

**DEVELOPER AGREEMENT
FOR PARK ROAD 22 BRIDGE AND VILLAGE CANAL**

This DEVELOPER AGREEMENT ("Agreement") is entered into between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, acting by and through its City Manager, or designee, and Padre Island Holdings, LLC, a Texas limited liability company ("PIH"), or PIH's successors or assigns, and Diamond Beach Holdings, LLC ("DBH") or DBH's successors or assigns (collectively with PIH, "Developers").

WHEREAS, the City desires to move forward with the construction of a bridge project on Park Road 22 as depicted on **Exhibit "1"** attached hereto (the "Bridge Project");

WHEREAS, the City has previously issued bids associated with the construction of the Bridge Project;

WHEREAS, the Developers desire to move forward with the construction of a canal project located to the West / Southwest of the Bridge Project as depicted on **Exhibit "2"** attached hereto (the "Village Canal");

WHEREAS, the City and the Developers desire to coordinate the construction of the Bridge Project with the construction of the Village Canal (the "Projects");

WHEREAS, the parties desire to enter into this Agreement to lay out each party's responsibilities related to the Projects.

NOW, THEREFORE, in order to provide a coordinated construction and improvement project, the parties agree as follows:

A. CONSTRUCTION OF THE PROJECTS

1. Roles and Responsibilities of the City

- 1.1 City shall prepare a new bid package for the construction of the Bridge Project within (30) days (the "Re-Bid") of the Effective Date of this Agreement and provide it to Developers for review;
- 1.2 The City shall issue the Re-Bid within 30 days following receipt of an executed contract between Developers and a construction contractor for the construction of the Village Canal. The Re-Bid will require that all bids remain open for a minimum of 240 days;
- 1.3 Following the opening of the Re-Bid, City will notify Developers of its intent to recommend award of a construction contract to City Council. The parties understand that if the lowest bid in the Re-Bid exceeds the amount of \$11,696,319.50, additional funding may not be available.
- 1.4 Contemporaneously with the notice referenced in Section 1.3 above, the City shall provide to Developers a certificate of funds for the amount of \$11,696,319.50 in currently accessible funds that have been duly appropriated by the City for the Bridge Project. If additional funding is required and identified by the City, City shall

provide to Developers, as soon as practicable, a certificate of funds for the additional amount. If the funds are not located, the City will provide notice to Developers within 3 days after determining the lack of funding, this Agreement shall terminate upon City's election, and Developers will have no obligation to the City to complete the Village Canal;

- 1.5 As soon as practicable following notice of the Village Canal's substantial completion in accordance with Section 2.5 below, City will award a contract for the construction of the Bridge Project at a regular meeting and will provide written notice to Developers of the date and time of the meeting and a copy of the documents being presented to City Council at the meeting. The Developers acknowledge that items typically appear on the City Council agenda twice before final approval. For purposes of this Section 1.5, substantial completion of the Village Canal shall mean the date when the dredging and bulkheading is completed for the Village Project;
- 1.6 As soon as practicable following the City's award of the contract for the construction of the Bridge Project, the City shall issue a notice to proceed (the "Notice to Proceed") to the contractor awarded the Re-Bid, so long as the contractor timely provides an executed contract and all of the documents required to finalize the contract, and will provide written notice of the Notice to Proceed to Developers within 3 days of its issuance;
- 1.7 After receiving notice of the Village Canal's substantial completion in accordance with Section 2.5 below, and after the City's award of a construction contract under the Re-Bid, the City shall expend the amount agreed upon in the Re-Bid in the construction of the Park Road 22 ("PR 22") Bridge or complete construction thereof at a lower cost (*Bridge Project location is shown in Exhibit "1"*). Nothing in this Agreement shall be considered a prohibition on terminating a construction contract with any contractor that has failed to adequately perform;
- 1.8 Within 10 days of the substantial completion of the Bridge Project, the City shall issue notice of such substantial completion to Developers. For purposes of this Section 1.8, substantial completion shall mean issuance of documentation by the City acknowledging that the Bridge Project has been substantially completed in accordance with the terms of the construction contract.

2. Roles and Responsibilities of the Developers

- 2.1 Developers shall, within 30 days after the City provides notice of the prepared bid package for the Re-Bid, provide an executed contract between Developers and a construction contractor for the construction of the Village Canal.
- 2.2 Following receipt of the certificate referenced in Section 1.4 above, Developers shall, within a commercially reasonable time, issue a notice to proceed to the contractor to commence the construction of the Village Canal in accordance with the plans provided in the United States Army Corps of Engineers permit issued regarding the canal project. Those plans that are related to the Village Canal are attached as Exhibit "2";

- 2.3 Developers shall substantially complete the Village Canal within 90 days following the receipt of the certificate referenced in Section 1.4 above, subject to Force Majeure as defined in Section C below. In any event, regardless of Force Majeure, Developers must substantially complete the Village Canal within 180 days following the receipt of the certificate referenced in Section 1.4 above. If the Village Canal is not substantially completed within the 180-day period, this Agreement will be considered terminated for all purposes. For purposes of this Section 2.3, substantial completion of the Village Canal shall mean the date when the dredging and bulkheading is completed for the Village Canal;
- 2.4 Upon completion of the Village Canal, subject to Force Majeure as defined in Section C below, the Developers shall connect the Village Canal to the existing canal owned by the Padre Isles Property Owners Association ("PIPOA"). Developers shall coordinate with the PIPOA on the connection to the existing canal system;
- 2.5 Upon reaching substantial completion of the Village Canal, including the connection of the Village Canal to the PIPOA canal, Developers shall notify City. For purposes of this Section 2.5, substantial completion of the Village Canal shall mean the date when the dredging and bulkheading is completed for the Village Canal; and
- 2.6 As soon as practicable following the City's issuance of the notice referenced in Section 1.8 above, Developers shall connect the canal within the PR 22 right of way to the Village Canal.

3. Sequencing of Obligations

So the Parties can further clarify the sequencing outlined in this Section A, the Parties' obligations shall proceed in order as follows:

1. City shall prepare the Re-Bid (Section 1.1)
2. Developers shall provide to the City the executed contract for construction of the Village Canal (Section 2.1)
3. City shall issue the Re-Bid (Section 1.2)
4. City shall determine its funding capabilities based on bids submitted in response to Re-Bid (Section 1.3), and City shall certify funding for the Re-Bid to Developers (Section 1.4)
5. Developers shall issue a notice to proceed to a contractor to commence construction of the Village Canal (Section 2.2)
6. Developers shall substantially complete the Village Canal (Section 2.3)
7. Developers shall provide to City notice of the Village Canal's substantial completion (Section 2.5)
8. Developers shall connect the Village Canal to the existing canal owned by PIPOA (Section 2.4)
9. City shall award construction contract for the Bridge Project (Section 1.5) and issue the Notice to Proceed (Section 1.6)
10. City will fund the construction contract awarded under the Re-Bid (Section 1.7)
11. City shall notify Developers of the Bridge Project's substantial completion (Section 1.8)

12. Developers shall connect the canal within the PR 22 right of way to the Village Canal (Section 2.6)

B. DEFAULT

1. If either the City or the Developers fail to comply with its duties or obligations under this Agreement, such an event shall constitute default.
2. In the event of a default by either party, the non-defaulting party may pursue its remedies for breach of this Agreement after written notice to the defaulting party and fifteen days opportunity to cure such default.

C. FORCE MAJEURE

In the event any party to this Agreement is rendered unable, wholly or in part, by force majeure including an act of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of government of the United States or the State of Texas or any civil or military authority (other than a party to this Agreement); insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; droughts; arrests; civil disturbances; explosions; or other inability similar to those enumerated; to carry out its obligations under this Agreement, it is agreed that party shall give written notice of such act to each party as soon as possible after the occurrence of the cause relied on and shall, thereafter, be relieved of its obligations, so far as they are affected by such act, during the continuance of any inability so caused, but for no longer.

D. INDEMNIFICATION

DEVELOPERS COVENANT TO FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, EMPLOYEES, AND AGENTS, AND THE TEXAS DEPARTMENT OF TRANSPORTATION, ITS OFFICERS, EMPLOYEES, AND AGENTS ("INDEMNITEES") AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ASSERTED AGAINST OR RECOVERED FROM INDEMNITEES ON ACCOUNT OF INJURY OR DAMAGE TO PERSON INCLUDING, WITHOUT LIMITATION ON THE FOREGOING, WORKERS' COMPENSATION AND DEATH CLAIMS, OR PROPERTY LOSS OR DAMAGE OF ANY OTHER KIND WHATSOEVER, TO THE EXTENT ANY INJURY, DAMAGE, OR LOSS MAY BE INCIDENT TO, ARISE OUT OF, BE CAUSED BY, OR BE IN ANY WAY CONNECTED WITH, EITHER PROXIMATELY OR REMOTELY, WHOLLY OR IN PART, THE CONSTRUCTION, INSTALLATION, EXISTENCE, OPERATION, USE, MAINTENANCE, REPAIR, RESTORATION, OR REMOVAL OF THE PUBLIC IMPROVEMENTS ASSOCIATED WITH THE CONSTRUCTION OF THE VILLAGE CANAL, INCLUDING THE INJURY, LOSS, OR DAMAGE CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES OR ANY OF THEM, REGARDLESS OF WHETHER THE INJURY, DAMAGE, LOSS, VIOLATION, EXERCISE OF RIGHTS, ACT, OR OMISSION IS CAUSED OR IS CLAIMED TO BE CAUSED BY THE CONTRIBUTING OR CONCURRENT NEGLIGENCE OF INDEMNITEES, OR ANY OF THEM, BUT NOT IF CAUSED BY THE SOLE NEGLIGENCE OF INDEMNITEES, OR ANY OF THEM, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY, AND INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS FEES WHICH ARISE, OR ARE CLAIMED TO ARISE, OUT OF OR IN CONNECTION WITH THE ASSERTED OR RECOVERED INCIDENT. THIS INDEMNITY SURVIVES TERMINATION OF THIS AGREEMENT.

E. ASSIGNMENT

Developers may not assign their interests in the Agreement without prior written approval of the City. Such approval shall not be unreasonably withheld. City may assign its interests in the Agreement upon written notice to Developers: (a) to any other person or governmental entity that succeeds to the governmental powers and authority of the City or (b) to the State of Texas or TxDOT.

F. NOTICES

1. Any notice or other communication required or permitted to be given under this Agreement must be given to the other party in writing at the following address:

If to the City:

City of Corpus Christi
Attn: Assistant City Manager
1201 Leopard Street, 5th Floor
Corpus Christi, Texas 78401
KeithSe@cctexas.com

If to PIH:

Padre Island Holdings, LLC
1613 S. Capital of Texas Highway
Suite 201
Austin, Texas 78746
padreisland@axysgroup.com

with a copy to:

City of Corpus Christi
Attn: City Attorney
1201 Leopard Street, 5th Floor
Corpus Christi, Texas 78401
MilesR@cctexas.com

with a copy to:

Stephen Robinson
Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
srobinson@abhr.com

If to DPH:

Diamond Beach Holdings LLC
5615 Kirby Drive
Houston, Texas 77005
jenniferhoff@ibc.com

2. If a third party succeeds to any of the rights or obligations of any of the City or Developers as outlined under this Agreement, the successor will provide notice of the change, in accordance with the provisions of this section, within five business days of the change. Following this notice, the successor will be entitled to receive any notice or other communication required or permitted to be given under this Agreement.
3. Notice must be made by United States Postal Service, First Class mail, certified, return receipt requested, postage prepaid; by a commercial delivery service that provides proof of delivery, delivery prepaid; or by personal delivery. A courtesy copy of the notice may be sent via email.
4. The City, PIH, or DPH may change the address for notices by giving notice of the change, in accordance with the provisions of this section, within five business days of the change.

G. LEGAL PROCEEDINGS

1. Venue for legal proceedings lies exclusively in Nueces County, Texas. Cases must be filed and tried in and cannot be removed from Nueces County, Texas.
2. Developers and City agree that they have knowingly waived and do hereby waive the right to trial by jury and have instead agreed, in the event of any litigation arising out of or connected to this Agreement, to proceed with a trial before the court, unless all parties subsequently agree otherwise in writing.

H. EFFECTIVE DATE AND TERM OF AGREEMENT


This Agreement becomes effective, is binding upon, and inures to the benefit of the City and the Developers from and after the date of the last signatory to this Agreement (the "Effective Date") and shall continue until the earlier of December 31, 2022 and the completion of the Bridge Project unless terminated earlier in accordance with the terms of this Agreement.

I. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

(EXECUTION PAGES FOLLOW)


CITY OF CORPUS CHRISTI


Samuel Keith Selman
Interim City Manager

Date


5/17/19

APPROVED AS TO FORM:


Assistant City Attorney
for the City Attorney

5/3/19

(Date)

Ord. 031747 AUTHORIZED
BY COUNCIL 04/23/19

SECRETARY KB

ATTEST:


REBECCA HUERTA Paul Pierce
Asst. CITY SECRETARY

DEVELOPERS:

Padre Island Holdings, LLC

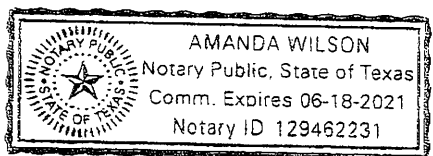
By: [Signature]
Name: Robert Kish
Title: manager

APRIL 12, 2019
Date

Effective Date: April 12, 2019

STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on April 12, 2019, by Robert Kish, of Padre Island Holdings, LLC, a Texas limited liability company, on behalf of said company.



[Signature]
Notary Public's Signature

Diamond Beach Holdings, LLC

By: _____
Name: _____
Title: _____

Date

Effective Date: _____

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2019, by _____, of Padre Island Holdings, LLC, a Texas limited liability company, on behalf of said company.

Notary Public's Signature

DEVELOPERS:

Padre Island Holdings, LLC

By: _____
Name: _____
Title: _____

_____ Date

Effective Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2019, by _____, of Padre Island Holdings, LLC, a Texas limited liability company, on behalf of said company.

Notary Public's Signature

Diamond Beach Holdings, LLC

By: [Signature]
Name: JENNIFER L. HEC
Title: VP

4-11-2019

Date

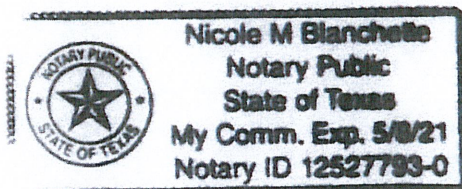
Effective Date: 4/11/19

STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on April 11, 2019, by Jennifer L. Hoff VP, of Padre Island Holdings, LLC, a Texas limited liability company, on behalf of said company.

[Signature]

Notary Public's Signature

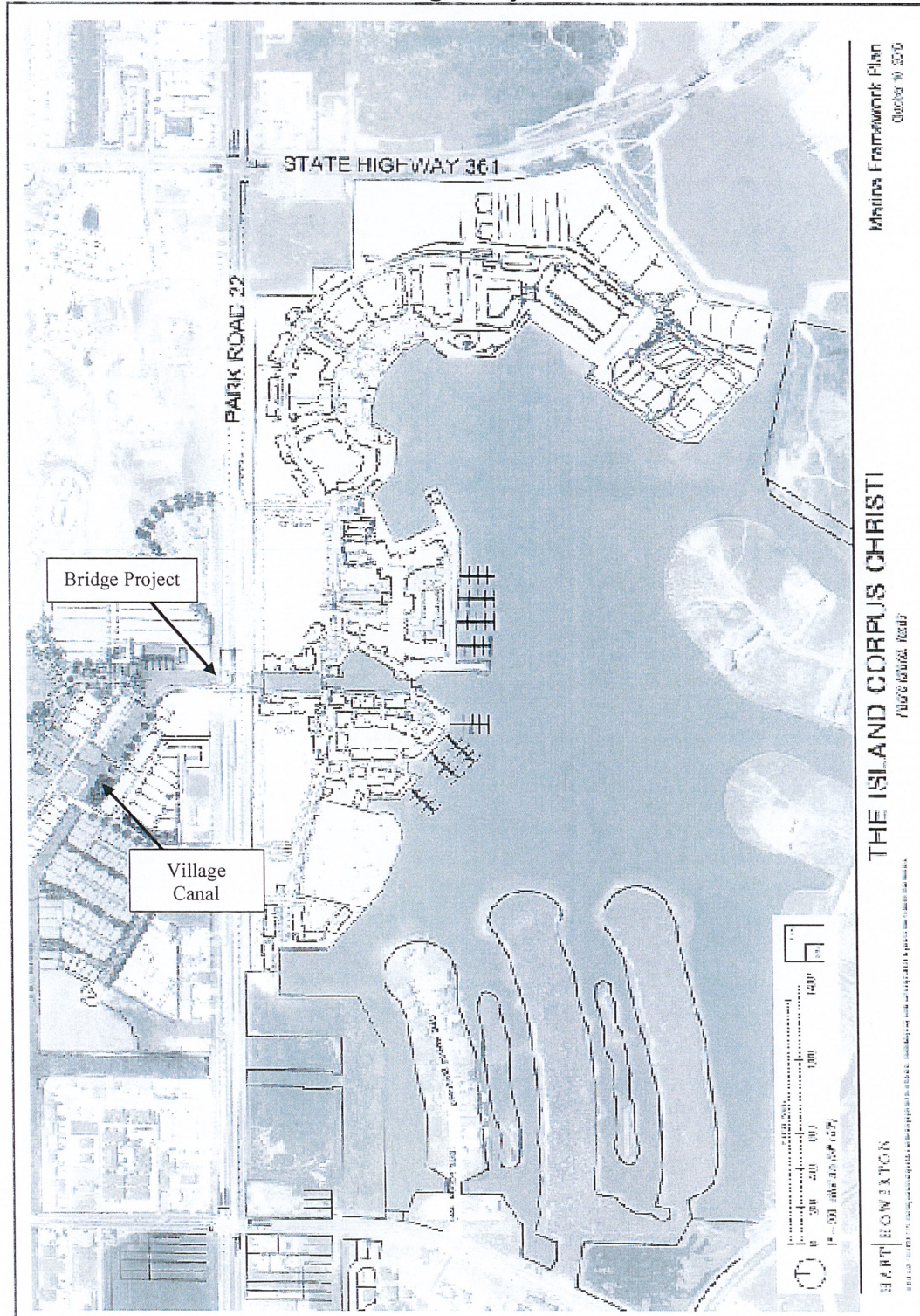


Developer Agreement - 22 Bridge/Village Canal

Exhibits

1. Bridge Project
2. Village Canal Project

EXHIBIT 1 Bridge Project



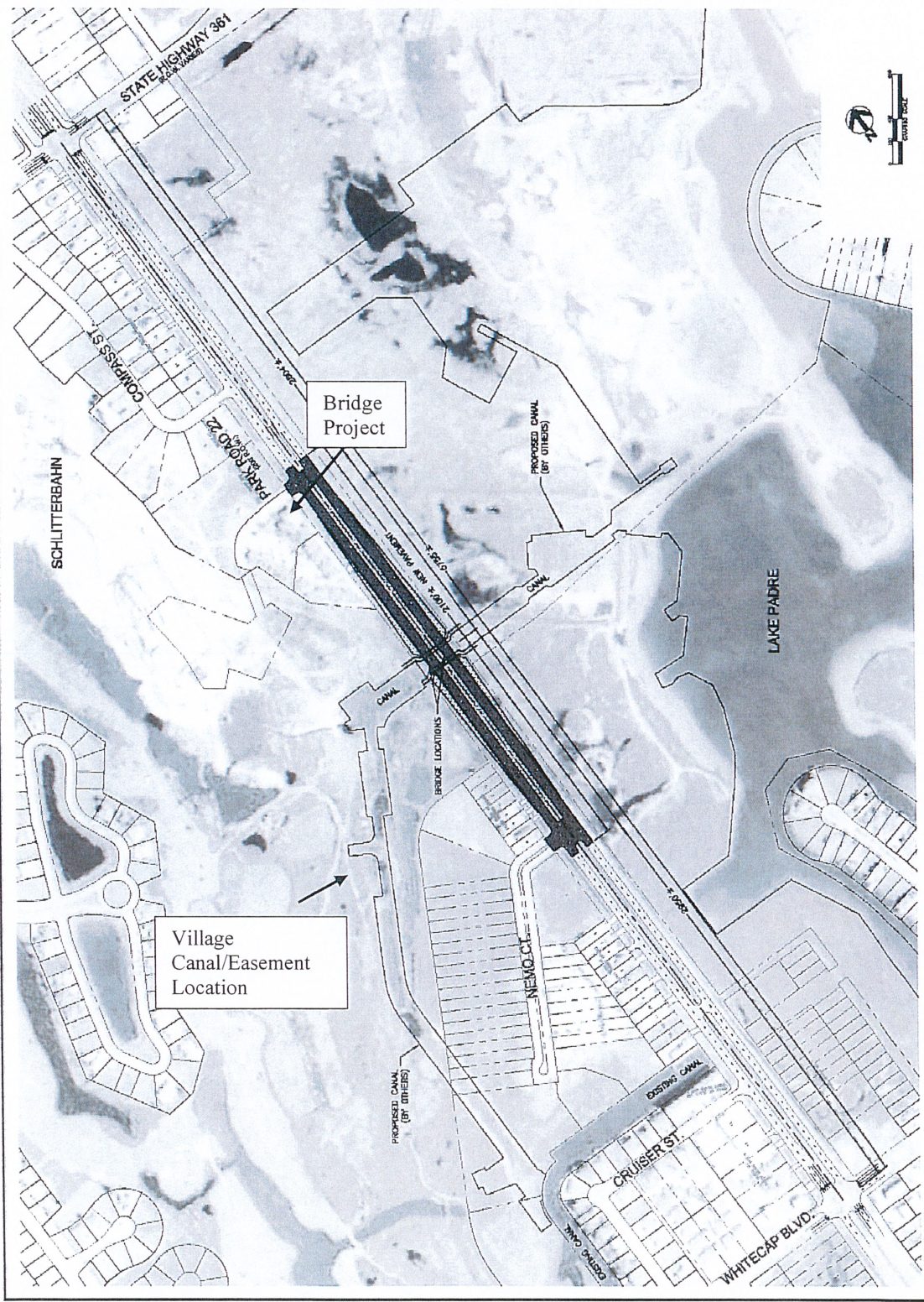
Marina Framework Plan
October 10, 2010

THE ISLAND CORPUS CHRISTI
(10070 03060 0000)

SEAPLANNING

SEAPLANNING, INC. 17500 Highway 100, Suite 100, Houston, Texas 77058-1100. Tel: 281.460.1100. Fax: 281.460.1101. www.seaplanning.com

URBAN ENGINEERING 1711 E. 10th St., Suite 100 Corpus Christi, TX 78401 TEL: 361.845.4343 FAX: 361.845.4344		City of Corpus Christi Texas Capitol Programs		OVERALL PROJECT VIEW PARK ROAD 22 BRIDGE (BOND 2004)		CITY PROJECT / DATE 2004-01-15 RECORD DRAWING NO. 1275	
REVISION NO.	DATE	BY	DESCRIPTION	REVISION NO.	DATE	BY	DESCRIPTION



Scale: 1" = 100' (approximate)
 Date: 1/15/04
 Project: Park Road 22 Bridge
 Drawing: Overall Project View
 Author: [Name]
 Checker: [Name]
 Engineer: [Name]

EXHIBIT 2 **Canal Project**

Gulf Shores Joint Venture

2 of 15

PERMITTED PLANS

SWG-2000-02743

