

**Resolution authorizing an agreement with Corpus Christi Alumina, LLC under Chapter 212 of the Texas Local Government Code, relating to the development of property in the City’s extraterritorial jurisdiction**

WHEREAS, Corpus Christi Alumina, LLC (“CCA”) is the owner of certain property within the extra-territorial jurisdiction of the City of Corpus Christi, which it intends to develop for industrial purposes;

WHEREAS, CCA has entered into an agreement to sell the property to Corpus Christi Liquefaction, LLC (“Cheniere”);

WHEREAS, the City has previously entered into an economic development agreement with Cheniere in accordance with Chapter 212 and 380 of the Local Government Code;

WHEREAS, the City and CCA desire to lay out the regulations that will be applicable to the development and set certain requirements for the development in accordance with section 212.172 of the Texas Local Government Code;

WHEREAS, CCA has agreed to be bound by the terms of an agreement with the City under Chapter 212 of the Texas Local Government Code, which includes certain provisions related to future plans for the property, including the addition of the property to an industrial district under the terms of an industrial district agreement; and

WHEREAS, the City finds that it is in the best interest of the City to enter into the agreement with CCA to set out the requirements of the development.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:**

**SECTION 1.** That the findings of the City Council and its actions approving this Resolution taken at the council meeting are hereby approved and adopted.

**SECTION 2.** That the City Manager, or designee, is authorized to execute a Chapter 212 agreement with Corpus Christi Alumina, LLC relating to the development of property in the City’s extraterritorial jurisdiction. A copy of said agreement is attached hereto as **Exhibit A.**

**ATTEST:**

**THE CITY OF CORPUS CHRISTI**

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Rebecca Huerta  
City Secretary

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Joe McComb  
Mayor

Corpus Christi, Texas

\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_

The above resolution was passed by the following vote:

Joe McComb \_\_\_\_\_

Roland Barrera \_\_\_\_\_

Rudy Garza \_\_\_\_\_

Paulette M. Guajardo \_\_\_\_\_

Gil Hernandez \_\_\_\_\_

Michael Hunter \_\_\_\_\_

Ben Molina \_\_\_\_\_

Everett Roy \_\_\_\_\_

Greg Smith \_\_\_\_\_

**TEXAS LOCAL GOVERNMENT CODE SECTION 212.172**  
**EXTRATERRITORIAL JURISDICTION NON-ANNEXATION AGREEMENT**  
**BETWEEN**  
**CITY OF CORPUS CHRISTI, TEXAS**  
**AND**  
**CORPUS CHRISTI ALUMINA LLC**

**EXTRATERRITORIAL JURISDICTION NON-ANNEXATION AGREEMENT**

This Extraterritorial Jurisdiction Non-Annexation Agreement (this “Agreement”) is entered into in accordance with and under the authority of Section 212.172 of the Texas Local Government Code (“Section 212.172”) effective as of \_\_\_\_\_, 2019 (the “Effective Date”), by and between THE CITY OF CORPUS CHRISTI, TEXAS (“City”), and CORPUS CHRISTI ALUMINA LLC, a Delaware limited liability company (“Company”).

**RECITALS**

WHEREAS, Company has acquired the land more particularly described in Exhibit A, all or a portion of which is located within City’s extraterritorial jurisdiction (all or such portion, the “ETJ Land”); and

WHEREAS, Company has entered into that certain Agreement to Purchase and Sell Real Estate (with all exhibits, schedules and amendments thereto the “Cheniere Contract”) with Cheniere Land Holdings, LLC (“Cheniere”) for the sale of the ETJ Land for further development; and

WHEREAS, City recognizes the positive economic impact that further development will bring to City and its extraterritorial jurisdiction through development and diversification of the economy, reduction of unemployment and underemployment through the creation of new jobs, and the attraction of new businesses; and

WHEREAS, City has entered into an Economic Development Incentive Agreement with Cheniere (“Cheniere Agreement”); and

WHEREAS, Section 212.172 authorizes City to make a written contract with an owner of land that is located in City's extraterritorial jurisdiction to guarantee the continuation of the extraterritorial status of such land and its immunity from annexation by City for a period of up to forty-five (45) years, and to agree to other terms regarding land usage, development, and regulation; and

WHEREAS, Company has sought certainty from City as to future annexation of the ETJ Land, and in consideration of the positive economic impact that further development will bring to City and its extraterritorial jurisdiction, City intends that the ETJ Land not be annexed during the term of this Agreement; and

WHEREAS, in consideration of the positive economic impact that further development will bring to City and its extraterritorial jurisdiction, City intends that the extraterritorial status of the ETJ Land be continued during the term of this Agreement; and

WHEREAS, in consideration of the benefits provided to Company pursuant to this Agreement, Company has agreed to comply with the terms and conditions of this Agreement, and to make payments in lieu of taxes to City as provided in this Agreement.



NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Company agree as follows:

**ARTICLE I**  
**DEFINITIONS**

The recitals to this Agreement are hereby incorporated for all purposes. The terms “Agreement,” “City,” “Company,” “Cheniere,” “Cheniere Agreement”, “Cheniere Contract”, “Effective Date,” “ETJ Land,” and “Section 212.172” shall have the above meanings, and the following words or phrases shall have the following meanings:

1.1 “Act of Default” or “Default” means a failure to timely, fully, and completely comply in any material respect with one or more requirements, obligations, performance criteria, duties, terms, conditions or warranties in this Agreement.

1.2 “Base Payment” has the meaning assigned to such term in Section 5.3 of this Agreement.

1.3 “Corpus Christi MSA” means the Corpus Christi Metropolitan Statistical Area (which includes San Patricio County, Nueces County, and Aransas County).

1.4 “Extraterritorial Jurisdiction Services Agreement” has the meaning assigned to such term in Section 2.5 of this Agreement.

1.5 “Force Majeure” means any failure by Company to comply with any requirement of this Agreement that is caused by (i) provisions of law, or the operation or effect of rules, regulations or orders promulgated by any governmental authority having jurisdiction over Company, the ETJ Land or any improvements or operations thereon or any upstream, intermediate or downstream equipment or support facilities as are necessary to such operations; (ii) any demand or requisition, arrest, order, request, directive, restraint or requirement of any government or governmental agency whether federal, state, military, local or otherwise; (iii) the action, judgment or decree of any court; (iv) floods, tornadoes, hailstorms, hurricanes, evacuation due to threats of hurricanes, lightning, earthquakes, washouts, high water, fires, acts of God or public enemies, wars (declared or undeclared), blockades, epidemics, riots or civil disturbances, insurrections, terrorism, sabotage, threats of terrorism or sabotage, strikes, labor disputes (it being understood that nothing contained in this Agreement shall require Company to settle any such strike or labor dispute), explosions, breakdown or failure of plant, machinery, equipment, lines of pipe or electric power lines (or unplanned or forced outages or shutdowns of the foregoing for inspections, repairs or maintenance), inability to obtain, renew or extend franchises, licenses or permits, loss, interruption, curtailment or failure to obtain electricity, gas, steam, water, wastewater disposal, waste disposal or other utilities or utility services, inability to obtain or failure of suppliers to deliver feedstock, raw materials, equipment, parts or materials (including, but not limited to, specially-manufactured tangible personal property that is manufactured by Company or its affiliates or purchased by Company from an unrelated party for installation and operation of the improvements on the ETJ Land), or inability of Company to ship, or failure of carriers to transport to or from Company’s facilities, products (finished or otherwise), feedstock, raw materials, equipment, parts or material; or (v) any other cause (except financial), whether similar or

dissimilar, over which Company has no reasonable control and which forbids or prevents performance and cannot be overcome by reasonable diligence or without unusual expense.

1.6 “Industrial District Agreement” means an agreement made and entered into under the authority of Section 42.044 of the Texas Local Government Code, or successor provisions thereto.

1.7 “Notice” has the meaning assigned to such term in Section 8.7 of this Agreement.

1.8 “Term” has the meaning assigned to such term in Article III of this Agreement.

## ARTICLE II ETJ LAND ANNEXATION AND USAGE

2.1 Extraterritorial Status of ETJ Land. Pursuant to its authority under Section 212.172, City agrees that, beginning on the Effective Date, and subject to Section 2.2 and Company’s compliance with the applicable terms of this Agreement, the ETJ Land shall remain in City’s extraterritorial jurisdiction and shall not be annexed by City during the Term.

2.2 Industrial District Agreement or Other Agreement.

(A) At any time during the Term, Company may give City written notification of a request to have all or any portion of the ETJ Land placed in an industrial district and bound by the terms of an Industrial District Agreement with City effective on the earlier of (i) the termination of this Agreement, and (ii) January 1, 2034. City will not withhold approval of any such request.

(B) Upon expiration of the Term or earlier termination of this Agreement, if City and Company have not previously entered into an Industrial District Agreement pursuant to Section 2.2(A) with respect to any portion of the ETJ Land then owned by Company, Company shall, prior to the effective date of the expiration or earlier termination of this Agreement, enter into an Industrial District Agreement with City to include all of the ETJ Land then owned by Company and not covered by an Industrial District Agreement entered into pursuant to Section 2.2(A). Any Industrial District Agreement entered into pursuant to this Section 2.2(B) shall contain terms and provisions comparable in all material respects to the most favorable terms and provisions contained in any Industrial District Agreement then in effect to which City is a party, and will be effective on the earlier of (i) the termination of this Agreement, and (ii) January 1, 2034.

(C) Notwithstanding the provisions of this Section 2.2, City and Company may, in lieu of entering into an Industrial District Agreement under such provisions, enter into another type of agreement (including, but not limited to, an agreement under Section 212.172 or an agreement under Chapter 380 of the Texas Local Government Code) containing such terms and provisions as are mutually agreed upon by City and Company, so long as such agreement is approved and executed prior to the effective date of the expiration or earlier termination of this Agreement.

2.3 Limited to Industrial and/or Commercial Use. Company covenants and agrees that during the Term, Company will use or permit the use of the ETJ Land only for industrial and/or commercial purposes, which use may include buildings or other improvements used for the administration or support of such industrial and/or commercial purposes. Holding the ETJ Land for future industrial and/or commercial use, and/or industrial and/or commercial support use,

without using it for non-industrial or non-commercial purposes, shall not be a violation of this Section 2.3.

2.4 Maintenance of ETJ Land and Improvements; Conduct of Operations. During the Term, Company shall maintain the ETJ Land and any of its improvements thereon, except those demolished or slated for demolition, and conduct its operations thereon, in a commercially reasonable manner. City shall not be responsible for any costs and expenses incurred in connection with the construction of any facilities. If requested by City, Company agrees to reasonably assist City in the preparation of any documentation necessary for the preparation and approval of any of the documents or actions required by City to perform any of its obligations under this Agreement.

2.5 City Services.

(A) During the Term, City shall have no obligation to extend to the ETJ Land, or any improvements or operations thereon, any utility, fire protection, or other City services, except for services that are being provided to and paid for by Company on the date hereof, or as City and Company shall otherwise agree in writing (any such agreement, and any amendment or successor agreement thereto, an "Extraterritorial Jurisdiction Services Agreement").

(B) Company agrees that during the Term, the provision of water service, wastewater service or any other services to Company may be provided by any special district or city other than City.

2.6 Compliance with City Rules and Regulations. City and Company agree that during the Term, with respect to the ETJ Land and any improvements or operations thereon, City shall not require compliance with its rules or regulations: (1) governing zoning and platting of the ETJ Land; provided, however, Company further agrees that it will in no way divide the ETJ Land without complying with applicable state law and City ordinances governing subdivision of land; (2) prescribing any building, electrical, plumbing, inspection, or similar or related code or codes; or (3) otherwise governing the operation of Company's business on the ETJ Land; provided, however, that an Extraterritorial Jurisdiction Services Agreement between City and Company may require Company's compliance with certain rules or regulations directly relating to City's provision of services to Company thereunder.

2.7 Annexation by Another Entity. If (i) any attempt to annex any of the ETJ Land is made by another municipality, (ii) any attempt is made by another municipality to include any of the ETJ Land within the extraterritorial jurisdiction of such municipality, or (iii) any incorporation of any new municipality should attempt to include any of the ETJ Land within the boundaries or extraterritorial jurisdiction of such municipality, City may seek a temporary and permanent injunction against such annexation, inclusion or incorporation, with the cooperation of Company, or may take other legal action necessary or advisable under the circumstances to prevent such annexation, inclusion or incorporation. Company agrees to provide City with prompt notice of any such attempted annexation.

2.8 Annexation Corridor. Except for any sale of the ETJ Land or any portion thereof which is contemplated by Section 5.1(B) of this Agreement, should Company sell a portion of the ETJ Land to any third party that is not an affiliate, subsidiary, related company, entity, partnership or joint

venture that controls, is controlled by, or is under common control with Company, and should such sold portion of the ETJ Land no longer be covered by this Agreement pursuant to the assignment provisions of Section 5.1 (“Relinquished Land”), Company shall, after City provides Company with sixty (60) days prior written notice of intent to initiate annexation proceedings with respect to such Relinquished Land, but only to the extent necessary to allow City to annex such Relinquished Land, permit City to annex a suitable strip of ETJ Land from City’s boundary to such Relinquished Land (an “Annexation Corridor”). Any Annexation Corridor shall (i) except to the extent otherwise required by clause (ii) of this sentence be the minimum amount legally necessary to annex the Relinquished Land, and (ii) be located and configured in a manner that does not result in the annexation of any portion of the facilities. The location and configuration of any Annexation Corridor shall be subject to the approval of Company, which approval shall not be unreasonably withheld. Company and any Annexation Corridor shall have no right to any City services as a result of such annexation, except as otherwise provided in any Extraterritorial Jurisdiction Services Agreement; nor shall City extend, by ordinance or otherwise, any rules or regulations to the Annexation Corridor, including, but not limited to, those (a) governing zoning, plats and subdivisions of land, (b) prescribing any building, electrical, plumbing, inspection, or similar or related code or codes, or (c) attempting to exercise in any manner whatsoever control over the conduct or operation of Company’s business thereon. Any such Annexation Corridor shall remain subject to this Agreement and shall not be subject to City taxes. In the event that the need for any Annexation Corridor no longer exists, City agrees to immediately cease any annexation proceedings related to such Annexation Corridor or, if such Annexation Corridor has been annexed by City, within sixty (60) days after such need no longer exists, take the steps necessary to complete disannexation proceedings required to remove the Annexation Corridor from City limits.

### **ARTICLE III**

#### **TERM**

The term of this Agreement (the “Term”) will begin on the Effective Date and shall continue until December 31, 2033, unless this Agreement is earlier terminated as provided elsewhere herein.

### **ARTICLE IV**

#### **REPRESENTATIONS**

4.1 Representations of City. City hereby represents to Company that as of the date hereof:

(A) City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) City has the power, authority and legal right under the laws of the State of Texas to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of City under, any agreement or instrument to which City is a party or by which City or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by City and constitutes a legal, valid and binding obligation of City, enforceable in accordance with its terms except to the extent that (i) such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

(D) The execution, delivery and performance of this Agreement by City do not require the consent or approval of any person that has not been obtained.

4.2 Representations of Company. Company hereby represents to City that as of the date hereof:

(A) Company is duly organized and existing and in good standing as a limited liability company under the laws of Delaware and shall remain in good standing in Delaware during the Term. Company is registered with the Texas Secretary of State and authorized to do business in Texas.

(B) Company has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof (i) have been duly authorized and will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation applicable to Company, and (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of Company under, any agreement or instrument to which Company is a party or by which Company or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by Company and constitutes a legal, valid and binding obligation of Company, enforceable in accordance with its terms except to the extent that (i) such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

(D) The execution, delivery and performance of this Agreement by Company do not require the consent or approval of any person that has not been obtained.

## ARTICLE V

### ADDITIONAL COMPANY REQUIREMENTS

5.1 Assignment. Except as provided in this Section 5.1, Company may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City, which approval will not be unreasonably withheld, delayed or conditioned.

(A) City agrees, that Company may assign in whole or in part its rights and obligations under this Agreement or with respect to all or any part of the ETJ Land or improvements thereon to any affiliate, subsidiary, related company, entity, partnership or joint venture of Company, as long as the assignee controls, is controlled by, or is under common control with Company; or to a



third party lender advancing funds for the acquisition of all or any part of the ETJ Land or improvements thereon or for the construction or operation of such improvements. City expressly consents to any assignment described in the preceding sentence, and agrees that no further consent of City to such an assignment will be required. Company agrees to provide City with written notice of any such assignment within 20 days of the effective date of such assignment.

(B) City agrees that Company may assign in whole or in part its rights and obligations under this Agreement or with respect to all or any part of the ETJ Land or improvements thereon to Cheniere and/or any affiliate of Cheniere that is also a party to the Cheniere Contract upon the consummation of the Cheniere Contract. City expressly consents to any assignment described in the preceding sentence and agrees that no further consent of City to such an assignment will be required. Company agrees to provide City with written notice of any such assignment within 20 days of the effective date of such assignment. City further acknowledges and agrees that upon an assignment under Section 5.1(B) of this Agreement, all terms, obligations, and requirements of Cheniere shall be governed by the Cheniere Agreement as modified from time to time by and between the City and Cheniere.

(C) In the event that a permitted assignee hereunder shall assume in writing the obligations of the assignor hereunder, the assignor shall cease to have any obligations or further obligations under this Agreement. City agrees that performance of any obligations of a party or a permitted assignee under this Agreement by any affiliate, subsidiary, related company, entity, partnership or joint venture of such party or permitted assignee shall be accepted as performance of such obligations for all purposes under this Agreement.

(D) In the event that the Cheniere Contract, as it may be amended from time to time, shall be terminated without the sale of the ETJ Land occurring thereunder, this Agreement shall terminate and the Parties shall enter into an industrial district agreement or other agreement in accordance with Section 2.2.

5.2 Prohibited Transfers. Company agrees that, without the express written approval of City, Company may not deed any part of the ETJ Land or improvements thereon to a tax-exempt entity or public entity; provided, however, that no such approval of City shall be required if any part of the ETJ Land or improvements thereon are (i) taken in condemnation proceedings or by any other exercise of any right or power of eminent domain, or (ii) conveyed or transferred under the threat of such condemnation proceedings or the exercise of any such right or power.

5.3 Payment In Lieu of Taxes.

(A) For purposes of this Agreement, the term "Base Payment" shall mean, with respect to any calendar tax year, an amount equal to the sum of (i) an amount equal to one hundred percent (100%) of the ad valorem taxes for the ETJ Land based upon its taxable value (as determined by the relevant appraisal district for such tax year) which would otherwise be payable to City by Company if the ETJ Land was situated within the city limits of City, plus (ii) sixty-two and one-half percent (62.5%) of the ad valorem taxes for that portion of the facilities (excluding personal property and inventory) located on the ETJ Land based upon its taxable value (as determined by the relevant appraisal district for such tax year) which would otherwise be payable to City by Company if such portion of the facilities was located within the city limits of City.

(B) For the tax year 2031, Company shall pay City an amount equal to thirty-three percent (33%) of the Base Payment with respect to such tax year. For the tax year 2032, Company shall pay City an amount equal to sixty-six percent (66%) of the Base Payment with respect to such tax year. For the tax year 2033, Company shall pay City an amount equal to one hundred percent (100%) of the Base Payment with respect to such tax year. Each such payment shall be due on January 31 of the year following the tax year with respect to which such payment is made. Except as otherwise provided in Section 5.3(C), Company shall not be obligated to pay City any portion of the Base Payment with respect to any other tax year during the Term.

(C) If upon the effective date of the expiration of the Term or earlier termination of this Agreement Company and City have not entered into an Industrial District Agreement or another type of agreement in accordance with Section 2.2, Company will, within 120 days following the expiration or earlier termination of this Agreement (except as otherwise provided in Section 5.3(C)(ii)), make an additional payment to City in an amount equal to the following, whichever is applicable:

(i) if the expiration or earlier termination of this Agreement occurs on or after January 1, 2029, an aggregate amount equal to the sum of one hundred percent (100%) of the Base Payment for each of the ten (10) calendar tax years immediately preceding the calendar tax year that includes the date of the expiration or earlier termination of this Agreement; or

(ii) if the expiration or earlier termination of this Agreement occurs before January 1, 2029, an aggregate amount equal to the sum of one hundred percent (100%) of the Base Payment for each calendar tax year from and including the calendar tax year 2019 through and including the calendar tax year that includes the date of the expiration or earlier termination of this Agreement (it being understood and agreed that if the taxable value of the ETJ Land and/or the portion of the facilities (excluding personal property and inventory) located on the ETJ Land for the calendar tax year that includes the date of the expiration or earlier termination of this Agreement has not been determined by the relevant appraisal district within 90 days following the expiration or earlier termination of this Agreement, the amount due under this Section 5.3(C)(ii) for the calendar tax year that includes the date of the expiration or earlier termination of this Agreement shall be due within 90 days after such taxable values of the ETJ Land and/or the portion of the facilities (excluding personal property and inventory) located on the ETJ Land have been determined by the relevant appraisal district).

(D) The obligations contained in this Section 5.3 shall survive the expiration or earlier termination of this Agreement until paid in full.

5.4 Use of Local Resources. [intentionally omitted]

**ARTICLE VI**  
**COVENANTS, WARRANTIES, OBLIGATIONS AND DUTIES**  
**OF COMPANY**

Company, as of the Effective Date, makes the following covenants and warranties to City

and agrees to timely and fully perform the following obligations and duties.

6.1 Untrue Statements. To the best of Company's knowledge, no written certificate or statement delivered by Company to City in connection herewith or with any transaction contemplated hereby contains any material untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading in any material respect except those which have been replaced by subsequent certificates or statements heretofore given to City in substitution.

6.2 Bankruptcy. Company is not the subject of any bankruptcy proceedings, and Company has not been informed that it is the subject of any potential involuntary bankruptcy proceedings.

6.3 Licenses and Authority. To the best of Company's knowledge, it has acquired or is in the process of acquiring and maintaining all necessary rights, licenses, permits and authority to carry on its business in City, City's extraterritorial jurisdiction, and San Patricio County, Texas, and will continue to use commercially reasonable efforts to maintain all such necessary rights, licenses, permits and authority.

6.4 Succession of Ownership. Except as provided in Section 5.1, no change of ownership or management of any part of the facilities nor a change of ownership or management of Company shall abate, waive, terminate or in any way relieve Company, or its successors and assigns, of their respective obligations herein.

6.5 Non-Discrimination. Company agrees that, as to all of the programs and activities arising out of this Agreement, it will not discriminate against any person on the basis of race, color, national or ethnic origin, sex, age, religion, or by reason of being disabled, or any other characteristic protected under applicable federal or state law.

6.6 Employment of Undocumented Workers. Company does not and agrees that it will not knowingly employ an undocumented worker (as defined by Texas Government Code, Section 2264.001(4)). Company's conviction of a violation under 8 U.S.C. 1324a shall constitute an Act of Default hereunder.

## **ARTICLE VII**

### **DEFAULT**

7.1 Company Default. Subject to Force Majeure and any consent given under Section 7.3 or variance granted under Section 8.12, if an Act of Default by Company is not cured and corrected within ninety (90) days after written notice from City to do so or by express waiver by City, City has the option to terminate this Agreement; provided, however, that if such Act of Default is caused by an event constituting Force Majeure, Company shall be allowed additional time reasonable under the circumstances to cure and correct such Act of Default. Company shall be liable to City for any actual proven damages sustained by City as a result of said Act of Default by Company under this Agreement, subject to the provisions of Section 8.13.

7.2 City Default. Should City fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such



failure shall be an Act of Default by City and City shall have ninety (90) days to cure and remove the Default after receipt of written notice to do so from Company. Upon the occurrence of an Act of Default by City (including, but not limited to, by annexing or attempting to annex any of the ETJ Land during the Term or wrongfully terminating this Agreement), Company shall, in addition to any other legal or other remedy that may be available to it, be entitled to specific performance and temporary and permanent injunctive and any other equitable relief from the date of such Act of Default for the balance of the Term (without proof of actual damage or inadequacy of legal remedy and without the necessity of posting a bond), including, but not limited to, enjoining City from enforcing any annexation ordinance adopted in violation of this Agreement, terminating this Agreement, or taking any other action in violation of this Agreement.

7.3 Consent and Excuse. In the event of unforeseeable third-party delays which are not Force Majeure and upon a reasonable showing by Company that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using commercially reasonable efforts, City may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld, delayed or conditioned.

7.4 Delay. Any delay for any amount of time by a party in providing notice of Default to a defaulting party hereunder, or in taking action in response to a Default, shall in no event be deemed or constitute a waiver of such Default by the non-defaulting party of any of its rights and remedies available in law or in equity.

7.5 Waiver. Any waiver granted by a party to a defaulting party of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by the defaulting party or of a subsequent Act of Default of the same act or event by the defaulting party.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

8.1 Attorneys' Fees. If any legal action or proceeding is commenced between City and Company under this Agreement, each party will be responsible for its own attorneys' fees and expenses.

8.2 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

8.3 Not an Industrial District Agreement. The Parties agree that this Agreement is not an Industrial District Agreement and should not be considered an Industrial District Agreement for any purpose.

8.4 Termination. At any time during the Term, Company may elect to terminate this Agreement as to all or any portion of the ETJ Land by providing City with written notice of such election. Following the giving of any such notice, this Agreement shall terminate and be of no further force or effect as to the portion or portions of the ETJ Land designated in such notice and all parties hereto shall be fully released of any further obligations under this Agreement relating to said designated portion or portions of the ETJ Land; provided, however, that if at the time of the giving of any such notice City is a Tier 2 Municipality with respect to such designated portion or

portions of the ETJ Land, Company and City shall enter into an Industrial District Agreement or another type of agreement in accordance with Section 2.2.

8.5 Compliance Review by City. City or City's designee may conduct a compliance review of Company's records relative to compliance with this Agreement to determine Company's compliance with the terms of this Agreement. This review may be done by City or its designee on an annual basis.

8.6 Access to Records. Company, during normal business hours and after being provided at least ten (10) working days prior written notice, shall allow City or its designee reasonable access to its records and books and all other relevant records relative to compliance with this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or the Office of the Texas Attorney General.

8.7 Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing, and may be given: (i) by depositing such Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (ii) by personal delivery of such Notice to the party, or an agent of the party; or (iii) by confirmed facsimile, provided that a copy of such Notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective two (2) days after such deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Company:

Corpus Christi Alumina, LLC  
Attn: Andrew Smith  
330 Madison Avenue  
New York, New York 10017  
Phone: (646) 949 - 2440  
Fax: \_\_\_\_\_

with a simultaneous copy (which shall not constitute notice) to:

Locke Lord, LLP  
200 Vesey Street  
20th Floor  
New York, NY 10281  
Phone: (212) 912 - 2816  
Fax: (646) 786 - 4116

Attention:

Andrew D. Otis  
Scott Husaker

City:

City of Corpus Christi  
Attn.: City Manager  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277  
Phone: (361) 826-3220  
Facsimile: (361) 826-3839

with a copy to:

City Attorney  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277  
Phone. (361) 826-3360  
Facsimile: (361) 826-3239

Any party may designate a different address at any time by giving Notice to the other party.

8.8 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.9 Article and Section Headings, Etc. The Article and Section headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of such Articles and Sections.

8.10 No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

8.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

8.12 Variances. City, in its sole discretion, may grant and approve variances to Company with respect to any of Company's requirements, obligations, performance criteria, duties, terms, conditions or warranties in this Agreement upon application in writing therefore by Company.

8.13 Damages not Included. Damages awarded in an adjudication brought against City or Company arising under the Agreement, including any amendments thereto, may not include: (i)

special or consequential damages; (ii) punitive or exemplary damages; or (iii) damages for unabsorbed home office overhead.

8.14 Interpretation. Each of the parties hereto has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against either party based on draftsmanship.

8.15 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer/employee relationship between the parties. Neither City nor its officers, elected officials, employees, or agents assume any responsibility of liability to any third party in connection with the development of the facilities or the design, construction or operation of any portion of the facilities.

## **ARTICLE IX**

### **GENERAL TERMS**

9.1 Entire Agreement. This Agreement (together with any Extraterritorial Jurisdiction Services Agreement) embodies the complete agreement of the parties hereto, superseding all oral or written, previous or contemporary, agreements between the parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

9.2 Required Recordation. City will file a copy of this Agreement in the real property records of each county in which any part of the land that is subject to the Agreement is located in compliance with Texas Local Government Code 212.172(c)(4).

9.3 Law. This Agreement is subject to all legal requirements of the State of Texas and U.S. Federal laws, and Company agrees that it will promptly comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of laws provisions of Texas law.

9.4 Confidential. City, its officers and employees, and its agents or contractors retained to perform economic development services for City, shall treat as confidential any information delivered by Company or its representatives to City and its representatives and shall not release such information to the public, unless required by law, court order, or ruling of the Texas Attorney General's Office. City shall immediately notify Company of requests or court orders to release such information.

EXECUTED effective as of the Effective Date.

**CORPUS CHRISTI ALUMINA, LLC**

By: *Andrew Smith*  
Name: Andrew Smith  
Title: Corporate Secretary

STATE OF NEW YORK §

§

COUNTY OF NEW YORK §

This instrument was acknowledged before me on the 20<sup>th</sup> day of may, 2019, by Andrew Smith, on behalf of Corpus Christi Alumina, LLC.

*Cynthia Medina*

Notary Public, State of New York

My commission expires: September 6, 2019

**CYNTHIA MEDINA**  
Notary Public, State of New York  
Registration #01ME6247830  
Qualified in Nassau County  
Commission Expires Sept. 6, 20 19

**CITY OF CORPUS CHRISTI, TEXAS**

By: \_\_\_\_\_  
Peter Zanoni  
City Manager

**ATTEST:**

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
Rebecca Huerta  
City Secretary

\_\_\_\_\_  
Assistant City Attorney  
For City Attorney

STATE OF TEXAS           §

§

COUNTY OF NUECES       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Peter Zanoni, City Manager, on behalf of City of Corpus Christi.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:\_\_\_\_\_

**EXHIBIT A****PROPERTY**

**METES AND BOUNDS DESCRIPTION  
OF  
410.487 ACRES OF LAND  
(NET 402.9886 ACRES)**

Being 410.487 acres of land (net 402.9886 acres), more or less, out of G. Valdez Survey, A-269, T.T. Williamson Surveys, A-288, A-290, A-291, San Patricio County, Texas and Corpus Christi Bay Submerged Tracts 1 and 2, Nueces County, Texas, and being out of a 1610.0 acre tract, a 4.264 acre tract and a 31.82 acre tract recorded in Clerk File No. 490819, Official Public Records of San Patricio County, Texas, and this 410.487 acres of land made up of two tracts, each being more particularly described by metes and bounds as follows:

**NORTH 20.80 ACRE TRACT**

Beginning at the northeast corner of this tract, said corner also being the northwest corner of a 203.20 acre tract recorded in C.F. #649462, O.P.R.S.P.C.T. and being on the south right-of-way line of Highway 361, said corner having State Plane Grid Coordinate of N 17,219,865.62', E 1,384,905.46', NAD'83, Texas South Zone in U.S. feet;

Thence with the east boundaries of this tract, the same being the west boundaries of said 203.20 acre tract as follows:

S 29-55-20 W, 208.19 feet;

S 00-28-40 E, 2107.32 feet, to the southeast corner of this tract;

Thence S 89-37-22 W with the south boundary of this tract, 366.11 feet, to the southwest corner of this tract, said corner being on the east boundary of a 827.38 acre tract recorded in C.F. #649462, O.P.R.S.P.C.T.;

Thence N 00-22-38 W with the west boundary of this tract, the same being the east boundary of said 827.38 acre tract, 2,560.76 feet, to the northwest corner of this tract, said corner also being the northeast corner of said 827.38 acre tract and said corner lying on the south right-of-way line of said Highway 361;

Thence S 60-01-57 E with the north boundary of this tract, the same being the south right-of-way line of said highway, 541.64 feet, to the point of beginning and containing 20.80 acres of land, more or less.

**SOUTH 389.687 ACRE TRACT**

Beginning at the northeast corner of this tract, said corner being on the west boundary of the aforementioned 203.20 acre tract and having State Plane Grid Coordinate of N 17,217,357.76', E

1,384,820.83', NAD'83, Texas South Zone in U.S. feet and said 203.20 acre tract being out of a 341.3 acre tract recorded in C.F. #490819, O.P.R.S.P.C.T.;

Thence S 00-28-40, at 906.66 pass the southwest corner of said 203.20 acre tract, in all 1,444.19 feet to an interior corner of this tract and said 341.3 acre tract;

Thence with the east boundaries of this tract, the same being the west boundaries of said 341.3 acre tract, as follows:

S 89-25-19 W, 160.89 feet,  
S 01-02-07 E, 322.96 feet;  
S 23-20-51 E, 93.03 feet;  
S 33-49-25 E, 89.86 feet;  
N 89-52-53 E, 656.55 feet;  
S 00-15-49 E, 242.54 feet;  
S 00-35-24 W, 251.78 feet;  
S 01-22-09 E, 611.35 feet;  
S 56-10-24 E, 89.56 feet;  
S 88-03-03 E, 141.09 feet;  
S 61-04-59 E, 293.53 feet, to a southeast corner of said 341.3 acre tract, said corner being on the east boundary of said 1610.0 acre tract and the west boundary of a Occidental Chemical Corporation 310.70 acre tract recorded in C.F. #605165, O.P.R.S.P.C.T.

Thence S 00-17-00 E with the east boundary of this tract and said 1610.0 acre tract, the same being the west boundary of said 310.70 acre tract, 4139.64 feet, to the southeast corner of said 1610.0 acre tract and the northeast corner of the aforementioned 4.264 acre tract;

Thence S 25-30-31 W, 437.10 feet, to the southeast corner of this tract and said 4.264 acre tract, said corner being on the north bulkhead line of the La Quinta Channel;

Thence N 77-31-01 W with the south boundary of this tract, the south boundaries of said 4.264 acre tract and 31.82 acre tract and said north bulkhead line, 2151.96 feet, to the southwest corner of this tract, said corner also being the southeast corner of a 212.20 acre tract recorded in C.F. # 531139, O.P.R.S.P.C.T.;

N 01-10-33 W with the west boundary of this tract and said 31.82 acre tract, the same being the east boundary of said 212.20 acre tract, 767.49 feet, to a corner;

Thence N 17-32-45 W with the west boundary of this tract and said 1610.0 acre, the same being the east boundary of said 212.20 acre tract, at 296.87 feet pass a northeast corner of said 212.20 acre tract, the same being the southeast corner of a 125.20 acre tract recorded in C.F. #613799, O.P.R.S.P.C.T., in all 1559.00 feet, to a corner of this tract;

Thence entering said 1610.00 acre tract and with the west boundaries of this tract as follows:

N 00-34-25 W, 1,009.16 feet, to the beginning of a curve to the right;



Thence with said curve to the right have a radial bearing of N 89-25-33 E, 382.66 feet, a central angle of 39-16-13, a length of 262.27 feet;

North, 369.46 feet;

West, 161.75 feet;

North 194.05 feet;

N 45-00-00 E, 56.65 feet,

N 00-20-25 W 1259.86 feet;

N 03-20-06 E, 232.21 feet;

N 19-42-49 W, 93.23 feet;

N 63-56-35 E, 287.81 feet;

N 18-21-49 W, 665.67 feet;

N 27-51-44 E, 160.87 feet;

N 16-38-15 W, 219.52 feet;

N 29-40-51 E, 103.17 feet, to the northwest corner of this tract;

Thence with the north boundary of this tract N 72-06-55 E, 1362.22 feet, to a corner of this tract;

Thence N 89-37-22 E, 366.49 feet, to the point of beginning and containing 389.687 acres of land, more or less, save and except from this tract a 3.1067 acre Nashtec tract recorded in C.F. #539596, O.P.R.S.P.C.T. lying within an 4.3917 acre Nashtec tract, **leaving a net acreage of 382.1886 acres**, and said 4.3917 being more particularly described by metes and bounds below:

Beginning at the northeast corner of this tract, said corner bearing S 26-03-09 W, 453.94 feet, from the southeast corner of the aforementioned 341.3 acre tract, said southeast corner being at the east boundary of said 1610.0 acre tract, the same being the west boundary of said Occidental Chemical Corporation 310.70 acre tract;

Thence with the outer limits of this 4.3917 acre tract as follows:

S 00-27-45 E, 1,399.65 feet;

S 89-18-17 W, 118.98 feet;

S 00-05-37 E, 222.82 feet;

N 89-22-02 E, 120.35 feet;

S 00-28-16 E, 116.61 feet, to the southeast corner of this tract;

N 89-14-09 W, 269.30 feet, to the southwest corner of this tract;

N 00-36-19 W, 339.02 feet;

N 89-35-34 E, 18.29 feet;

N 00-31-19 W, 545.70 feet;

N 89-25-25 E, 21.87 feet;

N 00-27-10 W, 118.30 feet;

S 89-51-28 W, 36.64 feet;

N 00-14-01 W, 156.16 feet;

N 89-26-59 E, 172.70 feet;

N 00-41-31 W 573.50 feet, to the northwest corner of this tract;

N 89-22-57 E, 96.12 feet, to the point of beginning and containing 4.3917 acres of land, more or less.

Notes:

1. Bearings are State Plane Grid.
2. Drawing accompanies this metes and bounds description.
3. Limits of tract based on surveys by Weisser Eng. And G& W Engineers and Cheniere provided information.
4. Description of 4.3917 acre tract based on survey conducted by Maverick Engineering, Inc. dated December 2, 2016.