

CAUSE NO. \_\_\_\_\_

CITY OF PORT ARANSAS, TEXAS  
Plaintiff,

v.

THE PORT OF CORPUS CHRISTI  
AUTHORITY OF NUECES COUNTY,  
TEXAS,  
Defendants

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IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

NUECES COUNTY, TEXAS

**ORIGINAL PETITION FOR DECLARATORY RELIEF**  
**BY THE CITY OF PORT ARANSAS, TEXAS**

**TO THE HONORABLE DISTRICT JUDGE OF SAID COURT:**

City of Port Aransas, Texas (herein sometimes referred to as “*Port Aransas*,” or “*City*” or “*Plaintiff*”) files this Original Petition for Declaratory Judgment against the Port of Corpus Christi Authority of Nueces County, Texas (herein sometimes referred to as “*POCC*” or the “*Port*” or “*Defendant*”), and would show as follows:

**I.**  
**INTRODUCTION**

1. This lawsuit is about exposing and eliminating extortion. The POCC has been secretly working to construct on Harbor Island its multi-billion-dollar maritime crude trans-loading facility for massive, “Very Large Crude Carriers,” (“*VLCCs*”) which will convert the city limits of Port Aransas into an unrecognizable industrial jungle of VLCC’s, storage tanks and marine oil and gas export processing facilities. The POCC has not and does not want to act within the inspection and permitting ordinances of Port Aransas to accomplish this, even though the POCC has told the City and the United States Army Corps of Engineers (the “*Corps*”) it would be subject to the City’s inspection and permitting ordinances.

2. Behind the POCC’s public disinformation campaign of stating it wishes only to engage in “reasonable dialog,” the POCC is instead engaged in a pitched battle in which it has jettisoned all sense of ethics, saying and doing anything and everything to prevail. Lest it be thought this is an exaggeration, consider what the POCC’s legal counsel told the Texas Attorney General just this year:

▪ There is currently a race in Texas for the development of public and private crude oil export terminals that can connect the growing crude oil production in Texas with the global markets for crude oil. The competition is fierce, swift, and well capitalized. The object is simple – to develop a safe, efficient, onshore terminal capable of servicing fully-laden VLCCs, but implementing the plan is complex with many variables. It would be an incredible disadvantage to PCCA if it were required to disclose to its public and private competitors its plans for capturing and servicing a significant share of this crude oil market.

3. The latest step in this “fierce, swift and well capitalized” warfare is the POCC’s purported position that the City has forfeited its public-access Marina.<sup>1</sup> The Marina is used and enjoyed by the citizens and businesses of the City, as well as private and public maritime vessels, both domestic and foreign. Not only is the Marina important to the City, it committed to a bond offering raising over \$6,205,000 to construct improvements and perform restorations to the Marina. Yet the POCC has stated that if the City will not essentially leave the POCC to develop its industrial jungle on Harbor Island “in any way” it elects and free of the City’s historic inspection and permitting ordinances and development codes, then it will try to take the Marina back, thus holding the Marina hostage as a bargaining chip to force the City’s acquiescence to the POCC’s will.

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<sup>1</sup> The City Marina includes a number of maritime functions including the berthing, servicing, and supplying of private and commercial vessels, and the maintenance of the United States Army Corps of Engineers channel access to the Corpus Christi Ship Channel.

4. Here is the brief background. When the City signed a long-term lease of the property on which the Marina sits in April 2018, it was unaware of any secret plans that the POCC had for Harbor Island and generally believed that any development plans would be subject to open disclosures and discussions. The Marina Lease in general referenced the fact that (a) the POCC would abide by the City's inspection and permitting ordinances but (b) if the City *changed* its inspection and permitting ordinances (or certain referenced Regulations) the City had adopted in February 2014, then the Marina Lease would automatically terminate. This posed no problem as the City had no intention of changing its inspection and permitting ordinances.

5. Fast forwarding in time to 2019, as the POCC's plans for its VLCC industrial jungle on Harbor Island began to leak out into the newspapers, the City repeatedly asked the POCC for information about the Harbor Island facility, and each time was rebuffed. After repeated information requests were ignored, the POCC finally told the City that the POCC believed it was not bound to any of the City's inspection and permitting ordinances and requirements and was free to do as it pleased on Harbor Island. Thus, on Thursday, August 29, 2019, the City issued a 60-day moratorium on building permits, in part to allow it to gather information, including that which had been withheld and undisclosed, which was particularly important since the City would have to respond to any fire or emergency occurrence on the mysterious Harbor Island.

6. Two business days later, the POCC filed a suit (since dismissed) claiming to be exempt from all City governance because the POCC alleged it was conducting some kind of "oil and gas operation" on Harbor Island. The very next day, the POCC sent the City a letter preposterously stating that the temporary 60-day permit moratorium accomplished by the Temporary Moratorium Ordinance was the same thing as an amendment to Section 25-121 of the Port Aransas Code of Ordinances, and the Marina Lease was therefore terminated. It is nonsense,

of course, but the POCC wanted to “up the ante” with the threat of loss of the City’s Marina, which has been described as “the heart of much of [the City’s] economy,” which it is.

7. The Marina is vital to the City’s revenues and its citizens’ ability to access navigable waters of the coastal United States for mooring, servicing, and other maritime functions, as well as public, private or commercial vessels. Its loss, or even the disruption of services provided by the City to its licensees including public, private and commercial users of the Marina and its services, confronts the City with potential severe and irreparable damage including damage to the City’s lease rights, and its substantial and material investment in the City’s Marina. The POCC knows this. In fact, it is the POCC’s plan to force the City to capitulate to POCC hegemony by putting the City’s Marina at risk, thus raising the stakes if the City will not submit to the POCC’s demands for its own exclusive control to the exclusion of the City.

8. But the City will not be intimidated or bullied especially by this form of economic extortion. It certainly won’t be extorted by ludicrous threats based on false claims that the City’s inspection and permitting requirements have been amended, when such is sheer fabrication. By this lawsuit, the City turns to the Courts for protection of its constitutional, contractual and property rights and its rights to protect its citizens.

## **II. DISCOVERY CONTROL PLAN**

9. The City requests this case be conducted under a Level 3 plan under TRCP 190.4.

10. The City does not seek damages at this time, other than the recovery of attorney’s fees, associated costs and expenses pursuant to the Texas Declaratory Judgments Act, Tex. Civ. Prac. & Rem Code, Sections 37.001, *et. seq.* and the breach of a written contract.

### **III. JURISDICTION**

This Court has subject matter jurisdiction over this matter under Tex. Gov't Code Ann. §§ 25.0003 and 25.1802; Tex. Prop. Code Ann. Title 8, Sec. 93.001, et seq. and the Tex. Civ. Prac. & Rem. Code Ann. §§ 37.006, 37.009, as referenced above.

### **IV. VENUE**

11. Venue is proper in Nueces County Texas pursuant to pursuant to Tex. Civ. Prac. & Rem. §§15.01, 37.006, 37.009, 38.001, inasmuch as this suit involves the determination of the rights of the City and the POCC in a written contract, including property rights and rights of possession, to real property located in Nueces County, Texas.

12. Both the City and the POCC maintain their principal place of business in Nueces County, Texas and both the City and the POCC are involved in the maritime activities described herein below.

### **V. PARTIES**

13. The City is a Texas political subdivision located in Nueces County. It is domiciled in Nueces County, and its principal office is located in Nueces County.

14. The Port of Corpus Christi Authority of Nueces County, Texas claims to be a political subdivision of the State of Texas. The POCC may be served through its corporate representatives or chief executive officer, Sean Strawbridge, whose principal place of business is 222 Power Street, Corpus Christi, Texas 78401.

## **VI. DAMAGES**

15. The City is not seeking damages. Instead, the City is seeking a declaratory judgment and recovery of attorneys' fees and costs under the UDJA.

## **VII. FACTUAL BACKGROUND**

### **A. The Maritime Nature of the Parties to This Controversy**

16. The POCC was established in 1922 as the Nueces County Navigation District and was renamed in 1981 by the Texas Legislature as the Port of Corpus Christi Authority of Nueces County, Texas. It claims to be a political subdivision of the State of Texas. It claims to have been created under article III, §52 of the Texas Constitution, and later converted to a navigation district operating under article XVI, § 59 of the Texas Constitution. The POCC claims as its boundaries all the territory in Nueces and San Patricio Counties, Texas.

17. The POCC is involved with the creation, operation, and orderly development and use of deep-water ports for interstate and international maritime commerce within its boundaries with many of its operations “maritime in nature.” The POCC claims responsibility to provide deep channels, adequate docks, cargo handling facilities, and other infrastructure components for maritime commerce which at its heart utilizes ocean going vessels, as does the City’s Marina facility.

18. The City of Port Aransas is a home rule municipality. It is the only established town on Mustang Island, and is located north of Padre Island. It is located on one of the longest barrier islands along the Texas coast, with the navigable waters of Corpus Christi Bay, the Gulf of Mexico, the Lydia Ann Ship Channel and the Corpus Christi Ship Channel (“CCSC”) surrounding

the City. The city limits of Port Aransas encompass not only land on Mustang Island but also land across the CCSC on the mainland, including Harbor Island acreage the POCC owns.

19. A number of commercial ferry vessels connect the approximately 1,500 feet of navigable water constituting the CCSC that separates both sides of the City. One end of the Corpus Christi Ship Channel that divides the city limits of Port Aransas provides deep water access from the Gulf of Mexico with Port Aransas providing a jettied entrance with access from the City Marina to the CCSC. Once through the center of the City, the CCSC runs into the Corpus Christi Turning Basin and then proceeds to the landlocked industrial areas within the City of Corpus Christi known as the Inner Harbor. The entirety of the City is thus immersed in providing for maritime commerce.

**B. The Maritime Controversy Giving Rise to this Petition**

20. The maritime controversy giving rise to this petition involves two general marine areas, both owned by the POCC, (a) the first being about 200 acres within the city limits of the City on the mainland side called “Harbor Island” and (b) the second involving a maritime marina (“*Marina*”) on the Mustang Island side of the City. This map shows mainland-situated Harbor Island (outlined in red) in relation to the remainder of the City, separated by the Corpus Christi Ship Channel and the area of the Marina (outlined in blue):



21. As regards its Harbor Island acreage, the POCC had over time considered a number of possible uses, including proposals at various times to develop there multiple fractionator and splitter plants, storage facilities, and more recently a desalinization facility. In fact, POCC’s plans for a desalinization facility required approvals from the Texas Commission on Environmental Quality (“TCEQ”). Although required by law to publicize its TCEQ application so that the public – including the City – could study the proposals and participate in TCEQ commission proceedings, the POCC kept the City in the dark about its desalinization application until its discovery by the City very late in the permitting process, thus precluding the City from effectively participating in the TCEQ proceedings and making its voice (which is the voice of its citizens) heard.

### **C. The Marina Lease and its Background**

22. In April 2018, after extended conversations and negotiations, the Port re-leased the Marina to the City by means of a lease agreement, a true and correct copy of which is attached hereto as **Exhibit 1** (the “Marina Lease” or sometimes the “Lease”). In general terms, the Marina



Lease contemplated a vast assortment of maritime activity which was to take place on the waterways and shoreline comprising the Marina, including the “construction, operation and maintenance of channels, canals, boat basins, wharfs, docks, berthing facilities for small boats, marine railways, marine service stations and any uses related to the operation and maintenance of a boat basin and harbor and for all other uses necessary, convenient or beneficial to the City of Port Aransas, Texas.” Further, it was contemplated the City would grant licenses and franchises for commercial use of these facilities. Hence the Marina itself was to be the home of maritime vessels conducting extensive maritime commerce (*“Maritime Uses”*). Obviously, the Maritime Uses centered around maritime vessels.

23. In connection with the Maritime Uses contemplated by the Marina Lease it was both understood and specifically provided that the City had the right, power and authority “to dig, dredge and cut away such portions of the land covered by this lease as may be necessary to provide channels and a small boat harbor and related facilities.” This included work on the navigable waters. To perform such work, maritime vessels would be required and were contemplated. As this work would also encompass activities within the navigable waters themselves, the Marina Lease made provision for interface with the Corps for approvals that may be required.

24. While the Marina Lease contemplated that the City would undertake a great deal of work, including construction of improvements, grading, filling, dredging, removal of existing improvements, repairs, maintenance dredging, location and relocation of utility lines, construction, maintenance and repair of bulkheads, piers, docks, slips, and any other improvements to the property, it also contemplated that such work was to be made and performed by the City at the City’s expense. This, in turn, led the City to issue \$6,205,000 in Bonds (the *“2018 Bonds”*) to

raise the money to pay for the anticipated maritime works. Furthermore, the Marine Lease contemplated that all such improvements were the property of the City.

25. As to the consideration to be paid and received under the Marine Lease, the City was to pay annual rentals. Until September 1, 2033 or the date on which the 2018 Bonds are paid off, the City is to make annual rental payments in an amount equal to the lesser of \$12,000 or 10% of the City's Net Marina Revenue (as defined) which generally consists of income from maritime vessel activity. After repayment of the 2018 Bonds, the rental increases. Additionally, as part of the Marine Lease, the City provides the POCC with two (2) adjacent and readily accessible boat docks and slips for the POCC patrol boats that police the area to ensure maritime commerce is conducted uninterrupted.

26. The POCC recognized that whatever it intended to do on its Harbor Island acreage would be affected by its need to comply with the City's building codes, which the City could change at any time. In fact, in February 2014, the City adopted Ordinance 2014-06, amending Section 25-121 of the City's Code of Ordinances, in which the City unambiguously declared its concerns with maintaining the City's "charm" and avoiding activity on Harbor Island that would "adversely affect, damage or destroy the aesthetics or environment of the City." While the entirety of Ordinance 2014-06, amending Section 25-121 of the City's Code of Ordinances is attached as

**Exhibit 2** hereto, in part the City Council stated in February 2014 as follows:

*"A public need exists to re-zone Harbor Island in order to promote and avoid damage to the life, health, property, safety and public peace of the City and its citizens. **The City of Port Aransas developed as a fishing village. It is a non-industrial town and relatively clean and free of the pollutants which normally accompany some industrial developments.** Its commercial structures historically were small and primarily wooden with peaked roofs. The City in its commercial area **had and still has the flavor and ambiance of a small fishing village which imbues it with a distinctive charm and character.** The City has in the past few years, experienced extremely rapid growth and **is in danger of losing the charm which makes it an attractive, unique venue.** In recognition of this situation the City Council has determined that re-zoning Harbor Island and the*

*imposition of additional controls upon new heavy industry development on Harbor Island is in the public interest. **In order to prevent the development of Harbor Island in a way which would adversely affect, damage or destroy the aesthetics or environment of the City the Council considers it necessary to re-zone Harbor Island.** The Planning and Zoning Commission and City Council have reviewed and analyzed Harbor Island development, historical, current and future, to determine if the zoning classifications, including design, construction and development standards, are consistent with the City's Comprehensive Plan, and whether such classifications and standards currently are in the best interests of the community and the general welfare of the City. The City Council has determined that it is in the best interest of the public to re-zone the property.” (emphasis added).*

27. Ordinance 2014-06, amending Section 25-121 of the City’s Code of Ordinances, then went on to amend the inspection and permitting classification and corresponding buildings and activities permitted on all of Harbor Island, restricting future uses. This happened over four years before the Marine Lease.

#### **D. The Forfeiture Provisions in the Marina Lease**

28. Understanding that it would be unlawful for the POCC to exact a surrender of the City’s governmental authority by getting the City to agree not to change its building codes, the POCC tried to come close to this by including penalty and forfeiture provisions in the Marina Lease whereby the City would forfeit the Marina Lease as a penalty if the City amended its building codes to make them more restrictive than those found in Section 25-121 of the City’s Code of Ordinances. The precise wording of this forfeiture provision found in Article VII of the Marine Lease, reads as follows:

*“City’ s currently existing Base Map currently shows more than half of Harbor Island as being within the City limits of the City. Harbor Island is currently zoned as " HI" by Section 25 -121 of the Port Aransas City Code (the " Code"). City acknowledges the importance of Harbor Island to the operation and development of the Port of Corpus Christi; and recognizes that any changes in the zoning of Harbor Island further restricting the uses to which property within the Harbor Island District may be put will have a significant adverse impact on the Authority and on Authority’ s development of the Port of Corpus Christi. Accordingly, the Parties hereto agree, that this Lease will immediately terminate in the event, the City, during the term of this Lease, changes the zoning of Harbor Island to place Harbor Island into any other zoning district set forth in Article III of the Code, other than*

*HI; or changes or modifies the Harbor Island District Regulations set forth in said section 25 -121 of the Code as they existed on January 1, 2018, such that the Harbor Island District Regulations become more restrictive as to the uses to which property within the HI District may now be put.”*

29. Freed from the verbal clutter, this provision would only come into play if the City either (i) changed Harbor Island’s zoning district or (ii) amended the terms of Section 25-121 of the Port Aransas Code of Ordinances, neither of which has happened.

30. Never once did the POCC assert or argue, prior to filing a September 3, 2019 lawsuit (since dismissed), that the City’s building codes were unlawful or improper. Nor did the POCC argue that it should not have to comply with the City’s inspection and permitting ordinances and building codes. To the contrary, in these provisions the POCC acknowledged the right of the City to have and enforce its building codes and ordinances. In fact, these acknowledgements were made by the POCC when it knew the City was acting in reliance thereon by among other things, undertaking of the issuance of the 2018 Bonds.

#### **E. POCC’s Secret Plans for its Harbor Island Acreage**

31. At some point, the precise time of which is unknown to the City, the POCC formulated, but did not disclose, plans for its Harbor Island acreage, which were to involve the construction of dock facilities adjoining the CCSC (outlined in green on the map above) which were to be used to load and offload a very different type of transporter, so-called “VLCCs”. VLCCs are more than 1,000 feet long and used to transport their hydrocarbon cargoes in maritime commerce to various places across the globe. Accompanying this undisclosed plan was also a plan to deepen to 74 feet, the CCSC that lies within the city limits of Port Aransas. Other related activities were also being planned by the POCC.

32. Recognizing the potentially controversial nature of its secret project which may well “adversely affect, damage or destroy the aesthetics or environment of the City,” as referenced

in Ordinance 2014-06 amending Section 25-121 of the Port Aransas Code of Ordinances, following the execution of the Marina Lease, the POCC apparently proceeded to conduct private, non-public negotiations with various entities, at various times claiming to be contemplating nothing more than a mere lease of its 200 acres on Harbor Island and at other times, stating that POCC had more in mind and had partnered with a company called “Lone Star Ports, LLC” (“LSP”) to accomplish its plans. LSP in turn was stated to be a partnership between a company called “The Carlyle Group” and the “Berry Group,” identified as an entity owed by Marvin, Dennis and Lawrence Berry. While LSP was publicized as a joint venture for activity on Harbor Island, the *public at no time* has seen any of the documentation or agreements concerning that arrangement and has been left with the POCC’s self-serving and contradictory characterizations of what the arrangement is and contemplates. Hence, no one outside the POCC and its contractual counterparties has any real idea as to what specifically is planned for the POCC’s acreage on Harbor Island, or for that matter, who is going to do what thereon simply because the POCC refuses to disclose any information.

**F. Port Aransas is Rebuffed in its Efforts to Determine What POCC is Doing and Whom They are Doing it With**

33. Throughout this period, the City continually reached out to the POCC to find out precisely what was transpiring in order to gain an understanding of how the City and its citizens may be affected. But the POCC consistently refused to give the City any information. In short, the City was left in an informational vacuum.

34. The City was able to get some information from the Corps in or around February 2019, and the information was troubling. In short, the Corps announced that at least three different permit applications had been made, one being by the POCC to deepen the CCSC and others relating to Harbor Island but filed by different companies, one called LSP and the other called

“Axis Midstream,” Axis Midstream being yet another company owned by the Berry Group but apparently separate from LSP.

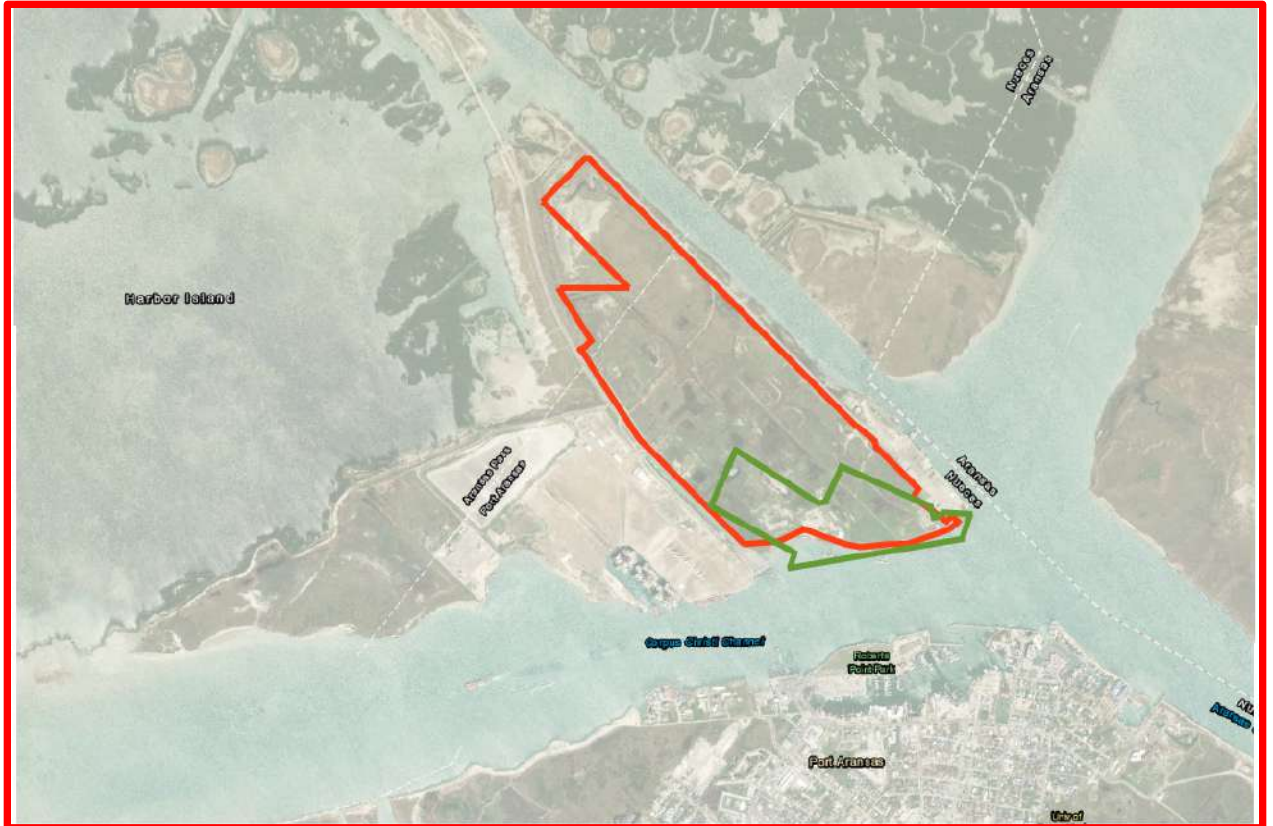
35. Having been left in the dark but understanding that a Berry Group company named AXIS Midstream was also applying with the TCEQ for pipeline permits to Harbor Island, the City determined it needed to find out what was going on. Thus, in February 2019, the City Council approved Resolution No. 2019-18 (the “*Environmental Concerns Resolution*”) which instructed City staff to retain professionals to investigate with state (*e.g.*, TCEQ) and federal (*e.g.*, the Corps) governmental agencies what precisely was going on with respect to Harbor Island, and if a permitting process was already underway to seek an extension of time from those agencies within which the City could respond. The Environmental Concerns Resolution was not addressed to the POCC. It took no action against the POCC or for that matter Harbor Island. In fact, the only entities the Environmental Concerns Resolution addressed were state and federal agencies, the only remaining available sources of information on the POCC’s otherwise secret conduct and plans. A true and correct copy of the Environmental Concerns Resolution is attached as **Exhibit 3**. Notably, it (a) is not an ordinance; (b) has nothing to do with Section 25-121 of the City’s Code of Ordinances, and (c) certainly effects no change to Section 25-121 of the City’s Code of Ordinances.

36. Compounding the lack of information in March and again in April 2019, the Port Commissioners of the POCC convened a series of meetings where they approved the leasing of virtually the entirety of their Harbor Island acreage (indicated in red on the above map) to Lone Star Ports, LLC (previously defined as “*LSP*”) of which the Berry Group was a partner. The POCC Resolutions, if believed, are clear that as of that point with respect to Harbor Island, the POCC was simply a landlord and LSP (consisting of Carlyle and the Berry Group) it’s tenant.

37. Yet, as noted, AXIS Midstream - an entity controlled by the same Berry Group that was a partner in the separate company called LSP - had filed with the TCEQ its own application for a terminal facility on Harbor Island showing the Harbor Island Terminal facilities to be on the NW side of Highway 361 while the Harbor Island Terminal Facilities that were the subject of Lone Star Ports' application were on the NE side of Highway 361:



38. To create even more uncertainty the POCC itself had submitted its own application to the Corps concerning a small portion of Harbor Island, on which it told the Corps, that it (the POCC) was going to build in-the-water piers for VLCC's indicating the POCC's wharfs were to be located as follows, illustrated in green in the context of Lone Star Ports' permit application boundaries, although it mentioned neither LSP nor AXIS:



Furthermore, in July 2019 the POCC certified to the Corps that the POCC was in full compliance with all of the City's Ordinances, when the City had received no demolition or building permit requests and in fact had been told the opposite. Uncertainty reigned supreme as to who was doing what, with whom and where they were doing it.

**G. The City Passes an Ordinance in August 2019 to Suspend Building Permits on Harbor Island for 60 Days**

39. Whatever was contemplated on either side of Harbor Island, the City was going to be impacted. For example, if there was a fire or explosion, the City's emergency personnel would be the primary – or as far as the City was aware the only – responders. Leaks of noxious fumes and gases would put the citizens of Port Aransas in harm's way, particularly given that the planned facilities would be a little over 1,000 feet from City parks where children are always at play. The following picture shows the proximity of the City's park to Harbor Island:





40. Yet the City continued to be left in the dark. Therefore, on August 29, 2019, the Port Aransas City Council passed City Ordinance No. 2019-09 (the “*Temporary Moratorium Ordinance*”) a true and correct copy of which is attached as **Exhibit 4**.

41. The Temporary Moratorium Ordinance simply imposed a moratorium on the issuance of City building permits on Harbor Island for a period of 60-days to allow the City to study fire protection and emergency services issues presented by development on Harbor Island, and to study potential changes in land development regulations on Harbor Island. The Temporary Moratorium Ordinance expired by its own terms on October 29, 2019 and has not been renewed by the City.

42. Importantly, neither before the Temporary Moratorium Ordinance nor after it expired by its terms, had the POCC, LSP, AXIS or anyone else, made any request of the City for building permits on Harbor Island. To the contrary, the POCC had made it plain they did not intend to ask for any permits of any kind and in fact commenced demolition of structures on Harbor

Island in violation of the City's demolition Ordinance -- in spite of the fact that they had told the Corps the exact opposite.

#### **H. The POCC Illegally and Improperly Acts to Terminate the Marina Lease**

43. The Temporary Moratorium Ordinance was passed on Thursday August 29, 2019. On Wednesday September 4, 2019, two business days later (excluding Labor Day) Sam Esquivel, who purports to be the POCC's Director of Real Estate Services, sent a letter to David Parsons, the City Manager of Port Aransas. A true and correct copy of that letter is attached hereto as **Exhibit 5**. It is sometimes referred to as the "Termination Letter." In relevant part, the Termination Letter claims that the City imposing a 60-day moratorium on building permits by the Temporary Moratorium Ordinance was a triggering event under the forfeiture provisions of Art. VII of the Marina Lease. Specifically, Esquivel wrote

*"By passage of Ordinance 2019-09, the City is restricting the development and use of the Port Authority's Harbor Island District property for use as a marine terminal, use as a storage facility for oil and/or gas products, and for other purposes expressly allowed under Code § 25-121 for those entities that are required to comply with the City's zoning and permitting requirements. City's Ordinance 2019-09 effectively changes the Harbor Island District Regulations under Code § 25-121 and makes them "more restrictive as to the uses to which property within the HI District may [have] be[en] put [as of the date of the Marina Lease]."*

44. This is a fraud. First, the POCC had filed no application for building permits on Harbor Island, thus nothing the City had done "restricted" any POCC activity. Second, the POCC's Chief Executive Officer, Sean Strawbridge, and others had previously stated that it was the POCC's position that notwithstanding what they told the Corps, the POCC (i) was not required to file, (ii) had not filed and (iii) was not going to file, any requests for building permits on Harbor Island. Third, even more profoundly disingenuous, on September 3, the day before the Termination Letter was sent, the POCC had filed a lawsuit, since dismissed, seeking to enjoin the City from enforcing its inspection and permitting requirements all together, in that suit claiming

for the first time that the Environmental Concerns Resolution and the Temporary Moratorium Ordinance were “preempted” and unenforceable by virtue of Texas Natural Resources Code §81.0523. The POCC made these arguments even though that statute applies only to “oil and gas operations” as conducted by an “oil and gas operator,” neither of which terms has any application to POCC and even if they did apply to the POCC, §81.0523 vests exclusive jurisdiction of any matters under §81.0523 with the Texas Railroad Commission (“TRC”) making the TRC the proper forum for any complaints about §81.0523 to be raised and addressed.

45. *Fourth*, and most importantly, nothing in or concerning the Temporary Moratorium Ordinance, is even referenced in the forfeiture provisions of Art. VII of the Marina Lease. Rather, the forfeiture provisions of Art. VII of the Marina Lease by their express terms are implicated if and only if, one of two things happens, namely either:

- The City *changes the zoning* of Harbor Island to place Harbor Island into any other zoning district set forth in Article III of the Code, other than “HI”; or
- The City *changes or modifies* the Harbor Island District Regulations set forth in said section 25 -121 of the Code as they existed on January 1, 2018, such that the Harbor Island District Regulations become more restrictive as to the uses to which property within the HI District may now be put.”

46. Ignoring the language of Marina Lease Art. VII, the Termination Letter falsely claimed that Art. VII addresses any action to “...restrict[] the development and use of the POCC’s Harbor Island District property for use as a marine terminal, use as a storage facility for oil and/or gas products, and for other purposes expressly allowed under the City’s Section 25-121...” and that a 60 day building permit moratorium as contemplated by the Temporary Moratorium Ordinance *was such a forbidden restriction*.

47. Assuming that Esquivel speaks for the POCC, the Termination Letter is plainly wrong on both points. The forfeiture provisions of Art. VII are *not* triggered by any action POCC

believes restricts them in any way or finds annoying, but rather only by two very specific things: (a) a change of zoning classifications or (b) a change or modification of Section 25-121 of the City's Code of Ordinances in a manner that makes what is covered there, more restrictive than it existed on January 1, 2018. Neither of these things has happened. The clear, undisputed evidence shows that there has been no change in the Harbor Island zoning classifications by the City. Similarly, Section 25-121 of the City's Code of Ordinances has not been changed or modified. Thus, the Termination Letter is a fraud in its contents. Furthermore, it is a fraud given the fact that the POCC never intended to comply with, or be restricted by, the City's inspection, permitting or regulatory rights as evidenced by the fact that one day after the Termination Letter, POCC sued the City claiming that the City had no inspection, permitting or regulatory rights at all, much less those specified in Article VII.

48. Following receipt of the Termination Letter, the City paid its Marina Lease rent as it had in the past. But that rental check has been returned to the City. See **Exhibit 6**. After its initial return, it was sent again and again rejected and returned by POCC. Thus, it appears that the POCC is going to reject all the City's attempts to pay its rent.

**I. While POCC Proclaims a Desire for Dialog, it has Declared All Out War**

49. Publicly, the POCC states that it wants reasonable dialog and understanding. That is not true. Behind that public disinformation campaign feigning collegiality, the POCC is engaged in a battle in which it will say anything and everything it must in order to prevail. The POCC's purported termination of the Marina Lease presents a clear and present threat to the City, and involves a justiciable controversy involving millions of dollars of Marina Lease and Maritime Uses of assets and revenues. The Marina Lease is vital to the City's revenues and its citizens' ability, as well as all public, domestic and foreign vessels' right and ability, to access the navigable

waters of Texas and the United States. Its loss or even the disruption of services provided by the City to its licensees and commercial users with whom the City has contracted, faces the City with severe and irreparable damage including damage to the City's lease rights, and its substantial and material investment in the City's Marina. A termination or a forfeiture of the Marina Lease will cause the City to lose the benefit of its bargain made with the Port. The City's economic and vital interest in the Marina Lease are valued at far more than the than the \$6-million of recent invested value derived from the 2018 Bonds, and, in equity such forfeiture must be avoided by appropriate declaratory relief. Thus, declaratory relief is thus required to clarify the rights and prerogatives of the City of Port Aransas.

### **VIII. CLAIM FOR DECLARATORY RELIEF**

50. Each and every one of the allegations hereinabove and hereafter set forth is incorporated herein by reference.

51. An actual controversy, dispute and case in controversy exists between the parties regarding their respective rights and obligations.

52. Accordingly, under Tex. CIV. PRAC. & REM. CODE ANN. § 37.001, et seq. the City respectfully petitions the Court to declare the rights and obligations of the parties as follows:

a. As regards the purported forfeiture of the Marina and Marina Lease, the City seeks alternative declarations that

i. The Temporary Moratorium Ordinance did not effect either: (a) a change of zoning classifications or (b) a modification of Section 25-121 of the Port Aransas Code of Ordinances in a manner that makes what is covered there, more restrictive than it existed on January 1, 2018. Neither did it do anything contemplated or covered by Marina Lease Art. VII;

- ii. The Environmental Concerns Resolution did not effect either: (a) a change of zoning classifications or (b) a modification of Section 25-121 of the Port Aransas Code of Ordinances in a manner that makes what is covered there, more restrictive than it existed on January 1, 2018. Neither did it do anything contemplated or covered by Marina Lease Art. VII;
  - iii. The City has heretofore taken no action contemplated or covered by Marina Lease Art. VII;
  - iv. The Termination Letter is invalid and ineffective and did not result in the termination of the Marina Lease; and
  - v. The Port has no right to terminate the Marina Lease, and its notices of termination constitute a wrongful attempted termination;
- b. The Termination Letter was not the result of a properly held commissioner meeting, is therefore not the act of the POCC and is thus void as an unauthorized act;
- c. With respect to Marina Lease Art. VII the City seeks alternative declarations that
- i. This provision is not implicated if actions are taken that restrict any development rights of anyone other than POCC, and actions that may affect LSP and/or AXIS do not implicate or trigger Marina Lease Art. VII;
  - ii. The development by AXIS Midstream is not a subject related to Marina Lease Art. VII;
  - iii. The development by LSP is not a subject related to Marina Lease Art VII;
  - iv. If the Port has, as it claims, leased the control of Harbor Island to others, then the City is not interfering with the POCC's development;
- d. The Marine Lease is not terminated and is still in force and effect;
- e. The rental payments which the City tenders into the registry of the Court are sufficient payment of rentals due POCC;
- f. POCC is obligated to accept future rental payments and any such rental

payments tendered into the registry of the Court are deemed satisfactorily paid;

- g. The City has the right and prerogative to enforce its ordinances as to Harbor Island in full including those found in Section 25-121 of the Port Aransas Code of Ordinances;
- h. The City's enforcement of its ordinances as to Harbor Island as found in Section 25-121 of the Port Aransas Code of Ordinances does not implicate or result in a forfeiture under Marina Lease Art. VII;
- i. The City's interpretations of its ordinances as to Harbor Island as found in Section 25-121 of the Port Aransas Code of Ordinances, even if different from the interpretation desired by POCC, does not implicate or result in a forfeiture under Marina Lease Art. VII;
- j. The City's seeking judicial determinations as to the meaning or scope of any provision of Section 25-121 of the Port Aransas Code of Ordinances does not implicate or result in a forfeiture under Marina Lease Art. VII; without limitation, the City arguing that the terms "marine terminal" or other terms Section 25-121 of the Port Aransas Code of Ordinances, did not and do not include and encompass VLCC's, does not implicate or result in a forfeiture under Marina Lease Art. VII;
- k. The City is not estopped or precluded from contacting, asking for information from or extensions of time within which to respond, from any state and federal regulators and such action does not implicate or result in a forfeiture under Marina Lease Art. VII;

- l. The City is not estopped or precluded from filing a contested case or otherwise contesting any state and federal action with respect to Harbor Island and such action if taken, does not implicate or result in a forfeiture under Marina Lease Art. VII;
- m. Even if the Marina Lease is terminated, the City is entitled to recover and prays for the value of improvements expended, including expenditures made and/or obligations incurred in or as a part of the 2018 Bond issuance;
- n. As regards matters concerning TNRC §81.0523, the City seeks alternative declarations that
  - i. The TRC has exclusive jurisdiction to determine whether or not the Port is an oil and gas operator;
  - ii. The Port is neither conducting an Oil and Gas Operation nor is it an Oil and Gas Operator such that the City is precluded in any way from enforcing its ordinances as a result of TNRC §81.0523;
  - iii. Even if the Port Authority is an oil and gas operator conducting an oil and gas operation, the City's building codes may still be enforced; and
  - iv. Even if the Port Authority is an oil and gas operator conducting an oil and gas operation, it has waived its rights to object to the City's enforcement of its building codes and ordinances under §81.0523, by entering into the Marina Lease which contemplates those codes and ordinances and representing to the Corps it was and would be compliant with the City's building codes.

**IX.  
ATTORNEYS FEES**

53. Each and every one of the allegations hereinabove and hereafter set forth is incorporated herein by reference.

54. Pursuant to the terms of the written Marina Lease as well as CIV, PRAC. & REM. CODE ANN. § 37.001, et seq, the City is entitled to recover its attorney's fees, costs and related



expenses for the trial and successful defense of any appeal by the Port of an adverse judgment.

**X.  
REQUEST FOR DISCLOSURES PURSUANT TO TRCP 194**

55. The City requires Defendant to answer fully and timely the mandatory requests for disclosures set out in TRCP 194.2, and to regularly and as required furnish full and complete and current updates to such requests.

**XI  
JURY DEMAND**

56. The City demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, the City of Port Aransas, Texas prays that upon trial, that it have the declarations set forth above, recovery of its attorney's fees and costs, and such others as the facts and law allow, found and ruled by the Court, and that any matters of disputed facts be submitted to the trier of fact as appropriate, and for such other and further relief to which the City may be justly entitled, both at law and in equity.

Respectfully submitted,

/s/ Shelby Jordan  
Shelby A. Jordan  
St. Bar No. 11016700  
JORDAN, HOLZER & ORTIZ, P.C.  
500 N. Shoreline Blvd., Ste. 900  
Corpus Christi, Texas 78401  
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Facsimile: 361-888-5555  
Email: [sjordan@jhwclaw.com](mailto:sjordan@jhwclaw.com)

/s/ Ben C. Broocks  
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St. Bar No. 03058800  
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Austin, Texas 78746

Telephone: 512-201-2000  
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Facsimile: (214) 747-6111

*/s/ by Mr. Fred D. Dreiling*

Mr. Fred D. Dreiling  
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*/s/ by Mr. Michael G. Morris*

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Telephone: (361) 884-1961, 802  
Facsimile: (361) 889-5100

ATTORNEYS FOR PLAINTIFF,  
CITY OF PORT ARANSAS, TEXAS

# EXHIBIT 1

**LEASE AGREEMENT**

**THE STATE OF TEXAS    §  
  §  
COUNTY OF NUECES    §**

This **LEASE AGREEMENT** ("**Lease**") is made effective as of the 1<sup>st</sup> day of April, 2018 ("**Effective Date**") by and between the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, pursuant to authorization by its Port Commissioners ("**Authority**"), and the **CITY OF PORT ARANSAS, TEXAS**, a Texas home rule municipality ("**City**"). Authority and City each herein called a "**Party**" and together the "**Parties**".

WHEREAS, by instrument dated effective January 1, 1987 Authority leased 50.73 acres of land to the City for marina purposes ("**1987 Lease**"); and

WHEREAS, by instrument executed on May 21, 1987, but dated to be effective June 1, 1987, City and Authority effectively released 20.66 acres from the terms of the 1987 Lease and entered into a new lease for said 20.66 acres, perpetual in nature provided said 20.66 acres is used for park purposes ("**Park Lease**"). The 1987 Lease as amended by the Park Lease shall hereinafter be referred to as the "**Marina Lease**".

WHEREAS, the Marina Lease, as amended expires on March 31, 2018; and

WHEREAS, the Parties desire to enter into a new lease for a period of thirty (30) years commencing on April 1, 2018 and ending on March 31, 2048; and

WHEREAS, City on or about 1/03/2018 issued \$6,205,000 Combination Tax and Limited Tax Revenue Certificates of Obligation, Series 2018 (the "**2018 Bonds**").

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that effective April 1, 2018, the following lease is hereby made.

I.

Authority, in consideration of the rents to be paid and upon the terms, covenants, and conditions hereinafter set forth, hereby leases to City and City hereby leases from Authority for a term beginning on the 1st day of April, 2018 and ending on the 31st day of March, 2048, the following described land located in Nueces County, Texas, to-wit:

30.07 acres of land more or less (the "**Property**"), out of 50.73 acres of land originally leased by Authority to City by the 1987 Lease. The description of said 50.73-acres is more particularly described and depicted in Exhibit "A" attached hereto, SAVE AND EXCEPT from said 50.73-acre tract, the 20.66 acre Park Lease tract described and depicted in Exhibit "B".

The Property hereby leased may be used for all purposes necessary, proper, convenient or expedient in connection with the construction, operation and maintenance of channels, canals, boat basins, wharfs, docks, berthing facilities for small boats, marine railways, marine service stations and any uses related to the operation and maintenance of a boat basin and harbor and for all other uses necessary, convenient or beneficial to the City of Port Aransas, Texas (the "Marina Purposes").

## II.

For the rights and privileges granted to it hereunder, City shall pay to the Authority a rental as follows:

A. City agrees to pay Authority rent for each lease year, or fractional part thereof, of the thirty (30) year term of this Lease. Until the earlier of September 1, 2033 or the date on which the 2018 Bonds are paid off, refunded, refinanced, or retired the rent payable, for each lease year, or fractional part thereof, will be ten percent (10%) of the City's Net Marina Revenues (hereinafter defined) for each lease year (the "Percentage Rent") or \$12,000.00 per year ("Minimum Guaranteed Rent"), whichever is greater. The annual Percentage Rent or Minimum Guaranteed Rent payment shall be due and payable each lease year by the City to the Authority within 30 days after the close of the City's fiscal year (September 30). The Percentage Rent shall increase to twenty percent (20%) of the City's Net Marina Revenues on the date the 2018 Bonds are paid off, refunded, refinanced, or retired or September 1, 2033, whichever is earlier. Minimum Guaranteed Rent will remain constant through the entire thirty (30) year term of the Lease.

B. As used herein the term "lease year" means April 1 through the following March 31 of each year (12-month period) of the Lease commencing on April 1, 2018.

C. As used herein the term "Net Marina Revenues" means for each lease year the dollar aggregate of all revenues derived from City's: (i) provision of services on the Property; (ii) sales conducted on the property; and (iii) use, sub-lease, license, rental, and operation of the Property for any of the Marina Purposes, less City's costs and expenses to provide services, maintenance, repairs to the Property, and City's debt service for the 2018 bonds only. Once the 2018 bonds are retired, refinanced, refunded or effectively paid off, then City shall no longer be entitled to use debt service as an offset in calculating Net Marina Revenues. City agrees to keep a permanent, accurate set of books and records of all Net Marina Revenues (and expenses) and payment records with respect to the 2018 Bonds available for Authority's inspection. City shall permit Authority and Authority's representatives to examine or audit such records at any and all reasonable times, and shall, upon Authority's request, explain the methods of keeping the records.

D. In addition to the Percentage Rent, City, each lease year during the term of this Lease agrees to provide Authority with two (2) adjacent safe and readily accessible boat docks and slips capable of berthing two of the Authority's patrol boats.

## III.

City shall have the right, power and authority to dig, dredge and cut away such portions of the land covered by this lease as may be necessary to provide channels and a small boat harbor and related facilities. Before performing any dredging or any filling of submerged areas and before building any

structures on the Property for which a Department of the Army permit is necessary and before constructing park facilities, City shall submit plans for such dredging or filling and for such structures and planned facilities to the Authority for its approval. In this connection it is anticipated that the access to the Property for navigation purposes from the Corpus Christi Ship Channel shall be only through the Government Basin and channel which now exists on a part of the Property and that approval of Authority will not be given for construction of docks, wharfs, and other navigation facilities along the north side of the Property fronting on the Corpus Christi Ship Channel.

IV.

City agrees that in the use of the Property it will not do or cause to be done anything that will adversely affect the use, development, and expansion of the Corpus Christi Ship Channel.

V.

This lease is granted to the City of Port Aransas in order that such City itself may use and develop the lands for small boat harbor facilities and it is specifically understood that this lease shall not be assigned without the consent in writing of Authority, save and except that the rights of City under this lease may be assigned in any mortgage, deed of trust or other security device made by City to secure revenue bonds or other evidences of indebtedness, if any, issued by City for the construction of facilities to be owned by City on the lands covered by this lease.

Without the consent of Authority, City shall have the right to sublet portions of the premises upon such rentals and considerations as City shall see fit.

VI.

**A. City has inspected the Property and has conducted any environmental site assessment it desired. As of the Effective Date of this Lease, City understands and agrees that the Property is being leased in an "As Is Where Is" condition, and City accepts the Property in the condition it exists on the Effective Date as reasonably suited and fit for City's intended uses of Property. City acknowledges that Authority has made no express warranties with regard to the Property, except as expressly set forth in this Lease. To the maximum extent permitted by applicable law, Authority hereby disclaims, and City waives the benefit of, any implied warranties, including implied warranties of habitability, or fitness or suitability for City's intended uses of the Property.**

**B. City further understands and agrees that improvements, grading, filling, dredging, removal of existing improvements, repairs, maintenance dredging, location and relocation of utility lines, construction, maintenance and repair of bulkheads, piers, docks, slips, and any other improvements to the Property, shall be made and performed by City at the sole cost and expense of City. City further understands and agrees that the "As-Is, Where Is" condition of the Property includes any contamination on the Property, including structures, surface soil or subsurface strata, groundwater, surface water and any adjacent channel or bay water and sediment, and that information received from Authority regarding such matters may not be complete or accurate and should not be accepted as such and by entering into this Agreement, City acknowledges that it is**

relying solely on its prior history with and operation of the Property, as well as, its own inspection and investigation into the condition of the Property.

## VII.

City's currently existing Base Map currently shows more than half of Harbor Island as being within the City limits of the City. Harbor Island is currently zoned as "HI" by Section 25-121 of the Port Aransas City Code (the "Code"). City acknowledges the importance of Harbor Island to the operation and development of the Port of Corpus Christi; and recognizes that any changes in the zoning of Harbor Island further restricting the uses to which property within the Harbor Island District may be put will have a significant adverse impact on the Authority and on Authority's development of the Port of Corpus Christi. Accordingly, the Parties hereto agree, that this Lease will immediately terminate in the event, the City, during the term of this Lease, changes the zoning of Harbor Island to place Harbor Island into any other zoning district set forth in Article III of the Code, other than HI; or changes or modifies the Harbor Island District Regulations set forth in said section 25-121 of the Code as they existed on January 1, 2018, such that the Harbor Island District Regulations become more restrictive as to the uses to which property within the HI District may now be put.

## VIII.

Various owners of land in Blocks Eighteen (18), Nineteen (19), Seventy-Six (76) and One Hundred Forty-Two (142) of Mustang Island Survey, which lands adjoin on the south the premises covered by this lease, have entered into or may enter into instruments of "mutual conveyances" with Authority entitling the owners of those lands which are subject to such mutual conveyances to certain rights of access to the lands covered by this lease and the channels and basins constructed thereon for certain uses and purposes and subject to certain conditions as are specified in such mutual conveyances, reference to which are here made. This lease is made subject to the rights of all parties to such mutual conveyances covering lands in the said blocks on Mustang Island and Authority hereby assigns to City the rights of Authority to grant franchises or permits under the conditions as specified in said mutual conveyances for terms of years not to exceed the term of this lease. Authority hereby assigns to City the full right to grant such permits or franchises as fully as if the Authority itself granted the same, which said franchises or permits when granted will be fully binding upon Authority for the term thereof not to exceed, however, the term of this lease. City shall have the full right to collect rentals for commercial uses as may be provided in said franchises and permits. All revenues received from the grant of any franchises or permits shall be considered part of the City's marina revenues for purposes of calculating Net Marina Revenue.

## IX.

City hereby waives all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys' and experts' fees and expenses), suits, settlements or judgments of any nature whatsoever (including claims for personal injury, bodily injury, real and personal property damage and economic loss) ("Claims") which arise or may arise in its favor against Authority, its Port Commissioners, directors, managers, employees and agents ("Authority Parties") during the Term of this Lease for any loss of, or damage to, any of its property located within or upon, or constituting a part of, the Property, to the extent that such loss or damage is or would have been covered by any property insurance which City is required to carry under this

Lease (whether or not City actually carries such insurance or self-insures for the loss or damage). City agrees to immediately give to each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of the waiver set forth in this Section, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

X.

A. To the extent allowed by law, City shall defend, indemnify and hold harmless the Authority Parties from and against, and City shall be responsible for, any and all Claims which may be brought or instituted or asserted against the Authority Parties based on or arising out of or relating to any of the following events (each being referred to herein as an "Indemnified Event"): (i) the failure on the part of the City or any of its sublessees or their respective owners, officers, managers, employees, agents, invitees, guests, contractors, subcontractors or licensees ("City Parties") to comply with the provisions of Applicable Laws applicable to the Property or the City's improvements on the Property constructed or owned by City ("City Facilities"), or (ii) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property occurring on the Property or the City's Facilities, or (iii) any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property arising out City's operations on the Property or City's use of the Property for Marina Purposes.

B. Notwithstanding anything to the contrary contained in Section X. A., it is expressly provided and agreed by and between the Parties that City shall not be obligated to indemnify and hold harmless the Authority Parties from and against their own negligence, and that neither the Authority nor the City waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under laws of the State of Texas.

C. Notwithstanding anything to the contrary contained in Section X. A., City shall be relieved of its obligation of indemnity (but not its obligation to defend) with respect to any Claim to the extent, but only to the extent, of (i) the amount actually recovered from one or more insurance carriers and either paid to the Authority Parties or paid for benefit of the Authority Parties in reduction of such Claim, or (ii) the percentage of responsibility attributed to the Authority Parties with respect to causing or contributing to cause the Indemnified Event for which the Claim was made.

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

E. The obligations of the City under this Section X shall survive the expiration or any earlier termination of the term of this Lease.



XI.

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees to procure and maintain at its sole expense during the Term of the Lease the policies of insurance described in Exhibit C attached hereto and in at least the minimum amounts specified in Exhibit C.

XII.

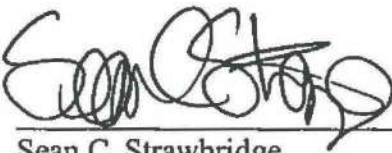
The Parties hereto agree that all provisions of this Lease Agreement are material; and further agree that if any part of this Lease is held to be invalid, illegal, or unenforceable in any respect then this Lease will not be reformed, but shall terminate in its entirety and be of no further force and effect.

This Lease is granted with the understanding that the lands included herein are needed and will be used by the City of Port Aransas in the construction and maintenance of channels, boat basins and small boat facilities in addition to the present "Government Basin" and other basins now dredged and existing on the lands included in this lease.

WITNESS the date and year first above mentioned.


**AUTHORITY:**

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

By:   
Sean C. Strawbridge  
Chief Executive Officer  
Date: 4-6-18

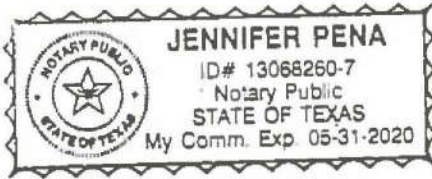
**CITY:**

**CITY OF PORT ARANSAS, TEXAS**

By:   
Name: David Parsons  
Title: City Manager  
Date: 4-2-2018

THE STATE OF TEXAS §  
§  
COUNTY OF NUECES §

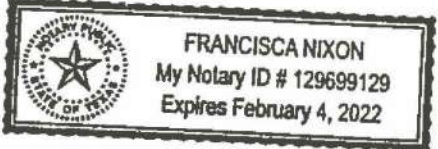
This instrument was acknowledged before me on this 4 day of April, 2018, by Sean C. Strawbridge as Chief Executive Officer of PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS, a navigation district and political subdivision of the State of Texas, on behalf of said navigational district.



Jennifer Pena  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF NUECES §

This instrument was acknowledged before me on the 3rd day of April, 2018, by City Manager David Parsons, City of Port Aransas, a Texas home-rule municipality, on behalf of said municipality



Francisca Nixon  
Notary Public, State of Texas

## EXHIBIT "A"

50.73 more or less acres of land more or less, lying along the north shore of Mustang Island, Nueces County Texas, within the city limits of Port Aransas, Texas, 20-1/2 miles N. 83°E from the County Court House of Nueces County at Corpus Christi, Texas. Said tract lies east of the right-of-way of Cotter Street leading to the Ferry Landing, north of Port of Corpus Christi Authority south bulkhead line of the Port Aransas Canal, west of the Federal authorized and dredged Turtle Cove Canal and Basin, and south of the Port Aransas-Corpus Christi Waterway, all being a portion of the lands patented by the State of Texas to Port of Corpus Christi Authority by Patent No. 217, dated January 24, 1950, and recorded in the Deed Records, Nueces County, Volume 455, Pages 586-588, and described by metes and bounds as follows:

Beginning at a point, which bears N. 83° 52' W. 877.51 feet from U.S.E.D. Triangulation Station 30+53.78 (1956), said point being the intersection of a northerly extension of the east right-of-way line of Cotter Street with a line 725.0 feet south of and parallel to the centerline of the 250 foot channel of the Port Aransas-Corpus Christi Waterway, for the northwest corner of this tract, with Coordinates X= 2,462,592.82 and Y = 792,608.33.

Thence, S. 12° 26' 31" E. a distance of 363.74 feet, with the east right-of-way line of Cotter Street to a point, which point is the beginning of a left curve having a radius of 616.20 feet.

Thence, with said left curve having a radius of 616.20 feet and chord bearing S. 31° 35' 51" E. 404.20 feet to a point, which point is the intersection of the east right-of-way line of Cotter Street with the Port of Corpus Christi Authority south bulkhead line of the Port Aransas Canal, for a corner of this tract.

Thence, N. 87° 06' 29" E. along the Port of Corpus Christi Authority south bulkhead line of the Port Aransas Canal, a distance of 1106.48 feet to a point, said point being an angle point in the south bulkhead line for a corner of this tract.

Thence, continuing along the south bulkhead line of the Port Aransas Canal, N. 74° 34' 25" E. a distance of 604.83 feet to a point, which point is the southwest corner of the Government Basin at Port Aransas, Texas, for a corner of this tract.

Thence, N. 56° 00' 32" E. a distance of 666.22 feet along the southeasterly edge of the Government Basin to an angle point in the Government Basin.

Thence, N. 86° 00' 32" E. a distance of 148.04 feet along the southerly edge of the Government Basin to a point, which point is the intersection of the southerly edge of the Government Basin with the most westerly edge of the original Turtle Cove Canal and Basin, for the southeasterly corner of this tract.

Thence, N. 3° 59' 28" W. along the westerly edge of the Turtle Cove Canal and Basin, a distance of 300.00 feet to a point for a corner of this tract.

Thence, S. 86° 00' 32" W. along the northerly edge of the Government Basin, a distance of 50.00 feet, to a point for a corner of this tract.

Thence, parallel to and 100.00 feet west of the centerline of the original Turtle Cove Canal N. 3° 59' 28" W. a distance of 374.78 feet to a point, said point being the northeast corner of this tract, with Coordinates X = 2,465,174.36 and Y = 793,177.90.

Thence, S. 77° 33' 21" W., 559.05 feet along a meandering shoreline to a point.

Thence, N. 17° 47' 53" W., 60.59 feet along same shoreline to a point.

Thence, S. 76° 09' 07" W., 441.03 feet along same shoreline to a point.

Thence, S. 47° 05' 00" W., 97.65 feet along same shoreline to a point.

Thence, S. 77° 33' 19" W., 169.47 feet along same shoreline to a point.

Thence, N. 84° 12' 02" W., 181.99 feet along same shoreline to a point.

Thence, S. 79° 57' 56" W., 212.24 feet along same shoreline to a point.

Thence, S. 67° 18' 04" W., 133.25 feet along same shoreline to a point.

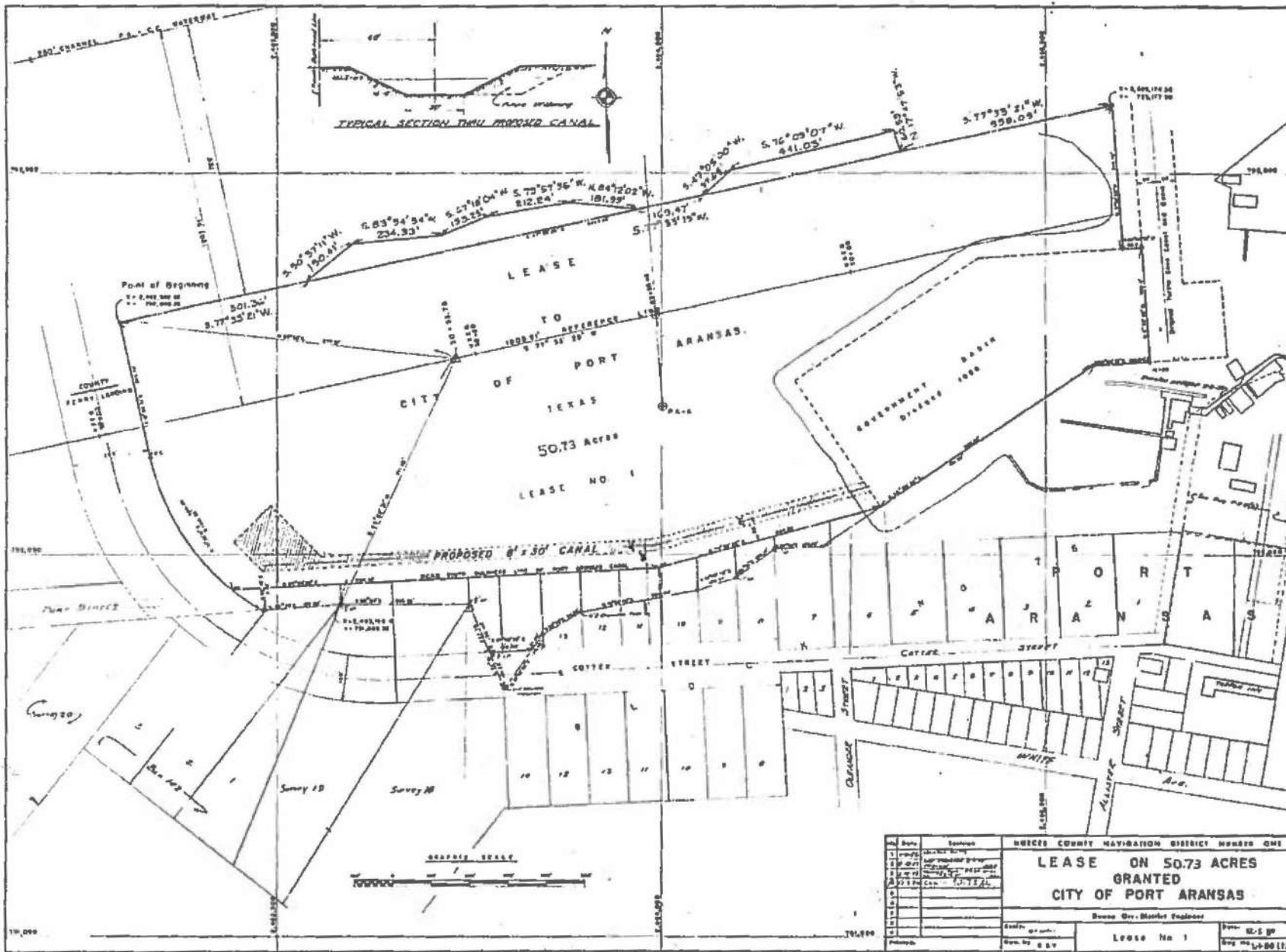
Thence, S. 83° 54' 54" W., 234.33 feet along same shoreline to a point.

Thence, S. 50° 37' 11" W., 150.41 feet along same shoreline to a point.

Thence, S. 77° 33' 21" W., 501.36 feet, parallel to and 725 feet south of the centerline of the Port Aransas-Corpus Christi Ship Channel, to the place of beginning; Said tract of land containing 50.73 acres of land more or less.

All bearings are based on Grid North for Texas, South Zone as established by the U.S. Coast and Geodetic Survey.

EXHIBIT "A"



L-1-16(B)A

## EXHIBIT "B"

### Metes and Bounds Description

Said tract being 26.66 acres of land lying along the north shore of Mustang Island, Nueces County Texas, within the city limits of Port Aransas, Texas, 20½ miles N. 83° E. from the County Court House of Nueces County at Corpus Christi, Texas. Said tract lies east of the right-of-way of Cotter street leading to the Ferry Landing, north of the Port of Corpus Christi Authority's south bulkhead line of the Port Aransas Canal, west of the Federal authorized and dredged Turtle Cove Canal and Basin, and south of the Port Aransas-Corpus Christi Waterway, all being a portion of the lands patented by the State of Texas to the Port of Corpus Christi Authority by Patent No. 217, dated January 24, 1950 and recorded in the Deed Records, Nueces County, Volume 455, Pages 586-588, and described by metes and bounds as follows:

Beginning at a point, which bears N. 83° 52' 00" W 877.51 feet from U.S.E.D. Triangulation Station 30+53.78 (1956). Said point being the intersection of a northerly extension of the east right-of-way line of Cotter Street with a line 725.0 feet south of and parallel to the centerline of the 500 foot channel of the Port Aransas-Corpus Christi Waterway, for the northwest corner of this tract, with Coordinates  $x=2,462,592.82$  and  $y=792,608.33$ .

Thence S 12° 26' 31" E., 363.74 feet, with the east right-of-way line of Cotter Street to a point of curvature. Said P.C. being the southwest corner of this tract and the beginning of a curve to the left having a radius of 616.20 feet.

Thence N. 75° 48' 29" E., 370.00 feet to a point.

Thence N. 85° 36' 00" E., 546.44 feet to a point.

Thence N. 87° 57' 09" E., 300.00 feet to a point on an existing bulkhead. Said bulkhead being on the north line of the Port Aransas Municipal Boat Basin.

Thence N. 83° 43' 57" E., 322.57 feet to a point on said existing bulkhead.

Thence N. 54° 36' 45" E., 249.44 feet to a point on said existing bulkhead.

Thence, N. 31° 43' 12" W., 95.91 feet to a point on said existing bulkhead and being an inside corner of this tract.

Thence, N. 55° 14' 24" E., 364.82 feet to a point.

Thence, S. 82° 21' 03" E., 30.00 feet to a point. Said point being the southeast corner of this tract.

Thence, N. 07° 38' 57" E., 84.68 feet to a point.

Thence, N. 28° 23' 14" W., 127.15 feet to a point on a line. Said line being 725.00 feet south of and parallel to the centerline of the 500 foot Port Aransas-Corpus Christi Ship Channel.

EXHIBIT "B"

Thence, N. 17° 47' 53" W., 60.59 feet to a point. Said point being at the shoreline of the Port Aransas-Corpus Christi Ship Channel and the northeast corner of this tract.

Thence, S. 76° 09' 07" W., 441.03 feet along a meandering shoreline to a point.

Thence, S. 47° 05' 00" W., 97.65 feet along same shoreline to a point.

Thence, S. 77° 33' 19" W., 169.47 feet along same shoreline to a point.

Thence, W. 84° 12' 02" W., 181.99 feet along same shoreline to a point.

Thence, S. 79° 57' 56" W., 212.24 feet along same shoreline to a point.

Thence, S. 67° 18' 04" W., 133.25 feet along same shoreline to a point.

Thence, S. 83° 54' 54" W., 234.33 feet along same shoreline to a point.

Thence, S. 50° 37' 11" W., 150.41 feet along same shoreline to a point.

Thence, S. 77° 33' 21" W., 501.36 feet, parallel to and 725.00 feet south of the centerline of the Port Aransas-Corpus Christi Ship Channel, to the place of beginning, said tract of land containing 20.34 acres of land more or less.

All bearings are based on Grid North for Texas, South Zone as established by the U.S. Coast and Geodetic Survey.

There is attached hereto a plat designated as drawing number L-1-235 (1) dated May 18, 1987, which further describes this tract for all purposes necessary, proper, convenient or expedient in connection with the construction, operation and maintenance of channels, canals, boat basins, wharves, docks, berthing facilities, for small boats, marine railways, marine service stations, and any uses related to the operation and maintenance of a boat basin and harbor and for all other uses necessary, convenient or beneficial to the City of Port Aransas, Texas.





## EXHIBIT "C"

### INSURANCE

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees to procure and maintain at its sole expense during the Term of the Lease the following policies of insurance (sometimes collectively referred to in this Exhibit as the "*Policies*") and in at least the minimum amounts specified below:

	<u>TYPE OF INSURANCE</u>	<u>LIMITS OF LIABILITY</u>
A.	Workers' Compensation	Statutory
B.	Employer's Liability	\$1,00,000 per Occurrence \$1,00,000 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
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Automobile liability insurance coverage will include all owned, non-owned, and hired vehicles.

E.	Pollution Liability Insurance	\$1,000,000 per Occurrence \$2,000,000 Aggregate
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F. **Property Insurance** Property insurance with no exclusions, except the standard printed exclusions, covering all loss, damage or destruction to the Lessee's Real and Personal Property, including Equipment, on the leased property in an amount equal to 100% of the Full Replacement Cost (hereinafter defined) of Lessee's Real and Personal Property, including Equipment, on the leased property, or in such greater amount as may be necessary to avoid the effect of the co-insurance provisions of the applicable policy or policies. The term "Full Replacement Cost" shall mean the actual replacement cost, including the cost of demolition and debris removal and without deduction for depreciation.

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 or *Additional Covered Party (Risk Pool/Joint Self-Insurance Fund)* either by a blanket additional insured or a specific endorsement on all policies, except for Worker's Compensation, Employer's Liability, and Commercial Property Insurance. If the work of Lessee'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, Lessee 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 Lease.

The insurance required as listed above shall apply to any contractor or subcontractor performing work on the Leased Premises for or on behalf of Lessee, and Lessee shall ensure that any such contractor or subcontractor is aware of and is in compliance with the insurance requirements during any period such contractor or subcontractor is on the Leased Premises at Lessee's request. Lessee's insurance provider shall give the Lessee at least thirty (30) day's prior written notice of any cancellation, nonrenewal, or material modification of each of the policies and Lessee shall then notify the Authority of same, Attention: Risk Manager.

The company writing each of the Policies must possess a current rating with A.M. Best Company of at least "A-, VII", unless the company providing the coverage is a *Risk Pool or Joint Self-Insurance Fund*. Lessee's liability shall not be limited to the specified amounts of insurance required herein.

# EXHIBIT 2

## Sec. 25-121. - HI Harbor Island district regulations.

JUL 10 2019

In this district no land or building shall be used, erected for, or converted to any use other than:

- (1) Any lawful, non-dwelling, non-residential use listed in R-1, R-2, TR-1, TR-2, TR-3, C-1, C-2, or I-1;
- (2) Light manufacturing;
- (3) Marine terminals;
- (4) Storage Facilities for oil and/or gas;
- (5) Ship yards;
- (6) Fabrication yards;
- (7) Offshore oil/gas support services;
- (8) Cruise ship/Gaming ship terminal;
- (9) Research and testing laboratories;
- (10) Communication towers;
- (11) Concrete and asphalt batch plants;
- (12) Seafood processing, packing, and storage;
- (13) Dwellings for resident watchmen/caretakers;
- (14) Dredge material placement areas.

Planned unit developments are encouraged.

(Ord. No. 97-8, § 1, 7-17-97; Ord. No. 2010-05, § 1, 3-18-10; Ord. No. 2014-06, § 1.b, 2-20-14)

**ORDINANCE NO. 2014-06**

AN ORDINANCE (1) AMENDING SECTION 25-121 PORT ARANSAS CODE OF ORDINANCES (“PACO”) AND THEREBY RE-ZONING THAT PORTION OF THE LAND AREA KNOWN AS HARBOR ISLAND WHICH IS INCLUDED WITHIN THE HI HARBOR ISLAND ZONING DISTRICT UNDER SECTION 25-121 PACO, MORE PARTICULARLY BY DELETING THE LIST OF ALLOWED USES SET FORTH IN 25-121 AND REPLACING THAT LIST WITH A MORE RESTRICTIVE LIST OF ALLOWED HEAVY INDUSTRY USES, ALL OF WHICH LAND IS WITHIN PORT ARANSAS’ CITY LIMITS AND IS GENERALLY LOCATED NORTH OF CORPUS CHRISTI SHIP CHANNEL, TO THE WEST OF THE EXTREME NORTHEAST TIP OF MUSTANG ISLAND, AND IS SEPARATED FROM THE REMAINDER OF THE CITY, WHICH LIES ON MUSTANG ISLAND, BY THE CORPUS CHRISTI SHIP CHANNEL, AND (2) PROVIDING FOR A DECLARATION OF CITY BOUNDARY, (3) FOR CORRECTION OF THE OFFICIAL ZONING MAP, AND (4) FOR READING, EFFECTIVE DATE, AND SEVERANCE.

**FINDINGS**

The City Council of the City of Port Aransas, Texas (Council) makes the legislative findings hereinafter set forth at Parts A through and including D, all of which are hereby found to be true and correct legislative and factual findings of the Council, and they are hereby approved and incorporated into the body of this Ordinance as part of this Ordinance.

**Part A. Harbor Island – Historical Use Overview**

Harbor Island lies to the West of the extreme Northeast tip of Mustang Island, includes land on both sides of Aransas Channel, and is separated from the remainder of the city (which lies on Mustang Island) by the 1,500’ wide Corpus Christi Ship Channel. The ship channel provides shipping access from the Gulf of Mexico to various inland ports including the cities of Port Aransas, Aransas Pass, Ingleside, Portland, and Corpus Christi.

Historical use of Harbor Island dates back to the late 1800’s, however, industrial uses did not take hold until 1912, following the completion of a permanent federal built jetty system that opened the doors for reliable shipping access and a rail system connecting mainland Aransas Pass. Cotton export was the first commercial activity seen (1912) followed immediately by crude oil storage and transport (1912), then a shipyard in 1918. With the opening of the Corpus Christi Ship Channel in 1927, Harbor Island activity slowed due to competition with a larger port town with better amenities. Cotton uses left in 1926 leaving the island’s primary use through the 30’s, 40’s, 50’s and 60’s to oil storage and transport, and a public ferry system that provide transportation to the City of Port Aransas.

New developments in offshore drilling changed everything in the 70’s. The need for offshore rig fabrication yards with deep water access and close proximity to the Gulf of Mexico meant

another busy cycle for Harbor Island. This was immediately followed by offshore rig support businesses setting up operations to run crews and drilling supplies back and forth from the rigs. Though large rig fabrication slowed in the early 2000's, offshore crew and drilling support still continues today. The early 1990's also saw the end of crude oil storage on Harbor Island and the tank farms once owned by Fina and Exxon were slowly dismantled over the next few years.

Other recent uses include: the Texas Treasure casino ship in operation from 2000-2008, offshore support companies Haliburton, and Martin Midstream, fabricators Brown & Root, J. Ray McDermott, and most recently, LNG transporter Martin Midstream.

Ownership of Harbor Island properties has changed throughout the years. The largest ownership change in the last twenty years came in 1995 when the Port of Corpus Christi (POCC) purchased the Fina/Exxon tracts.

### **Part B. Harbor Island - Historical Incorporation and Annexation Overview**

The City incorporated in 1911, including within its original boundaries the tip of Harbor Island which is generally defined by and lies at the junction of Corpus Christi Ship Channel and Aransas Channel and is directly across the Corpus Christi Ship Channel from what is present day Robert's Point Park. The City in 1970 by Ordinance 70-2, in 1973 by Ordinance 73-1, and in 1980 by Ordinance 80-6 annexed additional Harbor Island land.

### **Part C. Harbor Island - Historical Zoning Overview**

The portion of Harbor Island which is within the city limits of Port Aransas and is within the HI Harbor Island zoning district was originally defined by the City's official zoning map in 1985-1986. While the district name and uses allowed in the district have changed over time, the boundaries of the district have never been changed. The land in the district is governed for zoning purposes by Section 25-121 Port Aransas Code of Ordinances. It lies north of Corpus Christi Ship Channel, and is more specifically described, to the extent the following include Harbor Island land located north of Corpus Christi Ship Channel, by the Order of the County Judge of Nueces County, Texas dated February 20, 1912 establishing the City's original incorporation boundaries to which reference is made in minutes of the City Council dated January 26, 1952, and by City Ordinances numbered 70-2, 73-1 and 80-6. It is this land which is in the HI Harbor Island Zoning District, is governed as to zoning by Section 25-121 Port Aransas Code of Ordinances, and is directly affected and effectively re-zoned by this Ordinance.

There have been three primary zoning actions affecting those portions of Harbor Island within Port Aransas' jurisdiction and which are the subject of this Ordinance. The first was Ordinance 85-22 in 1985, followed by Ordinance 97-8 in 1997, and Ordinance 10-05 in 2010 as follows:

1985 Ordinance 85-22. What is now the HI Harbor Island zoning district was then called "Industrial District" and the ordinance provided that property could be used in such district only for the following purposes:

- (23) *Storage of petroleum and petroleum products, crewboat docking facilities and petroleum related uses;*
- (24) *Fabrication and manufacturing of oil rig jackets and structures.*
- (25) *Dwellings for resident watchmen – caretakers.*

1997 Ordinance 97-8. The district name was changed to “I-2 Heavy Industrial” and the ordinance provided that land in the district could only be used for:

- (1) *Any lawful, non-dwelling, non-residential use or*
- (2) *Dwellings for resident watchmen/caretakers.*

2010 Ordinance 10-05. The district was renamed “HI Harbor Island.” Allowed uses were defined and are now codified under Sec. 25-121 PACO as follows:

“Sec. 25-121. Harbor Island District – In this district no land or building shall be used, erected for, or converted to any use other than:

- (1) *Heavy industrial uses;*
- (2) *Any lawful, non-dwelling, non-residential use;*
- (3) *Planned unit developments (PUD) and master planned developments are encouraged;*
- (4) *Dwellings for resident watchmen/caretakers provided they are clearly incidental and secondary with the main use to which the property is put.”*

25-121 PACO establishes the HI Harbor Island zoning district. I understand Port Aransas adopted zoning in 1985 and the official zoning map created in 1986 defining the land which was included in each district includes in the district now known as “HI Harbor Island” zoning district but then called “Industrial” all of the Harbor Island land incorporated within the City’s original 1911-1912 incorporated territory and all Harbor Island land annexed by Ordinances 70-2, 73-1, and 80-6. I understand no other land in Port Aransas is in the district, that from 1985 to the present no changes have been made by extracting land from it or adding land to it. I understand that, even though the zoning district boundaries have not changed since 1985-86, the 1997 revised official zoning map mistakenly left out the Harbor Island land which lies northeast of Aransas Channel (i.e. some of the Harbor Island land annexed by Ordinance 80-6 and all of the Harbor Island land annexed by Ordinance 73-1), and the 2010 revised official zoning map simply copied the 1997 map boundary. The official zoning map must be corrected to correctly reflect the land which is in fact in the HI Harbor Island zoning district.

#### **Part D. Present Day Conditions and Determination**

The Port of Corpus Christi owns substantial acreage on Harbor Island some or all of which acreage was recently slated to have been sold to Martin Midstream which proposed to develop multiple fractionator and splitter plants, and storage facilities on the land. The sale did not occur, but the planned use spurred serious concern of the citizens of Port Aransas and this Council about future development on Harbor Island.

A public need exists to re-zone Harbor Island in order to promote and avoid damage to the life, health, property, safety and public peace of the City and its citizens. The City of Port Aransas developed as a fishing village. It is a non-industrial town and relatively clean and free of the pollutants which normally accompany some industrial developments. Its commercial structures historically were small and primarily wooden with peaked roofs. The City in its commercial area had and still has the flavor and ambiance of a small fishing village which imbues it with a distinctive charm and character. The City has in the past few years, experienced extremely rapid growth and is in danger of losing the charm which makes it an attractive, unique venue. In recognition of this situation the City Council has determined that re-zoning Harbor Island and the imposition of additional controls upon new heavy industry development on Harbor Island is in the public interest. In order to prevent the development of Harbor Island in a way which would adversely affect, damage or destroy the aesthetics or environment of the City the Council considers it necessary to re-zone Harbor Island. The Planning and Zoning Commission and City Council have reviewed and analyzed Harbor Island development, historical, current and future, to determine if the zoning classifications, including design, construction and development standards, are consistent with the City's Comprehensive Plan, and whether such classifications and standards currently are in the best interests of the community and the general welfare of the City. The City Council has determined that it is in the best interest of the public to re-zone the property.

The records of the city show that the Harbor Island area has been a part of the city continuously for several decades as more specifically set out in the Incorporation and Annexation History under Part B above. The city has provided municipal services, including police protection, to the area and has otherwise treated the area as a part of the city continuously with respect to each part of Harbor Island from the time each part was taken into the city limits to the present. There has not been a final judicial determination during any of this time that the area of Harbor Island now inside the boundaries of the City according to the records of the City and as found in this Ordinance to be within the City's boundaries is outside the boundaries of the city. In fact, the final Decree of the 94<sup>th</sup> District Court of Nueces County, Texas in cause numbered 76-12-C expressly decreed the validity of the City's annexation ordinances and boundaries as of the date of the decree March 30, 1977. There is no pending lawsuit that challenges the inclusion of the Harbor Island area as part of the city.

The Planning & Zoning Commission met December 19, 2013 and considered the matter of the development and re-zoning of Harbor Island, adopted a preliminary report, and set a public hearing. The Planning & Zoning Commission conducted a public hearing on January 16, 2014 and adopted a final report, which includes a recommendation to the Council that Harbor Island be re-zoned. The Council on January 16, 2014 received the Planning & Zoning Commission final report and thereafter conducted a public hearing. Notices of the public hearings and meetings were published, posted and given to those entitled, in the time, and in the proper form, all as required by law.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS,  
COUNTY OF NUECES, STATE OF TEXAS:**

**SECTION 1. AMENDMENT AND DECLARATION.****Sub-Section 1.a.**

It is hereby declared that all land area shown to be within Port Aransas city limits original incorporation boundaries and all land area annexed by Ordinances 70-2, 73-1 and 80-6, is adjacent to the remainder of the City and is part of the City for all purposes.

**Sub-Section 1.b.**

Section 25-121 Port Aransas Code of Ordinances is hereby amended, new matter being indicated by underlining and deleted matter by interlining:

Section 25-121. – HI Harbor Island district regulations.

In this district no land or building shall be used, erected for, or converted to any use other than:

1. Any lawful, non-dwelling, non-residential use listed in R-1, R-2, TR-1, TR-2, TR-3, C-1, C-2, or I-1;
2. Light manufacturing;
3. Marine terminals;
4. Storage Facilities for oil and/or gas;
5. Ship yards;
6. Fabrication yards;
7. Offshore oil/gas support services;
8. Cruise ship/Gaming ship terminal;
9. Research and testing laboratories;
10. Communication towers;
11. Concrete and asphalt batch plants;
12. Seafood processing, packing, and storage;
13. Dwellings for resident watchmen/caretakers;
14. Dredge material placement areas.

Planned Unit Developments are encouraged.

**Sub-Section 1.c.**

The City's Official Zoning Map shall be corrected to reflect the inclusion of all Harbor Island land which is in Port Aransas city limits in the HI Harbor Island zoning district governed by 25-121 PACO as found above.

**SECTION 2. EFFECTIVE DATE.** As provided by Article III, Section 12.C. and by Article XII, Section 2 of the Charter of the City of Port Aransas, this Ordinance shall be effective upon adoption and, in addition, if any penalty, fine or forfeiture is imposed by this Ordinance, then this Ordinance shall be effective only after publication of this Ordinance in its entirety or in summary form once in the official newspaper of the City of Port Aransas.

**SECTION 3. READING.** As provided by Article III, Section 13 and Article III, Section 12.b. of the Charter of the City of Port Aransas, this Ordinance or the caption of it shall be read at three city council meetings with at least one week elapsing between each reading.



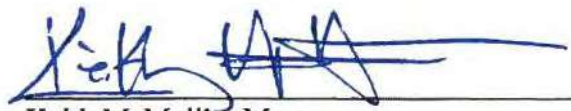
**SECTION 4. SEVERANCE.** If any part of this Ordinance is invalid or void or is declared to be so, then said part shall be severed from the balance of this Ordinance and said invalidity shall not affect the balance of this Ordinance, the balance of the Ordinance to be read as if said invalid or void portion thereof were not included, and the City Council declares that it would have adopted the valid portions of this Ordinance without the invalid parts and to this end the provisions of this Ordinance shall remain in full force and effect.

**SECTION 5. PUBLICATION.** As provided by Article III, Section 12.C. of the Charter of the City of Port Aransas, this Ordinance shall be published one time in the official newspaper of the City of Port Aransas, Nueces County, Texas, which publication shall contain the caption of this Ordinance stating in substance the purposes of same.

**PASSED, ORDAINED, APPROVED AND ADOPTED** this 20<sup>th</sup> day of FEBRUARY, 2014.

**CITY OF PORT ARANSAS, TEXAS**



  
\_\_\_\_\_  
Keith McMullin, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Irma Parker, City Secretary

First Reading: January 16, 2014  
Second Reading: February 6, 2014  
Third Reading: February 20, 2014

# EXHIBIT 3

RESOLUTION NO 2019-18

**A RESOLUTION OF THE PORT ARANSAS CITY COUNCIL SUPPORTING THE POSITION THAT ALL REGULATORY PERMITTING FOR OIL AND GAS INDUSTRIAL DEVELOPMENTS HAVE EXTENDED DEADLINES FOR PUBLIC COMMENT PERIODS TO ACCOMMODATE THE TIME NEEDED FOR THE CITY OF PORT ARANSAS TO PROPERLY RESEARCH, EVALUATE, AND COMMENT ON SAID PERMITS, AND ASK FOR AN UP-TO-DATE ENVIRONMENTAL IMPACT STUDY FOR ANY PROJECT THAT COULD POTENTIALLY IMPACT THE CRITICAL NATURAL HABITAT, BEAUTIFUL BEACHES, TOURISM INDUSTRY, AND THE PLACE WHERE WE RAISE OUR FAMILIES.**

**WHEREAS**, there is currently in the state of Texas a crude oil export boom creating a competitive environment on the Texas Gulf Coast to build one or more VLCC (Very Large Crude Carrier) terminals, with several proposed sites located within the city limits of Port Aransas; and

**WHEREAS**, the City is still in the midst of the critical rebuilding process as a result of being directly impacted by Hurricane Harvey on August 25, 2017, placing a huge work load on our citizens and municipal staff, re-enforcing the need for extended review periods; and

**WHEREAS**, industrial development permits are reviewed by the public and reviewing agencies such as the US Fish and Wildlife, EPA, USACE, Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife, and others, and such information contained within these permits should be the most updated and accurate scientific data available.

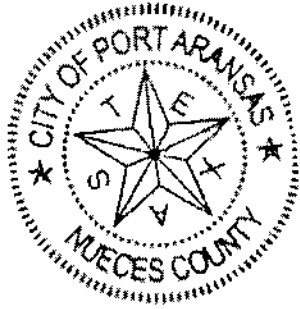
**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, NUECES COUNTY, TEXAS, AGREES THAT:**

**Section 1.** City staff is hereby directed to immediately requests public comment extensions on any and all regulatory permits for industrial development in the immediate region that may impact the city's welfare.

**Section 2.** City staff is hereby authorized to hire legal counsel to assist in challenging the scientific and socio-economic data's age, accuracy, and soundness contained in any and all regulatory permits.

**Section 3.** City staff is hereby directed to request updated an Environmental Impact Study for any ship channel dredging projects beyond the currently authorized 54' depth.

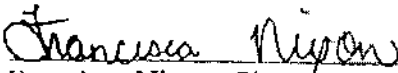
**PASSED and APPROVED** by the Port Aransas City Council, County of Nueces, State of Texas, on this 21<sup>st</sup> day of FEBRUARY, 2019.



CITY OF PORT ARANSAS, TEXAS

  
\_\_\_\_\_  
Charles R. Bujan, Mayor

ATTEST:

  
\_\_\_\_\_  
Francisca Nixon, City Secretary

# EXHIBIT 4

ORDINANCE NO. 2019-09

**EMERGENCY**

**AN EMERGENCY ORDINANCE PROVIDING FOR A MORATORIUM  
PRECLUDING THE ISSUANCE OF PROPERTY DEVELOPMENT  
PERMITS OR APPROVALS FOR DEVELOPMENT OF ANY HARBOR  
ISLAND PROPERTIES FOR HEAVY INDUSTRIAL USES, PROVIDING  
FOR EFFECTIVE DATE, READING, PUBLICATION, AND SEVERANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT  
ARANSAS, COUNTY OF NUECES, STATE OF TEXAS:**

Section 1. This is an emergency ordinance passed in accordance with Sections 3.12 and 3.13 of the Charter of the City of Port Aransas. Because this moratorium impacts only heavy industrial property uses, it is not subject to the procedures and limitations set forth in Subchapter E of Texas Local Government Code Chapter 212.

Section 2. In August, 2017, Hurricane Harvey devastated the middle Texas Coast and inflicted significant infrastructure and property damage to the City of Port Aransas. Among the many City services impacted by the Category 4 hurricane was the City's fire department, which was effectively destroyed as every single piece of firefighting equipment was lost. While the City is currently in the process of rebuilding its fire department, the City does not have the capability to provide fire protection services and emergency response to heavy industrial uses on Harbor Island and, in particular, oil and gas related operations. As a result, a public emergency exists which adversely affects the life, health, property, and public peace of those properties located on Harbor

Island. To ensure that these life safety concerns are protected, a temporary moratorium on further heavy industrial development on Harbor Island is warranted until adequate fire protection services and emergency response are available.

Section 3. The City of Port Aransas developed as a fishing village. It is a non-industrial town and relatively clean and free of the pollutants which normally accompany some industrial developments. Its commercial structures historically were small and primarily wooden with peaked roofs. The City in its commercial area had and still has the flavor and ambiance of a small fishing village which imbues it with a distinctive charm and character. The City has in the past few years, experienced extremely rapid growth and is in danger of losing the charm which makes it an attractive, unique venue. In recognition of this situation the City Council is considering re-zoning some of Harbor Island, and/or the imposition of additional controls upon new development on Harbor Island. In order to prevent the development of Harbor Island in a way which would adversely affect, damage or destroy the aesthetics or environment of the City, and to recognize the historical uses of Harbor Island, the Council considers it necessary to pass this temporary moratorium on an emergency basis to allow the City to study and, if determined to be appropriate, institute additional zoning and other development controls on Harbor Island.

Section 4. From and after the passage of this ordinance and for a period of 60 days thereafter, unless sooner repealed by the Council, no development permits or approvals shall be issued for development of Harbor Island property. Under Section 3.13 of the City Charter, unless extended

by further Council action, this emergency ordinance will automatically expire on the sixty-first (61st) day after its enactment.

Section 5. Effective Date. As provided by Sections 3.12 and 3.13 of the Charter of the City of Port Aransas, this ordinance shall be effective upon adoption.

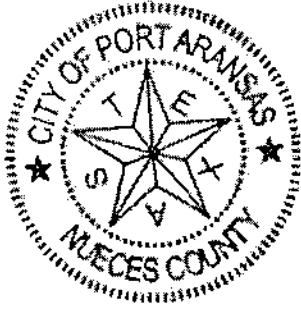
Section 6. Reading. As provided by Sections 3.12 and 3.13 of the Charter of the City of Port Aransas, this ordinance or the caption of it shall be read at one city council meeting.

Section 7. Severance. If any part of this ordinance is invalid or void or is declared to be so, then said part shall be severed from the balance of this ordinance and said invalidity shall not affect the balance of this ordinance, the balance of the ordinance to be read as if said invalid or void portion thereof were not included.

Section 8. Publication. As provided by Sections 3.12 and 3.13 City Charter of the City of Port Aransas this ordinance shall be published one time in the official newspaper of the City of Port Aransas, Nueces County, Texas, which publication shall contain the caption of this ordinance stating in substance the purposes of same.

**PASSED, ORDAINED, APPROVED AND ADOPTED** on one reading on this 29th day of August, 2019.





CITY OF PORT ARANSAS

BY: Charles R. Bujan  
Charles R. Bujan, Mayor

ATTEST:

Francisca Bujan  
City Secretary

# EXHIBIT 5



## PORT CORPUS CHRISTI®

September 4, 2019

### **Via Electronic Mail and/or Hand Delivery and/or Certified Mail**

City of Port Aransas, Texas  
Attn: Mr. David Parsons, City Manager  
710 W Avenue A  
Port Aransas, Texas 78373  
davidparsons@cityofportaransas.org

Re: Notice of Termination of Lease Agreement for 30.07 Acres for Marine Purposes Located in Port Aransas, Nueces County, Texas (“Marina Lease”).

Dear Mr. Parsons:

Reference is made to the Marina Lease, effective April 1, 2018, by and between the Port of Corpus Christi Authority of Nueces County, Texas, (the “Port Authority”) and the City of Port Aransas, Texas (the “City”).

Under the Marina Lease, the City acknowledged the importance of the Port Authority’s ability to develop Port Authority property on Harbor Island. Specifically, Section VII of the Marina Lease states:

City acknowledges the importance of Harbor Island to the operation and development of the Port of Corpus Christi; and recognizes that any changes in the zoning of Harbor Island further restricting the uses to which property within the Harbor Island District may be put will have a significant adverse impact on the Authority and on Authority’s development of the Port of Corpus Christi.<sup>1</sup>

As an inducement to the Port Authority to enter into the Marina Lease, the City agreed not to change the permissible uses of the Harbor Island District in a way that restricts the permissible uses of Harbor Island as they were on January 1, 2018. Section VII continues:

Accordingly, the Parties hereto agree, that this Lease will immediately terminate in the event, the City, during the term of this Lease, changes the zoning of Harbor Island to place Harbor Island into any other zoning district set forth in Article III of the Code, other than HI; or changes or modifies the Harbor Island District Regulations set forth in said section 25-121 of the Code as they existed on January 1, 2018, such that the Harbor Island District Regulations become more restrictive as to the uses to which property within the HI District may now be put.<sup>2</sup>

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<sup>1</sup> Marina Lease at 4, Section VII.

<sup>2</sup> *Id.*

The language of the Marina Lease is quite clear. The Port Authority unmistakably communicated the importance of the Harbor Island development to the City. In return, the City recognized the importance of assuring that the City would not do anything to further restrict the development of Harbor Island – or else lose its (the City’s) lease on the 30.07 acres made the subject of the Marina Lease.

As of January 1, 2018 and on the effective date of the Marina Lease, Section 25-121 of the City of Port Aransas Code of Ordinances (the “Code”) required that land and buildings in the Harbor Island District be used for:

- (3) Marine terminals; (4) Storage Facilities for oil and/or gas; (5) Ship yards; (7) Offshore oil/gas support services; (14) Dredge material placement areas, or other non-residential uses.<sup>3</sup>

Despite the assurances provided by the City in the Marina Lease, on August 29, 2019, the City Council of the City passed and adopted Ordinance No. 2019-09, which states in relevant part:

From and after the passage of this ordinance and for a period of 60 days thereafter, unless sooner repealed by the Council, no development permits or approvals shall be issued for development of Harbor Island property.<sup>4</sup>

By passage of Ordinance 2019-09, the City is restricting the development and use of the Port Authority’s Harbor Island District property for use as a marine terminal, use as a storage facility for oil and/or gas products, and for other purposes expressly allowed under Code § 25-121 for those entities that are required to comply with the City’s zoning and permitting requirements. City’s Ordinance 2019-09 effectively changes the Harbor Island District Regulations under Code § 25-121 and makes them “more restrictive as to the uses to which property within the HI District may [have] be[en] put [as of the date of the Marina Lease].”

The Marina Lease, therefore, terminated on its own terms as of the passage and adoption of Ordinance 2019-09 on August 29, 2019. Please note that the City’s obligations pursuant to Section X of the Marina Lease survive the termination of the Marina Lease.

Counsel for the Authority will contact the City Attorney to obtain a full and complete copy of the books and records related to the operations on the Property and the Net Marina Revenues, as those terms are used in the Marina Lease. If you would like to further discuss this Notice and how to move forward, then please do so by reaching out to Dane Bruun at (361) 561-8018.

<sup>3</sup> Ord. No. 97-8, § 1, 7-17-97; Ord. No. 2010-05, § 1, 3-18-10; Ord. No. 2014-06, § 1.b, 2-20-14.

<sup>4</sup> Ord. No. 2019-09, § 4, 8-28-2019.

Sincerely,



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Sam Esquivel

Director of Real Estate Services  
Port of Corpus Christi Authority,  
Nueces County, Texas

Copy:

Francisca Nixon – City of Port Aransas Secretary  
Dane Bruun – Welder Leshin

# EXHIBIT 6



**PORT CORPUS CHRISTI**

PO Box 1541 Corpus Christi, TX 78403

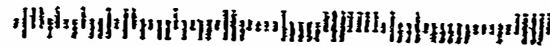
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CITY OF PORT ARANSAS  
710 W. AVENUE A  
PORT ARANSAS, TX  
78373-4128

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CITY OF PORT ARANSAS  
GENERAL OPERATING FUND  
710 W. AVENUE A (801) 749-4111  
PORT ARANSAS, TX 78373-4128

AMERICAN BANK  
6120 S. PADRE ISLAND DR.  
CORPUS CHRISTI, TX 78411

92717

89-328/1148

DATE 10/28/2019

AMOUNT \$\*\*\*12,000.00

PAY TWELVE THOUSAND & 00/100 DOLLARS

TO THE  
ORDER  
OF

\*\* PORT OF CORPUS CHRISTI \*\*  
P.O. BOX 15  
CORPUS CHRISTI, TX 78403



THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND CONTRAFACTIVE INK

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CITY OF PORT ARANSAS / GENERAL OPERATING FUND 710 W. AVENUE A PORT ARANSAS, TX 78373

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DATE	I.D.	PO #	DESCRIPTION	G/L DISTRIBUTION	AMOUNT
10/28/2019	HPACK	LEE 2019	LEASE 2019	65250	12,000.00

VOID

CHECK TOTAL 12,000.00

VND: 010490 \*\* PORT OF CORPUS CHRISTI TX \*\*

092717 10/28/2019