

**PORT OF CORPUS CHRISTI AUTHORITY
LICENSE FOR DEPOSIT OF DREDGED MATERIAL**

THIS AGREEMENT, is made and entered into effective as of _____, 2020 (“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 ("**Authority**") and **CITY OF CORPUS CHRISTI**, a political subdivision of the State of Texas, whose address 1201 Leopard Street, Corpus Christi, Texas 78401 (“**Company**”).

WITNESSETH

I

Company has requested **Authority** to allow it to use the **Authority** placement facility known as Rincon B West Dredge Material Placement Area, which is located in Nueces County, Texas, for deposit of dredged material taken from **Company**'s mooring facilities and slip for such dock area being outside the limits of the Federal ship channel. **Company** has advised **Authority** that approximately **39,550 cubic yards** of dredged material will be deposited in the **Rincon B West Dredge Material Placement Area**.

II

To facilitate the **Authority's** review of the **Company's** dredging project, two (2) sets of formal plans that clearly delineate the area to be dredged must be submitted for approval. The drawings must be prepared on a standard engineering format (11" x 17" drawings) and show all physical features and improvements in and around the area to be dredged and must be signed and sealed by a Professional Engineer registered in the State of Texas. A detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, existing channel depth elevations, etc., is also required. The site plan must also clearly show the bottom of cut line and top of slope line of the planned dredging. **Company** is responsible for obtaining permission to dredge on adjacent property not owned by **Company**. This includes side slope excavation. **Authority's** approval of **Company's** plans may never be construed as permission by **Authority** to dredge on adjacent property not owned by **Company**. Moreover, **Authority's** approval of **Company's** plans, may never be construed as a representation by **Authority** that such plans are the best method to be used for the placement of dredge material. **Company** must provide copies of all necessary federal and state permits prior to use of **Authority's** dredge material placement areas.

III

Authority hereby grants to **Company** permission to deposit dredged material in the Rincon B West Dredge Material Placement Area, conditioned that **Company** pay to **Authority**: (i) an Application Fee of \$500.00; (ii) the sum of \$4.71 per cubic yard of dredged material deposited into Rincon B West Dredge Material Placement Area, for **Authority** depletion fees; and (iii) the sum of \$3.00 per cubic yard of dredged material deposited in the Rincon B West Dredge Material Placement Area, to

replenish capacity, for a total fee of \$7.71 per cubic yard of dredge material placed into Rincon B West Dredge Material Placement Area. **Company** agrees that prior to commencing the deposit of any material under this license it will: (a) submit prepayment to **Authority**, equal to 90% of the estimated quantity of material to be dredged and placed in the Rincon B West Dredge Material Placement Area associated with (ii) and (iii) above; (b) attend a pre-construction meeting at PCCA Administration Office, 222 Power Street; and (c) receive written approval of **Authority's** Director of Channel & DMPA Development (a "Notice to Proceed") which approval may specify both when and under what conditions the work may be performed.

IV

Not later than thirty (30) days after dredging work at its dock area is completed, **Company** will provide **Authority** with (a) copies of cross sections made from soundings taken before and after dredging operations in **Company's** dock area and (b) a copy of the invoices from the dredging company performing the dredging work for **Company** which must state the amount of dredged material removed. Soundings for said cross sections will be taken along lines which are transverse to the dredging limits and not more than 100 feet apart with minimum 1" = 10' vertical and 1" = 50' horizontal scales. The cross section drawings must clearly show the existing bottom profile and the proposed dredge line with back slope and also any bulkhead lines, property lines, federal channel lines, allowable overdredge lines, etc. In addition to the drawings, **Company** will also provide **Authority** with a CAD file (compatible with **Authority's** software) of the drawings to facilitate determination of yardage to be billed. The actual yardage to be paid shall be determined by the method designated as "average-end area" or quantities stated on the dredging contractor's invoices whichever, in the judgment of the **Authority's** Director of Channel & DMPA Development, reflects the correct volume of material deposited in the Rincon B West Dredge Material Placement Area. Once final quantities are determined, a final invoice will be prepared and sent to **Company** to which the prepayment will be applied. In the event that final dredge quantities are less than the prepayment quantity, the **Authority** will send a refund check to cover overpayment. If, due to no fault of the **Authority**, **Company** does not use Rincon B West Dredge Material Placement Area for placement of any dredge material allowed under this agreement, the prepayment will not be refunded but may be applied to **Company's** future prepayment(s) under other **Authority** agreements for use of this or other **Authority** dredge material placement areas.

V

The Rincon B West Dredge Material Placement Area, is provided to **Company** "As Is, Where Is" and **Company** shall, by whatever method it alone chooses, determine the condition of the Rincon B West Dredge Material Placement Area, and related levees and spillways, and shall make such repair or modifications of the same as are necessary to accommodate the material and effluent from **Company's** dredging. The **Authority** does not make any warranty, expressed or implied, that the Rincon B West Dredge Material Placement Area is in condition to receive or accept the material to be deposited by **Company**. If **Company**, after inspection and/or evaluation of the DMPA deems the DMPA is unsuitable for **Company's** use and chooses not to make repairs or modifications per this Section, **Company** has the right not to use the DMPA and terminate agreement.

VI

COMPANY ASSUMES FULL RESPONSIBILITY TO **AUTHORITY** FOR THE PROPER PERFORMANCE OF THE DREDGING OPERATION CONDUCTED BY **COMPANY** AND ITS DREDGING CONTRACTOR AND FOR DEPOSIT OF DREDGED MATERIAL BY **COMPANY'S** DREDGING CONTRACTOR IN THE RINCON B WEST DREDGE MATERIAL PLACEMENT AREA, IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. **COMPANY** AND ITS DREDGING CONTRACTOR SHALL CONFORM TO THE DIRECTIONS OF THE DIRECTOR OF CHANNEL & DMPA DEVELOPMENT FOR **AUTHORITY**, IF ANY ARE GIVEN, IN ALL MATTERS RELATING TO THE DEPOSIT OF DREDGED MATERIAL IN THE RINCON B WEST DREDGE MATERIAL PLACEMENT AREA, AND THE PROPER USE, CONSTRUCTION AND MAINTENANCE OF LEVEES, DIKES, OR DRAINS WHICH ARE NECESSARY IN CONNECTION WITH THIS WORK. **COMPANY** FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD **AUTHORITY** HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION AND LIABILITIES OF ANY NATURE (INCLUDING COURT COSTS AND FEES AND EXPENSES OF ATTORNEYS, ENGINEERS AND OTHER CONSULTANTS INCIDENT TO INVESTIGATION AND DEFENSE) THAT MAY ARISE BY VIRTUE OF THE **COMPANY'S** DEPOSIT OF DREDGED MATERIAL UNDER THIS AGREEMENT OR THE EXERCISE BY **COMPANY** OF ANY OTHER PRIVILEGES HEREBY ACCORDED. **COMPANY** HEREBY WARRANTS THAT THE MATERIAL TO BE DREDGED AND PLACED IN THE **AUTHORITY'S** RINCON B WEST DREDGE MATERIAL PLACEMENT AREA, IS NOT A HAZARDOUS MATERIALS (AS THAT TERM MAY BE DEFINED BY FEDERAL OR STATE OF TEXAS LAW, STATUTE, OR REGULATION). **COMPANY** AGREES THAT IF SAID MATERIAL IS LATER FOUND TO BE HAZARDOUS, IT WILL BEAR, MUST PROPERLY REMEDIATE, AND PAY ALL COSTS OF REMEDIATION REQUIRED BY FEDERAL OR STATE OF TEXAS LAW, STATUTE, OR REGULATION, COST FOR REMOVAL AND/OR TREATMENT AS REQUIRED. THE OBLIGATIONS OF THE COMPANY UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

VII

This license is issued subject to the rights of **Authority**. If necessary, the Director of Channel & DMPA Development may stop or delay the work to allow **Authority's** prime dredging contractor to perform higher priority work and to deposit material into the designated dredge material placement area. **Authority** may stop or delay the work if **Authority** is required to cease operations by order of any court or governmental entity. In the event the Authority stops work or delays work for a period in excess of 120 days, or **Company** is required to cease operations by order of any court or governmental entity for a period in excess of 120 days, this Agreement may be terminated by either Party, and final payment shall be calculated pursuant to Section IV.

VIII

Payments for the material deposited in the dredge material placement area shall be made to Port of Corpus Christi Authority at its offices at 222 Power Street, or by mail to P.O. Box 1541, Corpus Christi, Texas 78403.

IX (INTENTIONALLY OMITTED)

X

Company and its contractor(s) shall satisfy the insurance requirements attached to this Agreement as **Exhibit A**. Prior to commencement of dredging or any related activities authorized under this Agreement, the **Authority** shall be furnished with Certificates of Insurance describing the policies and limits therein. The Certificates of Insurance will be provided to the attention of the Risk Program Manager for review and approval. If **Company** fails to maintain all or any part of the polices, then its privileges shall be temporarily suspended until such policies have been reinstated.

XI

This license is effective upon the Effective Date and will terminate upon (i) completion of Company's dredging project or (ii) 120 days from the Notice to Proceed, whichever occurs first. No dredging work may be performed until this agreement has been executed by both the **Authority** and the **Company**.

EXECUTED in duplicate as of the Effective Date.

CITY OF CORPUS CHRISTI

By: _____

Date: _____

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

By: _____

Date: _____

EXHIBIT A
INSURANCE

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

<u>TYPE OF INSURANCE</u>	<u>LIMITS OF LIABILITY</u>
A. Workers' Compensation	Statutory
B. Employer's Liability	\$500,000 per Occurrence \$500,000 Aggregate
C. Commercial General Liability	\$1,000,000 per Occurrence \$2,000,000 Aggregate
The CGL Policy will provide contractual liability coverage at the aforementioned limits.	
D. Business Automobile Liability	\$1,000,000 per Occurrence
Automobile liability insurance coverage will include all owned, non-owned, and hired vehicles.	
E. Umbrella Liability	\$5,000,000 per Occurrence
Umbrella liability coverage will apply to Employer's Liability, Commercial General Liability, and Business Automobile Liability.	
F. Pollution Liability	\$2,000,000 per Occurrence
G. Protection & Indemnity (P&I)	\$1,000,000 per Occurrence

Company's dredging contractor shall carry and maintain Protection & Indemnity Insurance with respect to bodily injury and/or property damage arising from marine operations. The Authority Parties shall be designated as an additional insured either by blanket additional insured or a specific endorsement.

Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the **Authority**, its Port Commissioners, officers and employees ("**Authority Parties**"). Additionally, the **Authority Parties** shall be designated as an Additional Insured either by a blanket additional insured or a specific endorsement on all policies, except for Worker's Compensation and Employer's Liability. In the event that the work of

Company's employees fall within the purview of the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or the Federal Employer's Liability Act, **Company** 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 Additional Insureds with respect to claims arising under this Agreement.

The insurance required as listed above in subsection A, B, C, D, F & G shall apply to any contractor or subcontractor performing for or on behalf of **Company**, and **Company** 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 minimum insurance required may be increased periodically upon request by **Authority** to commercially reasonable limits. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least "A-, VII".

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