



**Notice of Meeting of the Special Commission of the
Port of Corpus Christi Authority of Nueces County, Texas, on
Friday, September 01, 2017, at 8:00 AM
At the Ruben Bonilla Center for Global Trade
222 Power Street, Corpus Christi, Texas**

**The Agenda for this meeting of the Port Commission ("Commission") of the Port of
Corpus Christi Authority ("PCCA") is set forth below.**

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.

- 1. Call to Order**
- 2. Safety Briefing**
- 3. Pledge of Allegiance**
- 4. Invocation**
- 5. Receive Conflict of Interest Affidavits**
- 6. Public Comments (Each speaker is limited to 3 minutes).**
- 7. Open Agenda**

- 7.a. Receive presentation and consider adoption of Project Partnership Agreement between the Department of Army and the Port of Corpus Christi Authority of Nueces County, Texas for Corpus Christi Ship Channel Project (Main Channel Deepening and Widening and Barge Lane Separable Elements).
[Project Partnership Agreement - Memo](#)
[CCSC - Channel Improvement Project](#)
[Project Partnership Agreement - Resolution](#)
[Project Partnership Agreement - Agreement](#)
- 7.b. Approve resolution expressing official intent to issue Revenue Bonds to reimburse the Port of Corpus Christi Authority of capital expenditures made in connection with the Corpus Christi Ship Channel Project.
[Reimbursement - Memo](#)
[Reimbursement Resolution](#)
- 7.c. Approve Preliminary Construction Services Agreement with GCGV Asset Holding, LLC.
[GCGV - Memo](#)
[GCGV - Resolution](#)
[GCGV - Agreement](#)

8. Executive Session

- 8.a. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate purchasing property in San Patricio County.

9. Adjourn

DATE: September 1, 2017

TO: Port Commission

FROM: David L. Krams, P.E.
Director of Engineering Services
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(361) 885-6134

Adopt a Resolution to Approve a Project Partnership Agreement with the Department of the Army for the Deepening and Widening and Barge Lane Elements of the Corpus Christi Ship Channel – Channel Improvement Project.

SUMMARY: Staff requests adoption of a resolution to approve a Project Partnership Agreement (PPA) with the Department of the Army (Government) for design and construction of the deepening and widening and barge lane separable elements of the Corpus Christi Ship Channel – Channel Improvement Project (CIP) and authorization for the Executive Director to execute the same. Staff further requests approval to provide accelerated funds to the Government in an amount of \$32,166,000, to expedite the initial construction phases of the Project including the channel reach from the Gulf of Mexico to Harbor Island and the barges lanes across Corpus Christi Bay.

BACKGROUND: In November 2007, Congress passed the Water Resources Development Act of 2007, authorizing the Corpus Christi Ship Channel – Channel Improvement Project (CIP) which includes widening and deepening the Corpus Christi Ship Channel (CCSC), adding barge shelves/lanes on both sides of the ship channel across Corpus Christi Bay; extending the La Quinta Ship Channel; and constructing an offshore rock breakwater ecosystem restoration project near Ingleside-on-the-Bay. Construction of the breakwater project and the La Quinta Channel extension components of the CIP were performed and completed under a separate PPA approved by the Port Commission in 2009.

Since 2007, the CIP has been evaluated numerous times and has continued to be determined to be in the Federal interest to proceed with the project. As such, the CIP was reauthorized by the Water Resources Reform Development Act of 2014 (WRDA 2014), and in December 2016, the Water Infrastructure Improvements for the Nation Act (WIIN) was passed into law, which included provisions that clarified that the PCCA's remaining unconstructed elements of the CIP (the deepening, widening, and construction of barge shelves) did not require additional appropriation before the PCCA could enter into a PPA with the Government to construct these additional critical navigation improvements.

PCCA staff and representatives of the U.S. Army Corps of Engineers for the Government negotiated the attached PPA for the design and construction of the remaining elements of the CCSC - CIP, which generally include the widening and deepening of the CCSC to -54' Mean Lower Low Water (MLLW) and constructing barge shelves to -14' MLLW on both sides of the ship channel across Corpus Christi Bay.

As of the effective date of the agreement, the Government has estimated costs for the remaining elements to be \$326,887,000, with the Government's proportionate cost-share projected to be \$224,513,000 and the PCCA's proportionate cost-share projected to be \$102,374,000. Staff negotiated the cost-share based on 25% PCCA / 75% Government for dredging to -52' MLLW (-50' Mean Low Tide) plus advanced maintenance and allowable overdepth, and 50% PCCA / 50% Government for dredging depths beyond those limits. Costs for the barge lanes will be shared 10% PCCA / 90% Government.

Also included in the PPA is a provision to accelerate funding. This provision will allow construction to begin ahead of receiving sufficient federal appropriations to award construction contracts. This is done by allowing the PCCA to provide the Government funds in an accelerated fashion; that is, ahead of more than our required cost-share for a particular construction contract, for a total amount up to the PCCA's maximum projected cost-share of the Project, currently estimated to be \$102,374,000. Per the PPA and to expedite the Project construction, the PCCA agrees to provide \$32,166,000 to the Government within 30 days of a fully executed PPA. These funds are anticipated and intended to be used for the design and construction of the deepening of the channel from the Gulf of Mexico to Harbor Island just east of the Port Aransas Ferry Landing.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: The project conforms to the PCCA's Strategic Plan (Strategic Goal #2 – Provide Facilities and Services to Meet Customer Needs, Strategic Objective #2A – Provide Deepwater and Shallow-draft Waterways Required to Support Maritime and Industrial Development).

EMERGENCY: No.

FINANCIAL IMPACT: Of the \$32,166,000 to be initially funded under this agreement, approximately \$26,943,000 will be paid from PCCA cash reserves, and approximately \$5,223,000 will be used from unexpended construction general funds originally provided by the PCCA, currently being held in a Government account, for continued design and construction of the CIP.

STAFF RECOMMENDATION: Staff recommends adoption of the attached resolution to approve a Project Partnership Agreement with the Department of the Army for design and construction deepening and widening and barge lane separable elements of the Corpus

Christi Ship Channel – Channel Improvement Project and authorization for the Executive Director to execute the same. Staff further recommends approval to provide accelerated funds to the Government in an amount of \$32,166,000.

DEPARTMENTAL CLEARANCES:

Originating Department Engineering Services

Reviewed & Approved David L. Krams
 Dan Koesema

Legal Dane Bruun
Senior Staff John LaRue
 Sean Strawbridge
 Dennis Devries

LIST OF SUPPORTING DOCUMENTS:

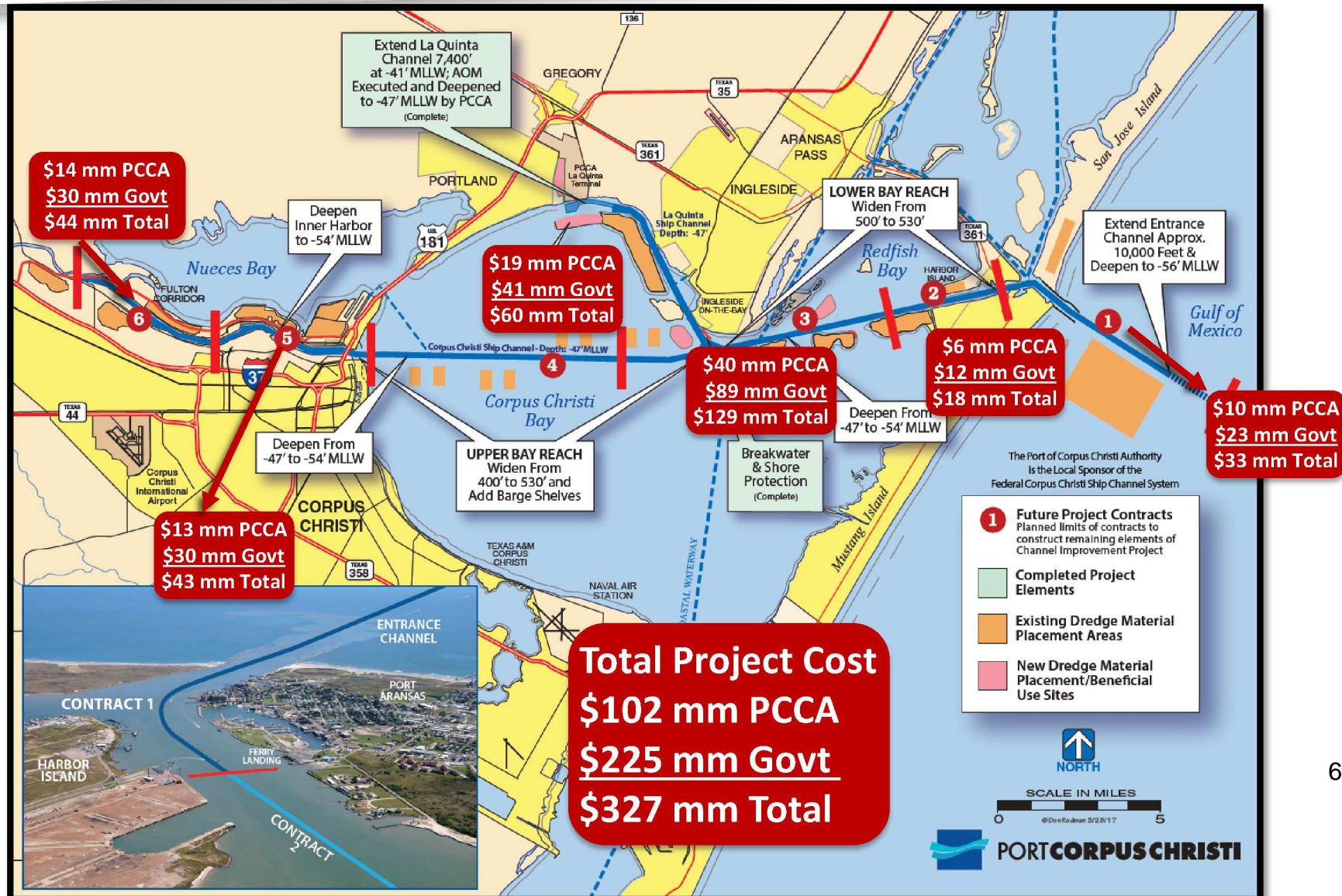
Exhibit
Resolution
Project Partnership Agreement



PORT CORPUS CHRISTI®

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Channel Improvement Project Projected Contracts and Estimated Costs



**RESOLUTION APPROVING A PROJECT PARTNERSHIP AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY AND THE PORT OF CORPUS
CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS FOR CORPUS CHRISTI SHIP
CHANNEL PROJECT (MAIN CHANNEL DEEPENING AND WIDENING AND
BARGE LANE SEPARABLE ELEMENTS)**

WHEREAS, a Project Partnership Agreement between The Department of the Army (the “Government”) and the Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”) for Corpus Christi Channel Project (Main Channel Deepening and Widening and Barge Lane Separable Elements) (the “Project Partnership Agreement”) has been presented to PCCA’s Port Commission for approval;

WHEREAS, construction of the Corpus Christi Ship Channel Project at Corpus Christi, Texas (the “Authorized Project”) was authorized by Section 1001(40) of the Water Resources Development Act of 2007 (Public Law 110-114) and modified by Section 7003 of the Water Resources Reform and Development Act of 2014 (Public Law 113-121);

WHEREAS, on October 13, 2009, the Government and PCCA entered into a Project Partnership Agreement for the La Quinta Extension and Ecosystem Restoration separable elements of the Authorized Project;

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

WHEREAS, the Government and PCCA desire to enter into this Project Partnership Agreement for the main channel deepening and widening and barge lane separable elements of the Authorized Project.

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

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

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

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

Section 4. This Resolution is hereby adopted by the Port Commission on September 1, 2017.

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS
FOR
CORPUS CHRISTI SHIP CHANNEL PROJECT
(MAIN CHANNEL DEEPENING AND WIDENING AND
BARGE LANE SEPARABLE ELEMENTS)

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the Assistant Secretary of the Army (Civil Works) and the Port of Corpus Christi Authority of Nueces County, Texas (hereinafter the “Non-Federal Sponsor”), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, construction of the Corpus Christi Ship Channel Project at Corpus Christi, Texas (hereinafter the “Authorized Project”) was authorized by Section 1001(40) of the Water Resources Development Act of 2007 (Public Law 110-114) and modified by Section 7003 of the Water Resources Reform and Development Act of 2014 (Public Law 113-121);

WHEREAS, on October 13, 2009, the Government and Non-Federal Sponsor entered into a Project Partnership Agreement for the La Quinta Extension and Ecosystem Restoration separable elements of the Authorized Project (hereinafter the “2009 PPA”);

WHEREAS, the Government and Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the “Agreement”) for the main channel deepening and widening and barge lane separable elements of the Authorized Project (hereinafter the “Project”), as defined in Article I.A. of this Agreement;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, while Project depths are adjusted and presented herein in Mean Lower Low Water (MLLW) where 0.0 feet Mean Low Tide (MLT) equals -2.0 feet MLLW, the parties agree the cost sharing will be calculated using the MLT datum, consistent with the Report of the Chief of Engineers, dated June 2, 2003 (hereinafter the “Chief’s Report”);

WHEREAS, any additional channel depths to provide for allowable overdepth and advanced maintenance are excluded in determining the channel depths for the purposes of calculating cost sharing;

WHEREAS, Section 1001(40)(B) of the Water Resources Development Act of 2007 directs the Government to enforce the navigation servitude in the Corpus Christi Ship Channel (including the removal or relocation of any facility obstructing the Authorized Project) consistent with the cost sharing requirements of Section 101 of the Water Resources Development Act of 1986 (33 U.S.C. 2211) in carrying out the Authorized Project;

WHEREAS, Section 217(a) of the Water Resources Development Act of 1996, Public Law 104-303 (33 U.S.C. 2326a(a)), provides that the Government may provide additional capacity at a dredged or excavated material placement facility constructed by the Government beyond the capacity that would be required for water resources project purposes, if the Non-Federal Sponsor agrees to pay all costs associated with the construction of the additional capacity;

WHEREAS, the Non-Federal Sponsor considers it to be in its own interest to immediately accelerate to the Government funds sufficient to award construction contracts for both the main channel deepening and widening and barge lane separable elements; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the general navigation features, which includes deepening the Corpus Christi Ship Channel (CCSC) from Viola Turning Basin to the end of the jetties in the Gulf of Mexico (approximately 34 miles) to -54 feet Mean Lower Low Water (MLLW); deepening and extending the remainder of the channel into the Gulf of Mexico (approximately 2 miles) to -56 feet MLLW; widening the CCSC to 530 feet through the Upper Bay and Lower Bay reaches (approximately 20 miles); construction of 200-foot wide barge shelves (channels) to -14 feet MLLW on both sides of the CCSC from its junction with the La Quinta Channel to the entrance of the Inner Harbor (approximately 10 miles); and providing additional capacity at existing upland dredged material placement facilities and constructing new confined and partly confined dredged material placement facilities, as generally described in the Corpus Christi Ship Channel, Texas Channel Improvement Project Final Feasibility Report and FEIS, dated April 2003, and approved in accordance with the Chief's Report, the Corpus Christi Ship Channel Deepening and Barge Shelves, Limited Reevaluation Report, dated November 2012 and as revised December 2012, and approved in accordance with the Report of the

Director of Civil Works, dated February 12, 2013, the Recommendation Letter from the Assistant Secretary of the Army, dated August 8, 2013, and the Limited Reevaluation Report, dated December 22, 2015.

B. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are cost shared and directly related to design and construction of the Project, including mitigation, if applicable. The term includes, but is not necessarily limited to: the Government’s costs and the Non-Federal Sponsor’s creditable contributions for design work for the Project not included under the 2009 PPA; the costs of historic preservation activities except for data recovery for historic properties; the Government’s costs of engineering, design, and construction (including the costs of altering or replacing any highway or railroad bridges over navigable waters of the United States); the Government’s supervision and administration costs; and the Non-Federal Sponsor’s creditable costs for providing in-kind contributions. The term does not include any costs for operation and maintenance; dispute resolution; participation in the Project Coordination Team; audits; administrative costs pursuant to Article II.J.; or additional work; or the Non-Federal Sponsor’s cost for negotiating this Agreement or for providing relocations or real property interests, except for those provided for mitigation. It also does not include any costs for aids to navigation or local service facilities.

C. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and dredged material placement facilities. Acquisition of real property interests may require the performance of relocations.

D. The term “relocation” means the alteration, lowering, raising, or replacement and attendant demolition of a utility (including privately and publicly owned pipelines, cables, and related facilities located in or under navigable waters of the United States, regardless whether they serve the general public), cemetery, highway, railroad (including any bridge thereof), or public facility, excluding any highway or railroad bridges over navigable waters of the United States and any structure determined to be an “obstruction” as that term is defined in paragraph J. of this Article.

E. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

F. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Engineer for the Southwestern Division. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the

existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

G. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

H. The term “Maximum Cost Limit” means the statutory limitation on the total cost of the Authorized Project, as determined by the Government in accordance with Section 902 of the Water Resources Development Act of 1986, as amended, if applicable to the Project, and Government regulations issued thereto.

I. The term “additional work” means items of work related to, but not included in, the Project that the Government will undertake on the Non-Federal Sponsor’s behalf pursuant to 33 U.S.C. 701h while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work. Additional work may also include providing additional capacity at a dredged material placement facility beyond the capacity that is required for Project purposes pursuant to 33 U.S.C. 2326a(a).

J. The term "obstruction" means any permitted or unpermitted structure located in or under navigable waters of the United States where (1) removal is necessary for construction or operation and maintenance of the Project; and (2) the Government determines, after consultation with the Non-Federal Sponsor and owner, that modification of the existing Section 10 permit or acceptance of a permit application is not justified because the structure does not require relocation. The term includes any pipeline for which the Government has granted a permit modification allowing the pipeline to be abandoned or decommissioned in place as of the effective date of this Agreement.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the following, in accordance with the provisions of this paragraph:

1. The Non-Federal Sponsor shall provide 10 percent of construction costs assigned by the Government to a channel depth not in excess of 20 feet; 25 percent of construction costs assigned by the Government to a channel depth in excess of 20 feet but not greater than 50 feet; and 50 percent of construction costs assigned by the Government to that portion of the channel depth in excess of 50 feet. In addition, the Non-Federal Sponsor shall pay an additional 10 percent of construction costs, less any credit afforded by the Government for real property interests and relocations.

a. In providing in-kind contributions, if any, as part of its cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the work.

b. After considering the estimated amount of credit for in-kind contributions, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the current fiscal year. In lieu of this amount, the Non-Federal Sponsor has elected to accelerate the provision of its funds for the Project and shall provide at least \$32,166,000 for immediate use by the Government. No later than 30 calendar days after execution of this Agreement, the Non-Federal Sponsor shall provide this amount to the Government in accordance with Article VI.C. In addition, the Non-Federal Sponsor may elect to accelerate additional funds, within its ultimate cost share, during the current fiscal year.

c. No later than August 1st prior to each subsequent fiscal year of construction, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C. In addition, the Non-Federal Sponsor may elect to accelerate the provision of funds, within its ultimate cost share, for immediate use of the Government.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations (other than relocations of utilities located in or under navigable waters of the United States) required for construction, operation, and maintenance of the Project.

3. The Non-Federal Sponsor shall construct, operate, and maintain, at no cost to the Government, the local service facilities, including obtaining all applicable licenses and permits necessary for construction, operation, and maintenance of such work.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government

for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

E. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the Project using funds appropriated by the Congress and, as applicable, funds provided by the Non-Federal Sponsor.

1. For navigation features in excess of 50 feet, the Non-Federal Sponsor shall pay 50 percent of the excess costs for operation and maintenance of the Project, which includes operation and maintenance of dredged material placement facilities, over the costs which the Government determines would have been incurred for operation and maintenance of the Project if the channel had a depth of 50 feet. In addition, for additional work, if any, associated with providing additional capacity at a dredged material placement facility beyond the capacity that is required for Project purposes, the Non-Federal Sponsor shall pay all operation and maintenance costs allocated by the Government to such work. No later than August 1st prior to each fiscal year in which such operation and maintenance will be performed, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.D.

2. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the Project. In addition, the Government shall have the full authority and right to operate and maintain or manage dredged material placement facilities including the right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. The Non-Federal Sponsor shall ensure that use of any additional capacity provided by the Government as additional work under 33 U.S.C. 2326a(a) complies with the operations plan approved by the Government. Except for such additional capacity, the Non-Federal Sponsor shall not place or authorize placement of material in the dredged material placement facilities unless the Government authorizes the placement under 33 U.S.C. 2326a(b) or 33 U.S.C. 1341(c), whichever is applicable. The Non-Federal Sponsor shall not otherwise modify or improve the dredged material

placement facilities unless the Government approves the modification or improvement under 33 U.S.C. 408.

F. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

H. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

I. The Non-Federal Sponsor may request in writing that the Government perform additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Engineer for the Southwestern Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

J. In accordance with Section 1001(40)(B) of the Water Resources Development Act of 2007, the Government shall exercise the navigation servitude and modify or revoke Section 10 permits to compel relocation of utilities and removal of obstructions when such utilities and obstructions are located in or under navigable waters of the United States and interfere with construction, operation, and maintenance of the Project. The Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the Government's estimated administrative costs, including litigation expenses, associated with exercising the navigation servitude in advance of the Government performing such work. In the event the Government elects to remove an obstruction during construction of the Project, the costs of removal shall be included in construction costs. For each utility relocation required to accommodate a channel depth over 45 feet, Section 101 of the Water Resources Development Act of 1986, as amended, provides that the Non-Federal Sponsor and the utility owner shall share equally in the

cost of the relocation. As provided in Articles V.A.2.c. and V.A.2.d., the cost of relocation are those necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Nothing in this Agreement prohibits a utility owner from voluntarily waiving the Non-Federal Sponsor's contribution or agreeing to accept a lesser amount. Unless a court determines that the owner of an obstruction is owed compensation, the Non-Federal Sponsor is not obligated to pay to the owner any costs the owner incurs in removing the obstruction.

K. The Non-Federal Sponsor understands that execution of this Agreement shall not constitute any commitment by the Government to budget, or the Congress to appropriate, funds for this Project or to match any funds accelerated by the Non-Federal Sponsor; that the funds accelerated by the Non-Federal Sponsor will be credited toward the Non-Federal Sponsor's cost share only to the extent matching Federal funds are provided; and that the Non-Federal Sponsor is not entitled to any repayment for any of the funds accelerated and obligated by the Government even if construction ultimately is not completed.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS OTHER THAN RELOCATIONS OF UTILITIES LOCATED IN OR UNDER NAVIGABLE WATERS OF THE UNITED STATES, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations (other than relocations of utilities located in or under navigable waters of the United States) necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions,

including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

C. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of the acquisitions or relocations in advance of the Government performing the work. The Government shall acquire the real property interests and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

D. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real

property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government, in accordance with the following procedures, requirements, and conditions, shall credit the value of real property interests and relocations required for construction, operation, and maintenance of the Project against the additional 10 percent payment. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for such real property interest.

(1) Date of Valuation. For real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value, except for such real property interests for in-kind contributions covered by an In-Kind Memorandum of Understanding, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the property to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the property, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

d. Incidental Costs. The Government shall credit the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for construction, operation, and maintenance of the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the

Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. To the maximum extent practicable, no less frequently than on an annual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for relocations.

a. For a relocation other than a highway, credit shall be afforded for the value of the relocation if the Non-Federal Sponsor is responsible for the relocation under applicable principles of just compensation. The value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, credit shall be afforded for the value of the relocation if the Non-Federal Sponsor is responsible for the relocation under applicable principles of just compensation. The value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Texas would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. For a relocation of a utility located in or under navigable waters of the United States that is required to accommodate a channel depth over 45 feet, the Non-Federal Sponsor shall receive credit for the portion of the relocation costs borne by the Non-Federal Sponsor, up to an amount equaling 50 percent of the value of the relocation. The value of such relocation shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

d. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the relocations. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

B. The Government, in accordance with the following procedures, requirements, and conditions, shall include in construction costs, the costs for in-kind contributions determined by the Government to be integral to construction, operation, and maintenance of the Project and credit such costs against the non-Federal share of construction costs. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. To the maximum extent practicable, no less frequently than on a semi-annual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government; or against the additional 10 percent of construction costs required pursuant to Article II.B.1.

C. When the Government exercises navigation servitude and revokes Section 10 permits to compel relocation of utilities and removal of obstructions located in or under navigable waters of the United States that interfere with construction, operation, and maintenance of the Project, the Government shall credit the administrative costs incurred by the Government and paid by the Non-Federal Sponsor pursuant to Article II.J. against the additional 10 percent of construction costs provided by the Non-Federal Sponsor pursuant to Article II.B.1.

D. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

E. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project or for costs associated with additional work. In addition, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs for real property interests, relocations, or administrative costs pursuant to Article II.J. in excess of the additional 10 percent of construction costs required pursuant to Article II.B.1.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs, which do not include the costs of providing relocations or real property interests, are projected to be \$326,887,000, with the Government's share of such costs projected to be \$224,513,000 and the Non-Federal Sponsor's share of such costs projected to be \$102,374,000, which includes creditable in-kind contributions projected to be \$1,000,000 and funds projected to be \$101,374,000. In addition, the Non-Federal Sponsor's additional 10 percent payment is projected to be \$32,689,000, reduced to \$9,358,000 after deducting costs for creditable real property interests and relocations, which are projected to be \$23,331,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. While undertaking construction, the Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. Payment of Funds for Construction.

1. The Non-Federal Sponsor shall provide funds by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal cost share as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of

additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

3. Upon conclusion of construction of the Project, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor to meet its cost share, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its cost share, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its cost share, the Government shall refund such excess amount, subject to the availability of funds for the refund. In the event funds are not available to make such refund, the Government shall seek such appropriations as necessary to make such refund.

D. Payment of Costs for Operation and Maintenance.

1. The Non-Federal Sponsor shall provide the funds required to meet its share of costs for operation and maintenance of navigation features in excess of 50 feet and for additional work associated with providing additional capacity at a dredged material placement facility beyond the capacity that is required for Project purposes by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of operation and maintenance costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such operation and maintenance costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. If there are real property interests, relocations, or additional work provided on behalf of the Non-Federal Sponsor, or administrative work performed by the Government pursuant to Article II.J., the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full

amount of such required funds available to the Government by delivering a check payable to “FAO, USAED, Galveston (M3)” to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 60 calendar days from receipt of written notice from the Government.

ARTICLE VII - TERMINATION OR SUSPENSION

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

B. If the Government determines at any time that the Federal funds made available for construction the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government may suspend construction if the Maximum Cost Limit is exceeded.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

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

ARTICLE VIII - HOLD AND SAVE

Subject to the provisions of Article XV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design,

construction, operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

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

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

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

without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

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

If to the Non-Federal Sponsor:

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

If to the Government:

District Engineer
U.S. Army Corps of Engineers, Galveston District
2000 Fort Point Road
Galveston, TX 77550

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

ARTICLE XIII - CONFIDENTIALITY

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

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

ARTICLE XV - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Commissioners of the Port of Corpus Christi Authority of

Nueces County, Texas, where creating such an obligation would be inconsistent with Article 16, Section 59(c) of the Constitution of the State of Texas. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

THE PORT OF CORPUS CHRISTI
AUTHORITY OF NUECES COUNTY,
TEXAS

BY: _____
[TYPED NAME]
Assistant Secretary of the Army
(Civil Works)

BY: _____
JOHN P. LARUE
Executive Director

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

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

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 2017.

LEO J. WELDER, JR.
General Counsel
Port of Corpus Christi Authority

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

JOHN P. LARUE
Executive Director
Port of Corpus Christi Authority of Nueces County, Texas

DATE: _____

DATE: September 1, 2017

TO: Port Commission

FROM: Sean Strawbridge – Deputy Executive Director & Chief Operating Officer
ssstrawbridge@pocca.com – 885-6133

Approve a Resolution of the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, Declaring the Port Authority's Official Intent to Reimburse Itself from the Proceeds of One or More Series of Tax-Exempt Bonds for Certain Expenditures Made in connection with the Corpus Christi Ship Channel Improvement Project

SUMMARY: The Project Partnership Agreement between the Department of the Army (“Government”) and PCCA for the Corpus Christi Ship Channel Improvement Project (Main Channel Deepening and Widening and Barge Lane Separable Elements) requires an advance payment by PCCA of at least \$32,166,000 (the “Accelerated Payment”) for immediate use by the Government no later than 30 calendar days after execution of the Project Partnership Agreement. If the Port Commission adopts the Reimbursement Resolution included with this memorandum and issues tax-exempt bonds to finance PCCA’s share of the cost of the Project, PCCA will be allowed to reimburse itself for the Accelerated Payment out of the proceeds from the sale of the bonds.

BACKGROUND: We know that PCCA will be required to make a \$32,166,000 payment to the U.S. Army Corps of Engineers shortly after the Commission approves the Project Partnership Agreement for the Project. This payment will be made from PCCA’s general funds. If the Commission decides to issue tax-exempt bonds to finance PCCA’s share of the cost to construct the Channel Improvement Project, PCCA will be able to reimburse itself for this \$32,166,000 payment out of the proceeds from the sale of the bonds, but only if the Commission adopts the Reimbursement Resolution included with this memorandum.

Under applicable IRS Regulations, the Reimbursement Resolution must (i) generally describe the project to be financed with the tax-exempt bonds, (ii) state the maximum principal amount of the bonds to be issued for the Project, and (iii) declare PCCA’s official intent to reimburse itself with bond proceeds for capital expenditures made by PCCA on the Project before the bonds are issued. The Reimbursement Resolution included with this memorandum satisfies these requirements. Adoption of the Reimbursement Resolution does not obligate PCCA to issue bonds to finance the Project.

ALTERNATIVES: The alternative would be to not adopt the Reimbursement Resolution and not reimburse the general fund for the \$32,166,000 accelerated payment to the USACE.

STAFF RECOMMENDATION: Staff recommends approval of the Reimbursement Resolution.

Reviewed & Approved	John LaRue
	Sean Strawbridge
	Dennis DeVries

Legal	Jimmy Welder
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LIST OF SUPPORTING DOCUMENTS:

Reimbursement Resolution for the Corpus Christi Ship Channel Improvement Project

**RESOLUTION OF THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI
AUTHORITY OF NUECES COUNTY, TEXAS, DECLARING THE AUTHORITY'S OFFICIAL
INTENT TO REIMBURSE ITSELF FROM THE PROCEEDS OF ONE OR MORE SERIES OF
TAX-EXEMPT BONDS FOR CERTAIN EXPENDITURES MADE IN CONNECTION WITH
THE CORPUS CHRISTI SHIP CHANNEL IMPROVEMENT PROJECT**

WHEREAS, the Port of Corpus Christi Authority of Nueces County, Texas (the "**Authority**") is a political subdivision of the State of Texas and is authorized to issue bonds pursuant to the laws of the State of Texas; and

WHEREAS, construction of the Corpus Christi Ship Channel Project at Corpus Christi, Texas (hereinafter the "**Authorized Project**") was authorized by Section 1001(40) of the Water Resources Development Act of 2007 (Public Law 110-114) and modified by Section 7003 of the Water Resources Reform and Development Act of 2014 (Public Law 113-121); and

WHEREAS, the Authority has this day approved a Project Partnership Agreement (the "**Project Partnership Agreement**") with the Department of the Army (the "**Government**") for the main channel deepening and widening and barge lane separable elements of the Authorized Project (hereinafter the "**Project**"); and

WHEREAS, the Project includes deepening the Corpus Christi Ship Channel ("**CCSC**") from Viola Turning Basin to the end of the jetties in the Gulf of Mexico (approximately 34 miles) to -54 feet Mean Lower Low Water ("**MLLW**"); deepening and extending the remainder of the channel into the Gulf of Mexico (approximately 2 miles) to -56 feet MLLW; widening the CCSC to 530 feet through the Upper Bay and Lower Bay reaches (approximately 20 miles); construction of 200-foot wide barge shelves (channels) to -14 feet MLLW on both sides of the CCSC from its junction with the La Quinta Channel to the entrance of the Inner Harbor (approximately 10 miles); and providing additional capacity at existing upland dredged material placement facilities and constructing new confined and partly confined dredged material placement facilities, as generally described in the Corpus Christi Ship Channel, Texas Channel Improvement Project Final Feasibility Report and FEIS, dated April 2003, and approved in accordance with the Chief's Report, the Corpus Christi Ship Channel Deepening and Barge Shelves, Limited Reevaluation Report, dated November 2012 and as revised December 2012, and approved in accordance with the Report of the Director of Civil Works, dated February 12, 2013, the Recommendation Letter from the Assistant Secretary of the Army, dated August 8, 2013, and the Limited Reevaluation Report, dated December 22, 2015; and

WHEREAS, the Project Partnership Agreement provides that, as of its effective date, construction costs of the Project, which do not include the costs of providing relocations or real property interests, are projected to be \$326,887,000; and

WHEREAS, the Project Partnership Agreement provides that the Authority shall provide 10 percent of construction costs assigned by the Government to a channel depth not in excess of 20 feet; 25 percent of construction costs assigned by the Government to a channel depth in excess of 20 feet but not greater than 50 feet; and 50 percent of construction costs assigned by the Government to that portion of the channel depth in excess of 50 feet (collectively, the "**Authority's Share of the Construction Costs**"); and

WHEREAS, the Authority's Share of the Construction Costs is estimated to be \$102,374,000; and

WHEREAS, the Project Partnership Agreement provides that in addition, the Authority shall pay an additional 10 percent of construction costs, less any credit afforded by the Government for real property interests and relocations (collectively, the "***Additional 10% of Construction Costs***"); and

WHEREAS, the Additional 10% of Construction Costs is estimated to be \$32,689,000; and

WHEREAS, the Authority's Share of the Construction Costs plus the Additional 10% of Construction Costs (collectively, the "***Authority's Total Project Costs***") is estimated to be \$135,063,000; and

WHEREAS, the Authority reasonably expects to issue, after the adoption of this Resolution, one or more series of tax-exempt bonds (the "***Project Bonds***"), the proceeds of which will be used to pay the Authority's Total Project Costs; and

WHEREAS, the Project Partnership Agreement provides that the Authority has elected to accelerate the provision of its funds for the Project and shall provide at least \$32,166,000 (the "***Accelerated Payment***") for immediate use by the Government no later than 30 calendar days after execution of the Project Partnership Agreement; and

WHEREAS, the Authority will pay out of its general fund, after September 1, 2017, the Accelerated Payment in accordance with the Project Partnership Agreement and certain other capital expenditures in connection with the Project (collectively, the "***Authority's Initial Project Expenditures***"); and

WHEREAS, the Port Commission of the Authority (the "***Port Commission***") has determined that the funds to pay the Authority's Initial Project Expenditures are available only for a temporary period and it is necessary to reimburse the Authority for the Authority's Initial Project Expenditures from the proceeds of the sale of the Project Bonds; and

WHEREAS, the Port Commission finds, considers, and declares that the reimbursement of the Authority for the payment of the Authority's Initial Project Expenditures will be appropriate and consistent with the lawful objectives of the Authority, and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse the Port Authority for such expenditures at such time as the Authority issues the Project Bonds;

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

Section 1. The Port Commission hereby adopts the findings set out in the preamble of this Resolution and declares the Authority's official intent to reimburse itself for the Authority's Initial Project Expenditures from the proceeds of the Project Bonds.

Section 2. The Authority reasonably expects that the aggregate maximum principal amount of the Project Bonds will not exceed \$135,063,000.

Section 3. All of the Authority's Initial Project Expenditures to be reimbursed pursuant to this Resolution will be capital expenditures within the meaning of Section 1.150-2 of the Treasury Regulations.

Section 4. The Authority will make a reimbursement allocation, which is a written allocation by the Authority that evidences the Authority's use of the proceeds of the Project Bonds to reimburse the Authority's Initial Project Expenditures, no later than 18 months after the later of the date on which the Accelerated Payment is paid to the Government or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Accelerated Payment is paid. The Authority recognizes that exceptions are available for certain expenditures for construction projects of at least five years.

Section 5. The Authority will maintain this Resolution in the Official Records of the Authority.

Section 6. The Chairman or Secretary of the Port Commission is hereby authorized and directed to take such further action and to execute and deliver such other instruments and documents as may in their judgment or upon the advice of counsel be necessary or advisable to carry into effect the intent of this Resolution.

Section 7. This Resolution shall take effect on September 1, 2017.

Passed and Approved by the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, at a Special Meeting held on the 1st day of September, 2017.

Charles W. Zahn, Jr.
Chairman, Port Commission

ATTEST:

Barbara Canales
Secretary, Port Commission

APPROVED AS TO FORM:

Leo J. Welder, Jr.
General Counsel

DATE: September 1, 2017

TO: Port Commission

FROM: Sean Strawbridge
Sstrawbridge@pocca.com
361.885.6133

Resolution Approving Preliminary Construction Services Agreement with GCGV Asset Holding, LLC, Associated with Construction of Heavy Haul Road

SUMMARY: Staff requests adoption of a Resolution approving a Preliminary Construction Services Agreement with GCGV Asset Holding, LLC, for preliminary construction work associated with driveways and a heavy haul road crossing PCCA property in San Patricio County.

BACKGROUND: GCGV has announced its intentions to construct and operate an ethane steam cracker for production of ethylene and derivative units for production of polyethylene (PE) and monoethylene glycol (MEG) (collectively, the “Project”). The Project will be constructed on the GCGV’s property in San Patricio County, Texas (“Project Site”). Portions of GCGV’s plant will be manufactured abroad and transported to the United States by heavy-lift ships, which will deliver these massive plant components to a heavy lift cargo dock to be constructed by GCGV at the end of PCCA’s La Quinta Ship Channel along the San Patricio Turning Basin. From there these massive components will be transported to the Project Site by heavy-lift multi-axle self-propelled modular transporter (SPMT) vehicles along heavy haul roads, bridges, and drainage features to be constructed by GCGV. Some of the liquid products produced at GCGV’s plant will be transported to storage tanks constructed by GCGV on land leased from PCCA, and from there these products will be loaded on ships and barges berthed at a liquid cargo dock to be constructed by GCGV near the end of the La Quinta Channel.

The Parties are working on definitive agreements for the Project (“Transaction Documents”) and expect to present these agreements to PCCA’s Port Commission for approval at the Commission’s meeting on November 21, 2017. In the meantime, GCGV has requested permission to begin preliminary work on the Project as soon as practicable in order to maintain GCGV’s timetable for completing the Project. The preliminary construction activities include: (1) construction of driveways in accordance with permits issued by TxDOT; (2) placement of a temporary office trailer of PCCA property during construction; and (3) site preparation and preliminary construction of a heavy haul road.

ALTERNATIVES: Incorporate this preliminary construction work in the Transaction Documents; however, this could result in delays in GCGV's timetable for completing the Project.

STAFF RECOMMENDATION: Staff recommends adoption of a Resolution approving a Preliminary Construction Services Agreement with GCGV Asset Holding, LLC, for preliminary construction work associated with driveways and a heavy haul road crossing PCCA property in San Patricio County.

Originating Department
Reviewed & Approved

Office of Chief Commercial Officer
Jarl Pederson
Darrin Aldrich
David Krams
Sarah Garza

Legal

Jimmy Welder
Dane Bruun

Executive Staff

Sean Strawbridge

LIST OF SUPPORTING DOCUMENTS:

Resolution
Preliminary Construction Services Agreement

**RESOLUTION APPROVING A PRELIMINARY CONSTRUCTION SERVICES
AGREEMENT WITH GCGV ASSET HOLDING, LLC**

WHEREAS, a Preliminary Construction Services Agreement between the Port of Corpus Christi Authority of Nueces County, Texas (“PCCA”) and GCGV Asset Holding, LLC (“GCGV”) for preliminary construction work associated with driveways and a heavy haul road crossing PCCA property in San Patricio County has been presented to PCCA’s Port Commission for approval;

WHEREAS, GCGV has announced its intentions to construct and operate an ethane steam cracker for production of ethylene and derivative units for production of polyethylene (PE) and monoethylene glycol (MEG) (collectively, the “Project”);

WHEREAS, PCCA and GCGV are working on definitive agreements for the Project (“Transaction Documents”) and expect to present these agreements to PCCA’s Port Commission for approval at the Commission’s meeting on November 21, 2017;

WHEREAS, GCGV has requested permission to begin preliminary work on the Project as soon as practicable in order to maintain GCGV’s timetable for completing the Project; and

WHEREAS, the Government and PCCA desire to enter into this Preliminary Construction Services Agreement so that GCGV can maintain its timetable for completing the Project.

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

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

Section 2. The Preliminary Construction Services Agreement, in substantially the form presented to this meeting, is hereby approved, and the Executive Director is hereby authorized and directed, for and on behalf of PCCA, to execute the Preliminary Construction Services Agreement and to make any changes he deems appropriate to carry out the purposes of the Preliminary Construction Services Agreement.

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

Section 4. This Resolution is hereby adopted by the Port Commission on September 1, 2017.

PRELIMINARY CONSTRUCTION SERVICES AGREEMENT

This PRELIMINARY CONSTRUCTION SERVICES AGREEMENT (the “Agreement”) is made this ____ day of September, 2017 (the “Effective Date”) by and between the **Port of Corpus Christi Authority of Nueces County, Texas**, a political subdivision of the State of Texas, with offices at 222 Power Street, Corpus Christi, Texas 78401 (“PCCA”) and **GCGV Asset Holding LLC**, having an address at 10375 Richmond Avenue, Suite 1800, Houston, Texas 77042 (“GCGV”). PCCA and GCGV are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

GCGV has announced its intentions to construct and operate an ethane steam cracker for production of ethylene and derivative units for production of polyethylene (PE) and monoethylene glycol (MEG) (collectively, the “Project”). The Project will be constructed on the GCGV’s property in San Patricio County, Texas (“Project Site”). Portions of GCGV’s plant will be manufactured abroad and transported to the United States by heavy-lift ships, which will deliver these massive plant components to a heavy lift cargo dock to be constructed by GCGV at the end of PCCA’s La Quinta Ship Channel along the San Patricio Turning Basin. From there these massive components will be transported to the Project Site by heavy-lift multi-axle self-propelled modular transporter (SPMT) vehicles along heavy haul roads, bridges, and drainage features to be constructed by GCGV. Some of the liquid products produced at GCGV’s plant will be transported to storage tanks constructed by GCGV on land leased from PCCA, and from there these products will be loaded on ships and barges berthed at a liquid cargo dock to be constructed by GCGV near the end of the La Quinta Channel.

The Parties are working on definitive agreements for the Project (“Transaction Documents”) and expect to present these agreements to PCCA’s Port Commission for approval at the Commission’s meeting on November 21, 2017. In the meantime, GCGV has requested permission to begin preliminary work on the Project as soon as practicable in order to maintain GCGV’s timetable for completing the Project. PCCA is willing to accommodate GCGV’s request on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, PCCA and GCGV agree as follows:

Section 1. Each of the following terms shall have the meaning set forth or referred to in this Section whenever they are used in this Agreement:

“PCCA Property” means the property designated as PCCA property in the map or plat attached hereto as **Exhibit A**.

“HHR Right-of-Way” means the 200’ wide strip of land designated as the HHR Right-of-Way in the map or plat attached hereto as **Exhibit A**.

“Heavy Haul Road” means the heavy haul road, bridges, and drainage features to be constructed by GCGV in the HHR Right-of-Way.

Section 2. The term of this Agreement (“Term of this Agreement”) is the period beginning on the Effective Date and ending on November 21, 2017, as this period may be extended by the mutual agreement of the Parties. The Parties expect this Agreement to be subsumed in the Transaction Documents upon their approval and execution by the Parties. Notwithstanding anything to the contrary contained in this Agreement, if the Parties are unable to reach agreement on the Transaction Documents before the expiration of the Term of this Agreement, all the Preliminary Work (as defined in Section 3 of this Agreement, except the Trailer) on the PCCA Property will belong to PCCA, and PCCA shall not be obligated to reimburse GCGV for any costs incurred by GCGV in performing the Temporary Work. The Transaction Documents, if approved by the Parties, will also provide that PCCA is the owner of all the Preliminary Work on the PCCA Property, except the Trailer.

Section 3. During the Term of this Agreement, GCGV may conduct the following preliminary construction activities on the PCCA Property or in the HHR Right-of Way, as the case may be, at its sole expense (collectively, the “Preliminary Work”):

- a Construct driveways along Farm to Market Road 2986 and along US HWY 181 Frontage Road (“Driveways”) in accordance with the driveway permit issued by the Texas Department of Transportation. The locations of the Driveways are shown on **Exhibit A** to this Agreement.
- b Place a temporary office trailer on the PCCA Property (“Trailer”) for GCGV employees who will be performing the Preliminary Work. The location of the Trailer is shown on **Exhibit A** to this Agreement. GCGV shall be responsible for arranging for utility service through individual providers, installation of utilities in accordance with applicable laws, codes, standards, and as approved by PCCA, and paying for all electricity, water, and all other utilities consumed during occupancy.
- c HHR Right-of-Way: Grub and strip to remove trees, grasses, shrubs, topsoil, and other vegetation from the HHR Right-of-Way to a minimum depth of 12 inches. All materials cleared and grubbed from the designated areas shall be disposed of off the PCCA Property.
- d Heavy Haul Road: Lime stabilize soil and compact to a minimum depth of 12 inches and to a minimum width of 120 feet in the HHR Right-of Way.
- e Heavy Haul Road: Place and compact aggregate (limestone) to a minimum depth of 8 inches and to a minimum width of 120 feet in the HHR Right-of Way. Elevation of roadway to be approved by PCCA and comply with the minimum standards included in the San Patricio County Drainage District Drainage Criteria and Design Manual, dated July 1987.
- f PCCA Property Drainage Improvements: Comply with proposed improvements described in the Channel and Dam Improvements for Green Lake Outfall, San Patricio County Drainage District, prepared by Naismith Engineering, Inc., dated December 2013, and accommodate drainage from property to the south as required

by Special Warranty Deed dated July 29, 2015 from Joseph D Cable, Joseph Edward Garrett, III, et al to The Port of Corpus Christi Authority of Nueces County, Texas , filed and recorded at 649208 in the Official Public Records of San Patricio County, Texas.

Section 4. All the Preliminary Work must comply with the applicable provisions of the Port of Corpus Christi Design Criteria Document and the current Port of Corpus Christi Authority Project Manual, which may be obtained from PCCA's Department of Engineering Services.

Section 5. GCGV must submit to PCCA plans for the Driveways (the "Driveway Plans") and the Driveway Plans must be approved in writing by PCCA's Director of Engineering Services prior to the commencement of construction of the same, which approval shall not be unreasonably denied, delayed or conditioned. GCGV must submit to PCCA plans and associated drainage designs for the Heavy Haul Road (collectively, the "HHR Plans") and the HHR Plans must be approved in writing by PCCA's Director of Engineering Services prior to the commencement of construction of the same, which approval shall not be unreasonably denied, delayed or conditioned. To facilitate PCCA's review, the Driveway Plans and the HHR Plans must be submitted electronically to PCCA for its prior approval. The Driveway Plans and the HHR Plans must be submitted in an electronic file format reasonably acceptable to PCCA and show all physical features and improvements in and around the site of the Driveways and the Heavy Haul Road and must be signed and sealed by a Professional Engineer registered in the State of Texas. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the Driveways and the Heavy Haul Road, property boundaries, and other features that may be relevant to, or impacted by the proposed construction must be submitted to PCCA. PCCA will respond to the request for review of the Driveway Plans or the HHR Plans within fifteen (15) business days after submittal. PCCA may (i) take no exception to the plans, (ii) take no exception subject to comments, (iii) request additional information, or (iv) disapprove the plans, setting forth PCCA's specific reasons for such disapproval. Disapproval by PCCA of such plans may only be based on such plans not being in conformity with this Agreement or PCCA's generally applicable standards that are made available to GCGV.

Section 6. GCGV will provide as-built documentation, including as-built drawings, applicable test results, material specifications and other relevant documentation to PCCA for any work completed under this agreement.

Section 7. GCGV shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience in the area caused by the Preliminary Work and make adequate provision for the safety and convenience of all persons affected thereby. Dust, noise and other effects caused by the Preliminary Work shall be reasonably controlled using accepted methods customarily utilized in order to control such conditions. GCGV shall not permit unreasonable amounts of dirt, debris, equipment, trash or the like to be located outside of the HHR Right-of-Way or the location of the Driveways, except as otherwise agreed to by PCCA and GCGV.

Section 8. **GCGV agrees to indemnify, protect, defend, and hold harmless PCCA, and its Commissioners, agents, officers, employees or contractors ("PCCA Parties"), from**

and against, and GCGV shall be responsible for, any actions, demands, liabilities, damages, costs or reasonable expenses (all of which are hereinafter collectively called “Claims”), which may be brought or instituted or asserted against the PCCA Parties based on or arising out of the acts or omissions of GCGV while performing the Preliminary Work or otherwise exercising its rights under this Agreement on or adjacent to the PCCA Property. This indemnity agreement is not intended and shall not be construed to require the GCGV to indemnify or hold harmless the PCCA Parties for any claims or liabilities resulting from the negligent acts or omissions of the PCCA Parties. In Claims against any PCCA Party by or for an employee of GCGV, GCGV’s indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for GCGV under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts. The obligations of GCGV under this paragraph shall survive the termination of this Agreement as to all Claims based on or arising out of acts or omissions occurring prior to termination.

Section 9. The rights granted to GCGV pursuant to this Agreement are subject to pipeline and utility rights of way and other encumbrances, whether of record or not.

Section 10. Ownership, operation, and maintenance of infrastructure constructed, in whole or in part, under this agreement shall be as stated in the final commercial terms between the parties as approved by the Port Commission and executed by both parties. Prosecution of any construction work that is initiated under this agreement and that is not completed when this agreement terminates, may be continued by GCGV under the terms and conditions set forth in the final executed commercial terms.

Section 11. GCGV agrees to obtain all applicable environmental permits necessary to conduct the Preliminary Work, and provide a copy of said permits to PCCA. GCGV agrees to conduct all activities in accordance with existing permits or permit applications related to the PCCA Property and in accordance with all applicable state and federal environmental rules and regulations. In connection with the activities to be performed under this Agreement, GCGV will comply with all applicable federal, state and local statutes, laws, ordinances, regulations, codes, permits, licenses, authorizations and rules, and other provisions having the force and effect of law, in each case as amended, including PCCA’s Tariff 100-A. Copies of permit applications, permits, agreements, and permissions obtained by GCGV for work under this agreement will be provided to PCCA.

Section 12. GCGV will provide PCCA with reasonable advance notice of entry on the PCCA Property prior to conducting any Preliminary Work thereon and will advise PCCA periodically about the scope of the Preliminary Work being performed. GCGV shall contact PCCA’s Police Department at 361-882-1182 a minimum of twenty-four (24) hours prior to entry upon the PCCA Property. GCGV, including GCGV’s agents, employees and contractors, shall comply with all PCCA mandated security requirements as provided in Item 669 of PCCA’s Tariff 100-A.

Section 13. PCCA's contact person for purposes of this Agreement is Erin Hall, Phone: 361-429-1091. GCGV's contact person is _____, Phone: _____.

Section 14. GCGV and its contractor(s) shall satisfy the insurance requirements attached to this Agreement as **Exhibit B**. Prior to the commencement of any Preliminary Work under this Agreement, GCGV shall furnish PCCA with Certificates of Insurance (and/or the endorsements) describing the Policies (as defined in **Exhibit B**) and the limits thereof. The Certificates of Insurance will be provided to the attention of the Risk Program Manager for review and approval. If GCGV fails to maintain all or any part of the Policies, then its rights under this Agreement shall be temporarily suspended until such Policies have been reinstated.

Agreed to by the Parties effective as of the Effective Date.

PCCA

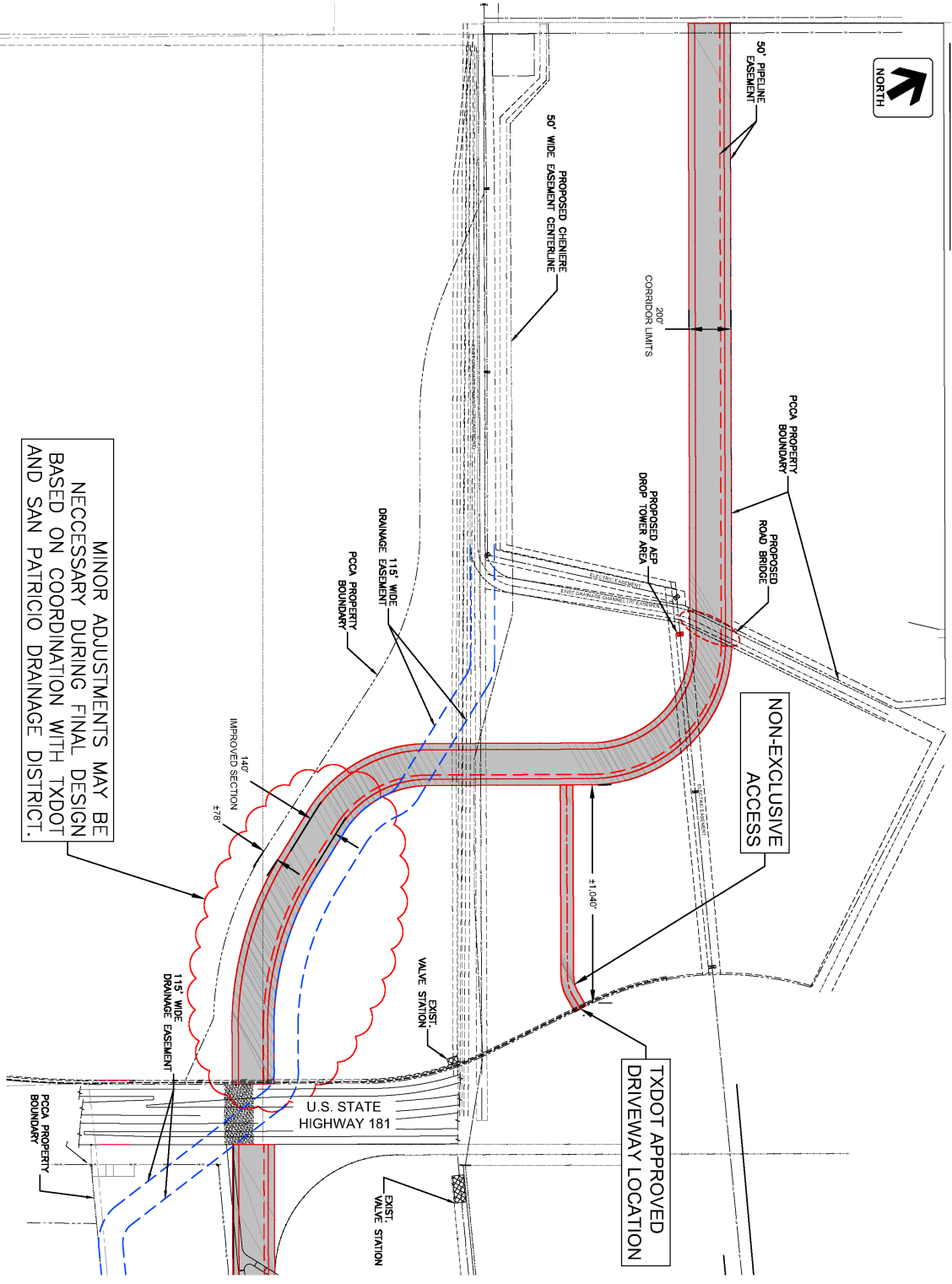
Port of Corpus Christi Authority

John P. LaRue,
Executive Director

GCGV

GCGV Asset Holding LLC

Name: _____
Title: _____



MINOR ADJUSTMENTS MAY BE NECESSARY DURING FINAL DESIGN BASED ON COORDINATION WITH TXDOT AND SAN PATRICIO DRAINAGE DISTRICT.



THIS DOCUMENT WAS PREPARED FOR THE PORT OF CORPUS CHRISTI UNDER THE AUTHORITY OF THE PORT OF CORPUS CHRISTI ON 5/4/17. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR PERMITTING PURPOSES.



PORT OF CORPUS CHRISTI

PORT OF CORPUS CHRISTI AUTHORITY

HEAVY HAUL ROAD ALIGNMENT

SCALE:	GRAPHIC	DATE:
DMN. BT:	PRELIMINARY ALIGNMENT	5/4/2017
BY:		8:08:17 AM

EXHIBIT A

EXHIBIT B

INSURANCE

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

TYPE OF INSURANCE

LIMITS OF LIABILITY

A. *Property Insurance*. Special form ("all risk") property insurance with no exclusions, except the standard printed exclusions, at Full Replacement Cost (hereinafter defined), covering the GCGV's property on the PCCA Property. Coverage shall include, without limitation, the following: primary and excess flood, windstorm, named storm, earthquake, and debris removal, subject to customary sub-limits. The term "*Full Replacement Cost*" shall mean the actual replacement cost of GCGV's property on the PCCA Property, including the cost of demolition and debris removal and without deduction for depreciation.

- | | | |
|----|------------------------------|---|
| B. | Workers' Compensation | Statutory |
| C. | Employer's Liability | \$500,000 per Occurrence
\$500,000 Aggregate |
| D. | Commercial General Liability | \$1,000,000 per Occurrence
\$2,000,000 Aggregate |

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

- | | | |
|----|-------------------------------|----------------------------|
| E. | Business Automobile Liability | \$1,000,000 per Occurrence |
|----|-------------------------------|----------------------------|

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

- | | | |
|----|--------------------|----------------------------|
| F. | Umbrella Liability | \$5,000,000 per Occurrence |
|----|--------------------|----------------------------|

Umbrella liability coverage will apply to Employer's Liability, Commercial General Liability, and Business Automobile Liability.

- | | | |
|----|---------------------|----------------------------|
| G. | Pollution Liability | \$2,000,000 per Occurrence |
|----|---------------------|----------------------------|

Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against PCCA, its Port Commissioners, officers and employees ("PCCA Parties"). Additionally, PCCA 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 and Employer's Liability. In the event that the work of GCGV's employees falls within the purview of the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or the Federal Employer's Liability Act, GCGV shall extend its insurance coverage to provide insurance against the liabilities imposed under the applicable Act or Acts.

Each policy, except Workers' Compensation must contain an endorsement that the policy is primary to any other insurance available to the PCCA Parties with respect to claims arising under this Agreement.

The insurance required as listed above, shall apply to any contractor or subcontractor performing work for or on behalf of GCGV, and GCGV 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 Agreement.

The company writing each of the Policies must possess a current rating with A.M. Best Company of at least "A-, VII".

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