

**INTERLOCAL COOPERATION AGREEMENT,
AND COMPROMISE SETTLEMENT AGREEMENT,
BETWEEN THE CITY OF PORT ARANASAS, TEXAS, AND
THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS,
REGARDING HARBOR ISLAND AND OTHER MATTERS**

This Agreement (“**Agreement**”) is made and entered into by and between the City of Port Aransas, Texas (“**City**”), a home-rule municipality, and the Port of Corpus Christi Authority of Nueces County, Texas (“**Port Authority**”), a political subdivision of the State of Texas 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 City and the Port Authority are sometimes referred to collectively as the “**Parties**” or individually as a “**Party**.”

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code (“**Act**”), authorizes local governments to contract with one or more local governments; and

WHEREAS, Harbor Island (“**Harbor Island**”) is an island located along the northeast perimeter of Corpus Christi Bay, portions of which are located within the city limits of Port Aransas and zoned for industrial uses; and

WHEREAS, the Port Authority owns land located on Harbor Island, which land the Port Authority plans to develop for marine terminals, storage facilities for oil and gas, dredge material placement areas, a seawater desalination facility, and other uses allowed by the City’s zoning; and

WHEREAS, both the City and the Port Authority desire that the development of Harbor Island occur in a manner that meets or exceeds the City’s zoning and all applicable development regulations, and in a manner that promotes the Port Authority’s responsible development of Harbor Island; and

WHEREAS, the City and the Port Authority desire to reach certain agreements regarding permitting and inspections on Harbor Island, the provision of fire protection services to developments on Harbor Island, and other matters; and

WHEREAS, the Port Authority has entered into an agreement with the University of Texas at Austin – Marine Science Institute (an “Interlocal Cooperation Contract For Studies Related to the Port’s Harbor Island Planning and Redevelopment Activities”); and

WHEREAS, currently pending before the Texas Commission on Environmental Quality (“**TCEQ**”) under TCEQ Docket No. 2019-1156-IWD and before the State Office of Administrative Hearings (“**SOAH**”) under SOAH Docket No. 582-20-1895 is the Port Authority’s permit application for a proposed desalination facility on Harbor Island, *i.e.*, Texas Pollutant Discharge Elimination System (“**TPDES**”) Permit No. WQ0005253000 (“**TPDES Permit**”), upon which the City provided comments to the TCEQ and requested a contested case hearing; and

WHEREAS, a preliminary hearing was held on July 9, 2020, by the SOAH in Docket No. 582-20-1895 regarding the TPDES Permit and the City was admitted as a party; and

WHEREAS, currently pending before the TCEQ under TCEQ Docket No. 2020-0511-AIR and before SOAH under SOAH Docket No. 582-20-3438 is Lone Star Ports, LLC's application for Air Quality Permit No. 157150 ("**Air Permit**"), upon which the City provided comments to the TCEQ and requested a contested case hearing; and

WHEREAS, a preliminary hearing was held on June 30, 2020, by SOAH in Docket No. 582-20-3438 regarding the Air Permit and the City was admitted as a party; and

WHEREAS, the Port Authority has submitted an application with the United States Army Corps of Engineers ("**USACE**") (SWG-2019-00245) for authorization to work in the waters of the United States to construct a terminal facility with two vessel berths on Harbor Island, upon which the City provided comments to the USACE; and

WHEREAS, the City and the Port Authority desire to reach certain agreements regarding the desalination facility on Harbor Island; and

WHEREAS, the City and the Port Authority desire to reach certain agreements regarding a Marine Terminal Project (a term hereinafter defined) and other facilities that the Port Authority proposes to construct on Harbor Island; and

WHEREAS, the City and the Port Authority desire to confirm certain understandings regarding the Marina Lease between the City and the Port Authority, effective April 1, 2018; and

WHEREAS, the City and the Port Authority desire to resolve and settle all litigation matters currently pending between the Parties by dismissing, with prejudice, their respective claims against each other, and releasing all claims against each other; and

WHEREAS, both the City Council of the City of Port Aransas, Texas ("**City Council**"), and the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas ("**Port Commission**") find that this Agreement is in the common interest of both Parties.

NOW, THEREFORE, the City and the Port Authority, for the mutual consideration hereinafter stated, agree and understand as follows:

Section 1. TERM

This Agreement shall continue in force until March 31, 2038; or until terminated by mutual written agreement and consent of both Parties.

Section 2. OBLIGATIONS OF THE PARTIES

The City and the Port Authority covenant and agree that, while this Agreement is in effect, they shall comply with the following terms and conditions:

A. Harbor Island Inspections and Permitting.

The Port Authority agrees that its development of Harbor Island properties (inclusive of a desalination facility, Marine Terminal Project (hereinafter defined), and other facilities) shall meet all of the City's applicable commercial and industrial development and construction regulations, in existence as of April 1, 2018. The City staff shall be responsible for permitting and inspecting the Port Authority's improvements that are typically considered retail commercial development (noise, lighting, and odor), which permitting and inspecting shall not be unreasonably withheld. For the Port Authority's improvements that are below-ground or that would be considered industrial development (including, but not limited to, docks, basins, storage tanks, pipelines, pump facilities, and similar facilities), the City and the Port Authority shall jointly select and engage a qualified third-party inspector with expertise in determining compliance with applicable standards for each phase of the Port Authority's development of Harbor Island. The City and the Port Authority shall share the cost of such third-party inspector services equally unless otherwise agreed to between the City of Port Aransas City Manager and the Port Authority's Chief Executive Officer.

For residential and commercial uses on Harbor Island for property that the Port Authority owns of a non-industrial nature (including, but not limited to, strip centers, gas stations, office buildings, retail shops, restaurants, and other developments typically inspected and permitted by the City), the City shall specifically provide those traditional services and inspections at its sole cost.

B. Harbor Island Fire Fighting and Environmental Catastrophe Response.

On or before September 1, 2020, the Port Authority shall pay to the City \$200,000 for use by the City for firefighting equipment and training to better prepare the City's fire department to prevent and fight fires and other environmental catastrophes at proposed or existing facilities on Harbor Island. The Port Authority shall continue to make such \$200,000 payments to the City for five consecutive years for a total payment to the City of \$1,000,000 by the end of the five-year period. The second of the five payments shall be made on or before September 1, 2021; the third of the five payments shall be made on or before September 1, 2022; the fourth of the five payments shall be made on or before September 1, 2023; and the fifth of the five payments shall be made on or before September 1, 2024. The use of the funds for equipment and training will be at the sole discretion of the City so long as the expenditures are utilized for firefighting equipment and training to better prepare the City's fire department to prevent and fight fires and other environmental catastrophes at proposed or existing facilities on Harbor Island, or as may otherwise be agreed to between the City of Port Aransas City Manager and the Port Authority's Chief Executive Officer. The Port Authority agrees to budget funds sufficient to pay each year's \$200,000 obligation in each fiscal year's budget until the entire \$1,000,000 has been paid to the City.

C. Harbor Island Desalination Facility.

Regarding the proposed desalination facility on Harbor Island and the pending TPDES Permit, the Parties agree to the following:

1. The City and the Port Authority agree that the CORMIX modeling completed by the TCEQ, and the October 21, 2019 report *Desalination Brine Discharge Modeling - Corpus Christi Bay System* completed by Jordan Furnans with LRE Water, Inc., in conjunction with researchers at the University of Texas at Austin, indicate that the Port Authority's proposed desalination facility's brine discharge into the Corpus Christi Ship Channel will not increase the ambient salinity levels in the Corpus Christi Bay system;
2. The Port Authority shall require that the placement of any Port Authority desalination facility's intake structure relating to its TPDES Permit be located offshore (in the Gulf of Mexico), which intake structure is referenced in the Resolution approved by the Port Authority dated May 19, 2020, a true and correct copy of which is attached hereto as *Exhibit A*;
3. The City shall, on or before August 31, 2020, approve, execute, and deliver to the Port Authority and appropriate governing agency (or agencies) the documents attached hereto as *Exhibit B* thereby withdrawing as a party from SOAH Docket No. 582-20-1895 and withdrawing the City's comments, objections, and requests for contested case hearing in TCEQ Docket No. 2019-1156-IWD regarding the TPDES Permit and application;
4. The City, as an entity, agrees in relation to the TCEQ Docket No. 2019-1156-IWD and SOAH Docket No. 582-20-1895 and any appeal of the Commission's decision on the TPDES Permit, unless ordered to do so pursuant to subpoena or court order, that it will not provide financial or technical support to any person, entity, or group opposing the issuance of the TPDES Permit in TCEQ Docket No. 2019-1156-IWD or SOAH Docket No. 582-20-1895 or any appeal of the Commission's decision on the TPDES Permit;
5. The City shall be permitted one seat on the Port Authority's Harbor Island desalination facility review team involved in the Request for Qualification process for selection of a desalination project developer and evaluating the descaling process relating to the TPDES Permit;
6. The Parties agree that in the event that the desalination facility is developed (designed, built, constructed, maintained, or operated by the Port Authority, and/or its designee) within the city limits of the City, that such development will be subject to the third-party inspection process set forth in Section 2(A) of this Agreement; and
7. The Parties agree that this Agreement does not constitute an endorsement of the TPDES Permit, the TPDES Permit application, any modeling completed in support of the application, including the modeling listed in Section 2(C)(1) of this Agreement, or the issuance of the TPDES Permit.

D. Harbor Island Marine Terminal.

Regarding the Port Authority's proposed Harbor Island Marine Terminal, the Parties agree to the following:

1. The Port Authority's development of marine terminals capable of servicing multiple classifications of vessels, crude oil and other petroleum product storage, and other related infrastructure (including dredging of uplands and submerged lands within the City limits) on or near Harbor Island ("**Marine Terminal Project**"), which is inclusive of those listed permitted uses set forth in City Code of Ordinance's Section 25-121, is an allowable use on Harbor Island (and nearby submerged lands) pursuant to the City's zoning ordinances and resolutions;
2. That in the event that the Marine Terminal Project is developed (designed, built, constructed, maintained, or operated by the Port Authority, and/or its designees) within the city limits of the City, that such development will be subject to the third-party inspection process set forth in Section 2(A) of this Agreement;
3. The City shall, on or before August 31, 2020, approve, execute, and deliver to the Port Authority and appropriate governing agency (or agencies) the documents attached hereto as *Exhibit C* thereby withdrawing all comments and objections to the Port Authority's Marine Terminal Project and USACE Permit Application No. SWG-2019-00245;
4. The City, as an entity, agrees in relation to the USACE Permit Application No. SWG-2019-00245 and any appeal of that matter, unless ordered to do so pursuant to subpoena or court order, that it will not provide financial or technical support to any person, entity, or group opposing the Port Authority's Marine Terminal Project, including USACE Permit Application No. SWG-2019-00245;
5. The City shall, on or before August 31, 2020, approve, execute, and deliver to the Port Authority and appropriate governing agency (or agencies) the documents attached hereto as *Exhibit D* thereby withdrawing as a party from SOAH Docket No. 582-20-3438 and withdrawing the City's comments, objections, and requests for contested case hearing in TCEQ Docket No. 2020-0511-AIR regarding the Air Permit and the application regarding the same;
6. The City, as an entity, agrees in relation to the TCEQ Docket No. 2020-0511-AIR and SOAH Docket No. 582-20-3438 and any appeal of the Commission's decision on the Air Permit, unless ordered to do so pursuant to subpoena or court order, that it will not provide financial or technical support to any person, entity, or group opposing the Air Permit in TCEQ Docket No. 2020-0511-AIR or SOAH Docket No. 582-20-3438, or any appeal of the Commission's decision on the Air Permit; and
7. The Parties agree that this Agreement does not constitute an endorsement of the Marine Terminal Project, the Port Authority's application regarding the same pending before the USACE under USACE Permit Application No. SWG-2019-00245, or the Lone Star Ports, LLC's Air Permit and the application regarding the same.

E. Marina Lease.

Regarding the Marina Lease between the City and the Port Authority, effective April 1, 2018, the Parties agree to the following:

1. The Marina Lease has a thirty (30) year term commencing on April 1, 2018, and expiring on March 31, 2048, and is, and at all times since its approval by the Parties has been, a valid agreement between the Parties and, as such, each Party hereby affirms its intention to fully and completely abide by the contractual terms and provisions of such Marina Lease;
2. The Port Authority, on or before August 31, 2020, shall approve, execute, and deliver to the City the documents attached hereto as *Exhibit E* thereby affirming that the Port Authority is withdrawing its prior claim that the Marina Lease is terminated, and rescinding the Port Authority's September 4, 2019, "Lease Termination" letter executed by Sam Esquivel; and
3. The Port Authority agrees that the City has timely made all payments to the Port Authority as required by the Marina Lease as of the Effective Date of this Agreement.

F. Other Matters.

1. To the extent of any conflict between the environmental permits and processes addressed in this Agreement and City Resolution No. 2019-18, a copy of which is attached hereto as *Exhibit F*, this Agreement shall control.
2. The Parties hereby expressly and further agree to execute the letter attached hereto as *Exhibit G* to Senator Lois W. Kolkhorst to jointly inform her that the City no longer opposes the following matters: (1) the Port Authority's Harbor Island desalination facility (including TPDES Permit No. WQ0005253000 and the application supporting the same); (2) Lone Star Ports, LLC's Harbor Island project (including TCEQ Air Quality Permit No. 157150 and the application supporting the same); and (3) the Port Authority's Marine Terminal Project (including USACE Permit Application No. SWG-2019-00245).
3. To the extent authorized by law, the Port Authority agrees that it shall not object to, or resist, any future efforts by the City to renew the City's Charlie's Pasture project (including USACE Permit Application No. SWG-2000-02968).
4. To the extent authorized by law, the City agrees that it shall not enact any zoning changes (by ordinance, resolution, or other measure) on any land owned or controlled by the Port Authority on Harbor Island.
5. To the extent authorized by law, the Port Authority agrees that it shall not object to, or resist, any City zoning changes (by ordinance, resolution, or other measure) imposed on any land on Harbor Island that is not owned or controlled by the Port Authority on the date of the imposition of the regulation. To the extent that this paragraph might be

interpreted to conflict with any provisions of the Marina Lease (as described in Section 3(E) of this Agreement), this paragraph shall control.

6. Neither Party will oppose the issuance of any renewals of the TPDES Permit, the Air Permit, and the authorizations issued by the USACE relating to the Marine Terminal Project and the Charlie's Pasture project, or related projects on Port Authority land, without first consulting the other Party and complying with the requirements of Section 2(H) of this Agreement.

G. Litigation Matters.

Through the execution and implementation of this Agreement, the Parties intend to compromise and settle all outstanding claims and litigation between them. The Parties understand and agree that their respective claims are in dispute and that they desire to settle such dispute by compromise to avoid the uncertainties, inconvenience, and expense of further litigation, and to forge a stronger relationship between sovereign governmental entities.

1. The City shall dismiss, with prejudice, its appeal in Appeal No. 13-20-00013-CV, taken from Cause No. 2019CCV-61513-3, by approving, executing, and filing those documents attached as *Exhibit H* on or before August 31, 2020;

2. The City shall dismiss, with prejudice, its appeal in Appeal No. 13-20-00243-CV, taken from Cause No. 2019-DCV-6221-B, by approving, executing, and filing those documents attached as *Exhibit I* on or before August 31, 2020;

3. The Port Authority shall dismiss, with prejudice, its lawsuit in Cause No. 2019CCV-61513-3, by approving, executing, and filing those documents attached hereto as *Exhibit J* on or before September 14, 2020;

4. The City shall dismiss, with prejudice, its lawsuit in Cause No. 2019-DCV-6221-B, by approving, executing, and filing those documents attached hereto as *Exhibit K* on or before September 14, 2020; and

5. For and in consideration of the covenants and undertakings contained in this Agreement, which is hereby declared to be adequate and sufficient, it is agreed by and among the Parties that all disputes concerning the subject matters of the litigation matters referenced in Sections G(1), G(2), G(3), and G(4) of this Agreement (collectively referred to as the "Litigation Matters"), and the claims alleged in the Litigation Matters shall be settled and compromised. Each Party RELEASES AND FOREVER DISCHARGES the other Party, their elected or appointed officials, representatives, departments, agents, servants, employees, attorneys, successors and assigns, jointly and severally, each and all of them, whether acting in their official or individual capacities, of and from any and all claims, demands, damages (pecuniary and non-pecuniary), actions, causes of actions, attorneys' fees, expenses, court costs, compensation, and all damages, of whatever kind or nature, whether now known or not known to the Parties in any way directly or indirectly related to any actions heretofore taken in regard to the subjects of the Litigation Matters,

or related to any claim alleged or which could have been alleged against the other Party in the Litigation Matters.

H. Other City/Port Authority Issues.

The Parties recognize that there may be other issues of concern or dispute that may arise in the Port Authority's development of properties located on Harbor Island, environmental issues of concern to the City, and/or the interpretation and implementation of this Agreement. Should such issues arise, the Parties agree to work with each other, in good faith, in an effort to resolve such issues prior to instituting litigation. No Party shall institute litigation regarding the matters addressed in this Agreement without first notifying the other Party of its concerns and giving the other Party a reasonable time in which to respond to address the concerns. Further, unless waived by both Parties, the Parties agree to engage, in good-faith, in mediation prior to instituting litigation.

Section 3. MISCELLANEOUS PROVISIONS

A. Effective Date.

The effective date of this Agreement shall be the last day this Agreement is approved by a Party hereto as indicated on the signature blocks below (the "**Effective Date**").

B. Entire Agreement.

This Agreement represents the entire agreement between the City and the Port Authority regarding the development of Harbor Island and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the governing bodies of both the City and the Port Authority or those authorized to sign on behalf of those governing bodies.

C. Immunity and Defenses.

It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto. The Parties agree, to the extent authorized by law, that this Agreement may be enforced by those remedies allowed under Texas law including, but not necessarily limited to, specific performance, injunctive relief, equitable relief, mandamus, and monetary damages.

D. Notice. All notices required by this Agreement shall be addressed to the following, or other such Party or address as either Party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:

Mr. David Parsons
City Manager
710 W. Avenue A
Port Aransas, Texas 78373
Phone: 361.749.4111
Email: DavidParsons@cityofportaransas.org

Port Authority:

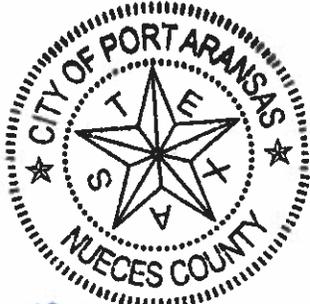
Sean Strawbridge
Chief Executive Officer
222 Power Street
Corpus Christi, Texas 78401
Phone: 361.882.5633
Email: sstrawbridge@pocca.com

E. Severability Clause. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

F. Successors and Assigns. This Agreement shall be binding upon the Parties hereto, their successors, and assigns. Neither of the Parties will assign nor transfer an interest in this Agreement without the written consent of the other Party.

G. Venue. The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement. The Parties agree that this Agreement is performable in Nueces County, Texas, and that exclusive venue shall lie in Nueces County, Texas.

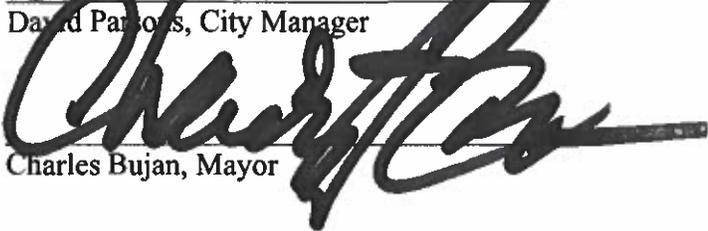
APPROVED by the City Council of the City of Port Aransas, Texas, in its meeting held on the _____ day of _____, 2020, and executed by its authorized representative.



ATTEST:


Francisca Nixon, City Secretary

CITY OF PORT ARANSAS, TEXAS


David Parsons, City Manager

Charles Bujan, Mayor

APPROVED AS TO FORM:

Michael G. Morris, City Attorney

APPROVED by the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, in its meeting held on the 28th day of August, 2020, and executed by its authorized representative.

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



Sean Strawbridge, Chief Executive Officer



Charles W. Zahn, Jr., Chairman of Port of Corpus
Christi Authority of Nueces County, Texas,
Commission