.** (a) Unless otherwise specified in the Order, payment must be received by Seller net 30 days from invoice date. (b) All payments shall be made in the currency listed in the Order, or, if not so listed, then in U.S. dollars. (c) If the payment due date is not a business day, Seller must receive such payment on the next business day after such due date. (d) Each shipment of Goods and each provision of Services is a separate transaction and payment shall be made accordingly. (e) Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to the prevailing EURIBOR rate of interest, expressed as an annual percent, plus 3% from the payment due date until paid in full, or the highest interest rate allowed by applicable law, whichever is less.
5. **CREDIT TERMS.** If, in Seller’s judgment, the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may suspend performance hereunder. Buyer will be responsible for any costs associated with such suspension (including charges for reactivation). In addition, Seller may, for any reason, (a) require prepayment by wire transfer at least two business days prior to a scheduled shipment of Goods or provision of Services, and/or (b) require Performance Assurance at least three business days prior to a scheduled shipment of Goods or provision of Services. “**Performance Assurance**” means collateral in the form of either cash or letter(s) of credit in a form, and from an issuing bank, acceptable to Seller.
6. **DELIVERY.** (a) Unless otherwise stated in the Order, all Goods will be delivered to Buyer EX Works the manufacturing facility of the Goods (the “**Facility**”). (b) If Buyer has not issued inspection and shipping instructions by the time the Goods are available to Buyer, Seller may either, at its sole discretion, (i) store the Goods at Buyer’s risk and cost, or (ii) select any reasonable method of shipment, without liability by reason of its selection, costs and risk of shipment to be paid for by Buyer. (c) Shipments or Goods in storage may be insured at Buyer’s expense, and Seller will not place a valuation upon shipments or Goods stored unless specifically requested in writing by Buyer or required for export purposes. (d) Unless otherwise stated in the Order, the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference.
7. **TITLE/RISK OF LOSS.** Title in the Goods shall pass to Buyer only upon payment in full. The risk of loss or damage to the Goods shall pass to Buyer upon delivery in accordance with the Contract.
8. **INSPECTION/REJECTION OF GOODS.** All Goods shall be received subject to Buyer’s reasonable inspection and rejection. If Buyer finds any of the Goods not to comply with any of the specifications contained in the Contract, Buyer, may, at its sole election, reject that portion of the Goods that fail to comply. Rejected Goods will be held at Seller’s risk for a reasonable time, to be returned or disposed of by Buyer at Seller’s written instruction and at Seller’s sole cost and expense. A failure by Buyer to reject the Goods in writing within 30 days after receipt shall constitute an unqualified acceptance of such Goods by Buyer and a waiver by Buyer of all claims with respect thereto, except for latent damages which are not apparent upon delivery but become exposed upon closer inspection or during installation or startup. Buyer will promptly notify Seller of any such issues.
9. **WARRANTY.** (a) Seller warrants that (i) the Goods shall be new and good quality and shall conform to the specifications specifically set forth in the Order and title to the Goods shall be free from any security interest, lien or encumbrance upon Seller’s receipt of full payment for the Goods, and (ii) Seller shall perform the Services in a workmanlike manner in accordance with the specifications specifically set forth in the Order. (b) The foregoing warranties will last for the following period (the “**Warranty Period**”): (i) for Goods, 18 months after the date that the Goods are available for shipment or one year after first start-up, whichever occurs first, and (ii) for Services, three months after completion of the Services. If during the Warranty Period any Goods or Services prove upon examination by Seller not to meet the warranties set forth above, Seller will repair the Goods or supply identical or substantially similar replacement Goods EX Works the Facility, at Seller’s sole discretion, or re-perform the Services (as applicable). Any replacement Goods or re-performed Services will be warranted for the unexpired portion of the Warranty Period applicable to the particular Goods or Services. (c) Seller will not be responsible for transportation costs or for the costs of removal, installation, re-installation or making of access of any Goods or items, where such transportation, removal, installation, re-installation or making of access is required to repair or replace any defective Goods or to re-perform Services. Furthermore, Seller will not be responsible for and assumes no liability for materials or workmanship, labor costs or other related expenses for any work performed by third parties in the repair or replacement of defective Goods or the re-performance of Services. (d) This warranty will be voided if (i) the Goods or the subject of the Services have not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by Seller; (ii) the Goods or the subject of the Services have been subjected to any accident, misapplication, environmental contaminant, corrosion, damage, debris, improper passivation, abuse or misuse; (iii) Buyer has modified the Goods or the subject of the Services without Seller’s prior written consent; (iv) Buyer has used or repaired the Goods or the subject of the Services after discovery of the defect without Seller’s prior written consent; (v) Buyer refuses to permit Seller to examine the Goods or the subject of the Services and operating data to determine the nature of the defect claimed, or (vi) Buyer fails to meet its obligations. (e) Goods not manufactured by Seller are subject only to warranties of Seller’s vendors and Seller hereby assigns to Buyer all rights in such vendor’s warranties, however, Seller shall furnish to Buyer reasonable assistance in enforcing such rights. (f) Inexpensive items requiring repair or replacement and routine maintenance-related or consumable items shall be outside the scope of these limited warranties. (g) Seller’s performance guarantees, if any, shall be deemed to be met by a satisfactory demonstration of the guaranteed performance parameters during a performance test, which shall be the responsibility of Buyer and to be based on test procedures as specified in the Order or, if not specified in the Order, to be based on test procedures mutually agreed upon by Seller and Buyer. In the absence of a performance test within 60 days of first startup, unless otherwise specified in the Order, Seller’s performance guarantees are deemed to have been met. (h) ALL WARRANTIES OR REPRESENTATIONS NOT SPECIFICALLY INCLUDED IN THE TERMS AND CONDITIONS, INCLUDING THOSE WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHETHER EXPRESSED, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING, USAGE OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY GOODS OR SERVICES, ARE EXPRESSLY EXCLUDED. NO EXPRESS OR IMPLIED WARRANTY IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF ANY GOODS, EXCEPT AS MAY BE PROVIDED IN A SEPARATE WRITTEN AGREEMENT SIGNED BY SELLER. (i) BUYER’S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE GOODS OR THE RE-PERFORMANCE OF THE SERVICES, AS APPLICABLE, DURING THE WARRANTY PERIOD, AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE AMOUNT PAID BY BUYER TO SELLER UNDER THE CONTRACT SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.
10. **OBLIGATION OF BUYER.** Buyer is solely responsible for identifying and defining all processes and mechanical considerations and site requirements, which may affect the performance, reliability or operation of the Goods. Seller’s quotation and any sale is based upon the covenant by Buyer that all information and data provided to Seller by or for Buyer is current, complete, accurate and does not contain information which is misleading.
11. **LIMITATION OF LIABILITY.** (a) THE LIABILITY OF SELLER AND ITS AFFILIATES IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS OR SERVICES DETERMINED DEFECTIVE, AND IN NO EVENT WILL THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES BE IN EXCESS OF THE TOTAL PAYMENTS RECEIVED FROM BUYER UNDER THE CONTRACT, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, TORT, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. ALL INSURANCE, BOND AND BANK GUARANTEE OR LETTER OF CREDIT PROCEEDS WHICH MAY BE PAID TO BUYER BY THE INSURERS, SURETIES OR BANKS OF SELLER OR ITS AFFILIATES WILL BE CREDITED AGAINST THE LIMITATION STATED ABOVE AND REDUCE THE AMOUNT OF THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES. (b) NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES OR OTHER ECONOMIC LOSSES, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, TORT OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE BY OPERATION OF LAW OR OTHERWISE. (c) THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BUYER’S REMEDIES ARE LIMITED TO THOSE REMEDIES STATED HEREIN AND THESE REMEDIES SHALL NOT FAIL THEIR ESSENTIAL PURPOSE BECAUSE BUYER IS LIMITED TO THE EXCLUSIVE REMEDIES AS STATED HEREIN. THIS SECTION 11 SHALL APPLY TO ANY ADDITIONAL PURCHASES OF EQUIPMENT (INCLUDING SPARE PARTS AND AFTER MARKET PARTS) BY BUYER FROM SELLER AFTER THE DATE OF THE ORDER.
12. **DEFAULT.** Upon the occurrence of any of the following events: (a) Seller, or any affiliate of Seller, shall not have received a payment due from Buyer, or any affiliate of Buyer, hereunder by the date such payment is due under the Contract, and such failure shall remain uncured for a period of three business days after Buyer’s receipt of written notice from Seller of such non-payment, (b) the failure of Buyer or Seller to perform any other obligation in the Contract (excluding Section 5, CREDIT TERMS, which is subject to (d) below) and such failure is not excused or cured within 30 days after written notice thereof; (c) the occurrence of a Bankruptcy Event; or (d) the failure of Buyer to timely provide prepayment or Performance Assurance as set forth in Section 5, CREDIT TERMS, then the non-defaulting party, in its sole discretion and without prior notice (other than as provided above) to the defaulting party, may do any one or more of the following: (x) suspend performance under the Contract; or (y) terminate the Contract, whereby any and all obligations of the defaulting party, including payments or deliveries due, will, at the option of the non-defaulting party, become immediately due and payable or deliverable, as applicable. If, as a result of a default by Buyer, Seller suspends performance and withholds delivery of the Goods as permitted above, it may sell the Goods to a third party and deduct from the proceeds of such sale the purchase price and all reasonable costs resulting from Buyer’s default as identified above, including all costs associated with the transportation (including demurrage and other vessel or shipping related charges), storage, and sale of the Goods. The foregoing rights, which shall include specific performance, shall be cumulative and alternative and in addition to any other rights or remedies to which the non-defaulting party may be entitled at law or in equity. The non-defaulting party shall be entitled to recover from the defaulting party all court costs, reasonable attorneys’ fees and expenses incurred by the non-defaulting party in connection with the defaulting party’s default, and interest on past due amounts as set forth in Section 4, PAYMENT TERMS. In addition, Seller will have the right to maintain a lien on the Goods until payment in full is received by Seller. “**Bankruptcy Event**” means the occurrence of any of the following events with respect to either Buyer or Seller: (a) filing of a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (b) making of an assignment or any general arrangement for the benefit of creditors; (c) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within 30 days after such filing; (d) otherwise becoming bankrupt or insolvent (however

## AGENDA ITEM NO. 3.e

- evidenced); (e) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) being generally unable to pay its debts as they fall due.
13. **INTELLECTUAL PROPERTY.** (a) Seller will defend and indemnify Buyer from any claim, suit or proceeding brought against Buyer based on a claim that the Goods as manufactured and furnished by Seller and used in the manner for which it was intended and sold to Buyer constitutes an infringement of any United States, Canadian or European Union-member patent, if Seller is notified promptly in writing and given authority, information and assistance for the defense of such claim, suit or proceeding. All aspects of the defense and settlement of any such claim, suit or proceeding shall be within Seller's sole discretion. Buyer remains solely responsible for its own costs, including all fees and expenses of its own counsel, if any, or its personnel, which are incurred in conjunction with the defense of such claim, suit or proceeding. Should it be held that the Goods constitute infringement and the use of the Goods is enjoined, Seller will, at its sole discretion and at its own expense, either procure for Buyer the right to continue using the Goods, replace the Goods with noninfringing goods, modify the Goods to become noninfringing or refund the purchase price for the infringing Goods. This indemnification does not apply to any liability for infringement (i) of any method patent where the Goods are used with other apparatus for carrying out a process resulting in a combination of steps which is deemed to infringe a method patent or patent directed to a combination of steps, (ii) the Goods are modified by Buyer, (iii) the Goods are used by Buyer in a manner different than the use communicated to and understood by Seller at the time the Goods were sold to Buyer and such use constitutes infringement, or (iv) with respect to claims of infringement where the Goods were designed and manufactured in accordance with the design or specifications furnished or required by Buyer. Seller's obligations under this indemnity, including all of its costs associated with the defense of any such suit or proceeding, shall in no event exceed the purchase price of the infringing Goods. (b) Buyer will indemnify and hold harmless Seller from any suit or proceeding brought against Seller by any third party based on claims resulting from exceptions (i), (ii), (iii) or (iv) as stated above. (c) Seller retains all intellectual property rights, whether registered or un-registered, including trademarks, patents, and copyright of all documents, drawing rights, design rights, developed programs, software, models and other data provided or developed in the course of the Contract. Seller will, if so required by Buyer, grant Buyer a non-exclusive, non-assignable royalty free license to use the same only for the purposes of operating or maintenance of the equipment by Buyer. (d) Buyer represents and warrants to Seller that Buyer has all necessary rights and permissions to provide all information provided by or on behalf of Buyer to Seller and shall indemnify Seller from any third party with respect to Seller's use of such information in connection with the Contract.
  14. **DELIVERY DATE.** Seller shall use reasonable efforts to meet Buyer's requested delivery date, but Seller does not guarantee a specific delivery date.
  15. **BACKCHARGES.** No backcharges will be paid or allowed by Seller unless: (a) Seller is notified in writing of any defect claim or omission pursuant to Section 9, WARRANTY, and (b) Seller provides prior approval of such backcharges in writing.
  16. **CANCELLATION FEE.** Buyer may not cancel any part of the Contract except upon written notice and payment to Seller of: (a) all reasonable costs arising from the Order prior to the date of cancellation. (b) all reasonable costs arising due to the cancellation, plus (c) a cancellation fee. Unless otherwise specified in the Order, the cancellation fee shall be the higher of 35% of the total price of the Contract or \$250.00. The parties agree that Seller's damages following a termination of any part of the Contract by Buyer are difficult to determine and that the cancellation fee provided by this provision is a genuine pre-estimate of loss and not a penalty and is reasonable in light of the circumstances. Seller shall be entitled to the payments set forth above if Seller terminates the Contract pursuant to Section 12, DEFAULT, or Section 17, SUSPENSION. Title to all works in progress and all materials not delivered to Buyer prior to the date of cancellation will remain with Seller.
  17. **SUSPENSION AND DELAYS.** (a) Buyer may only suspend an Order upon receipt of Seller's prior written consent, which may be withheld by Seller for any reason. (b) If Buyer or any of its agents delays Seller's performance due to failure to promptly approve drawings or procedures or due to any other action or non-action on part of Buyer or its agents: (i) Buyer shall reimburse Seller for all costs incurred by Seller as a result of such delay (including costs of reactivation), (ii) the delivery time shall be adjusted, and (iii) milestone payments (if applicable) will be adjusted to keep Seller whole for verifiable costs incurred up to the date of delay or suspension. (c) If, due to any action or non-action on the part of Buyer or its agents, Seller is delayed for more than 45 days, or such longer period of time as deemed reasonable by Seller in its sole discretion, Seller may elect to terminate the Agreement, such termination to be at Seller's sole discretion. Seller will be entitled to the payments provided in Section 16 following any such termination.
  18. **FORCE MAJEURE.** Force Majeure means any circumstances beyond the reasonable control of either party, including fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, acts of terrorism or war, riots or other civil disturbances or voluntary or involuntary compliance with any law, order regulation, recommendation or request of any governmental authority, inability to obtain materials necessary for manufacturer of the Goods, total or partial failure of any of Seller's usual means of transportation of the Goods, or for failure to obtain necessary governmental approvals, permits or licenses. Neither party will have any liability, other than for the payment of monies owing, for their failure to perform any of their contractual obligations arising out of or in connection with events of Force Majeure.
  19. **ASSIGNABILITY.** The rights and duties under the Contract are not assignable or transferable by Buyer, in whole or in part, by operation of law or otherwise, without the prior written consent of Seller that may be granted or withheld in its sole discretion. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, shall be considered a breach of the Contract and shall permit Seller, in addition to any other rights which it may have, to terminate the Contract. Seller shall have the right to assign any rights or obligations under the Contract to any third party.
  20. **GOVERNING LAW.** The Contract and its execution, performance, interpretation, construction and enforcement shall be governed by the law, both procedural and substantive, of the State of ~~Kansas~~ Texas, without regard to its conflicts of law rules. Any action or proceeding between Buyer and Seller relating to the Contract shall be commenced and maintained exclusively in the State or federal courts in ~~Wichita, Kansas~~ Houston, Texas, and Buyer submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. **BUYER AND SELLER EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE CONTRACT.**
  21. **NOTICE.** All notices, consents, communications or transmittals under the Contract shall be in writing and shall be deemed received on the day of delivery if personally hand delivered or sent by facsimile or electronic transmission (with written confirmation of the completed transmittal), or within two business days if mailed as certified or registered mail with return receipt, postage prepaid addressed to the party to whom such notice is given at the address of such party stated in the Contract.
  22. **ENTIRE AGREEMENT; AMENDMENT; WAIVERS.** The Contract shall supersede all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this Agreement. Neither party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and signed by both parties. No waiver by Buyer of any breach of any terms, conditions or obligations under the Contract shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.
  23. **ELECTRONIC TRANSACTIONS.** The Contract may be digitally copied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form and neither party shall object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.
  24. **COMPLIANCE.** (a) Buyer and Seller shall comply fully with all applicable laws and regulations in their respective performances of the Contract and shall neither take nor refrain from taking any action that could result in liability for either Buyer or Seller under applicable law, including the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, or those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control (31 C.F.R. Chapter V) or the U.S. Commerce Department's Bureau of Industry and Security (15 C.F.R. Parts 730 et. Seq.). Neither Buyer nor Seller shall be required to take or refrain from taking any action impermissible or penalized under United States or other applicable laws. (b) Without restricting the generality of the foregoing: (i) Buyer does hereby acknowledge that any distribution, sale, transfer or re-export of the Goods is governed by and subject to the trade control laws of the United States. (ii) Buyer will not distribute, sell, transfer or re-export the Goods, except in conformance with United States law. (iii) If Buyer knows or has reason to know that any of its customers intends to distribute, sell, transfer or re-export the Goods, either directly or through incorporation into other products, then Buyer shall inform the customer that the customer is responsible for obtaining any licenses or other approvals from the U.S. Government before such distribution, sale, transfer or re-export, by including the following language in Buyer's purchase order acknowledgement or other appropriate documentation to its customer: *NOTICE: The products, technical data, and/or software included in this Order were provided in compliance with the laws and regulations of the United States. Customer is responsible for obtaining all licenses, permits or other approvals that may be necessary under the laws of the United States before any distribution, sale, transfer or re-export of such items and for ensuring that the end-user and end use of these products are permitted under U.S. law. Re-export, diversion, transshipment, or use contrary to U.S. law is prohibited and is cause for cancellation of this [purchase order].* (c) Buyer's breach of this Section shall constitute cause for immediate termination of the Contract by Seller.
  25. **INDEPENDENT CONTRACTORS.** Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Contract or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under the Contract or otherwise at law.
  26. **NO THIRD PARTY BENEFICIARIES.** The Contract is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.
  27. **SEVERABILITY.** The invalidity or unenforceability of any provision of the Contract shall not affect the validity or enforceability of its other provisions and the remaining provisions shall remain in full force and effect.
  28. **CONFIDENTIALITY.** All information that Buyer acquires from Seller hereunder, directly or indirectly, and all information that arises out of the sale of the Goods or Services hereunder, concerning such Goods, Services, and/or proprietary processes involved, including information concerning Seller's current and future business plans, information relating to Seller's operations, know-how, and other Seller-furnished information shall be deemed Seller's "Proprietary Information". Buyer shall (a) hold Seller's Proprietary Information in strictest confidence, (b) not disclose it to others, (c) use it solely for purposes of this Agreement and (d) upon Seller's request, either promptly deliver to Seller all such Proprietary Information that is in written, electronic or other form, including copies and summaries, or, at Seller's option, destroy such Proprietary Information and provide Buyer certification of such destruction. The obligations under this Section shall survive the expiration or termination of the Contract.
  29. **MISCELLANEOUS.** The captions and section headings set forth in the Contract are used for convenience only and shall not be used in defining or construing any of the terms and conditions set forth in the Contract. The term "days", as used herein, shall mean actual days occurring, including, Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "business days" shall mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicate otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

[End of General Terms and Conditions of Sale]