

FRANCHISE

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS TO THE TEXAS FUEL AND ASPHALT COMPANY, LLC

SECTION 1 **GRANT OF ACCESS TO CHANNEL**

Subject to the terms and conditions of this franchise, Port of Corpus Christi Authority of Nueces County, Texas (“Authority”), hereby grants to The Texas Fuel and Asphalt Company, LLC, a Texas limited liability company, whose business mailing address is PO Box 9605, Corpus Christi, Texas 78469, its successors and permitted assigns (“Grantee”), for the term specified in this Section 1, the right of access to the Corpus Christi Ship Channel (“Channel”) from Grantee’s Land (hereinafter defined) for all purposes necessary, proper or expedient in connection with the use and operation of the docks and wharves constructed or to be constructed on Grantee’s Land and reasonably related to shipping property or commodities by water to, from, or across these docks and wharves. The term of this franchise shall begin when Grantee files its written acceptance of it with the Authority in accordance with Section 10 of this franchise and shall end on August 31, 2044. “Grantee’s Land” is that certain 1.03 acres of land situated in Nueces County, Texas, which is shown on the Authority’s Boundary Map attached hereto as Exhibit A and incorporated herein by reference, and being the easternmost 1.03 acres of the 7.48 acres of submerged land conveyed to Mary Dunn Meaney by the Nueces County Navigation District No. 1 by that certain Mutual Conveyance described in Section 7 of this franchise.

SECTION 2 **USE OF AUTHORITY’S LAND**

The Authority has established the south bulkhead line of the Channel, which is the line beyond which no structure may be built, and this line as it may be changed from time to time by the Authority is referred to herein as the “South Bulkhead Line.” The northerly boundary line of Grantee’s Land is the South Bulkhead Line. Grantee may cross the South Bulkhead Line (where it is adjacent to Grantee’s Land) and conduct and perform all dredging and excavation operations in, on and under the submerged lands owned by the Authority lying between the Channel and Grantee’s Land as may be necessary, proper or expedient in connection with the use of such submerged lands of the Authority as a means of access from Grantee’s docks and wharves to the Channel.

SECTION 3 **RENTALS**

For the rights granted to it hereunder, Grantee shall pay to the Authority a rental, based upon the type and quantity of all property or commodities shipped by water to, from, or across docks and wharves on Grantee's Land, as follows:

A. Cargo Owned by Others. For all property or commodities owned by a party other than the holder of this franchise which is shipped by water to, from, or across docks or wharves on Grantee's Land, a rental equal to the product of (i) the quantity of the property or commodities so shipped, multiplied by (ii) fifty percent (50%) of the Authority's then current tariff wharfage rate on the same type of property or commodity.

B. Cargo Owned by Grantee. For all property or commodities owned by the holder of this franchise which is shipped by water to, from, or across docks or wharves on Grantee's Land, a rental equal to the product of (i) the quantity of the property or commodities so shipped, multiplied by (ii) an amount (the "Rental Rate") not more than fifty percent (50%) of the Authority's then current tariff wharfage rate on the same type of property or commodity. The Rental Rate shall be fifty percent (50%) of the Authority's then current tariff wharfage rate on the same type of property or commodity, unless the Authority agrees to reduce the Rental Rate for a certain type of property or commodity for all individuals or entities holding similar franchises granted by the Authority. The Authority shall give Grantee written notice of any such reductions.

Grantee, its successors and permitted assigns, shall keep and maintain a complete and accurate set of books and records showing all property and commodities shipped to, from, or across any docks or wharves constructed on the Grantee's Land in order that the Authority may ascertain therefrom what rentals are due to the Authority from Grantee hereunder, and such books and records shall be subject to the inspection of the Authority, its agents and attorneys, at any and all reasonable times.

By accepting this franchise, Grantee agrees that the rental payable under this Section 3 is fair and reasonable. The rental payable hereunder shall be paid to the Authority at its offices in Corpus Christi, Nueces County, Texas, and shall be payable monthly or at such other reasonable time or times as the Authority may direct by general rule or regulation which shall be applicable to all persons or parties holding permits or franchises similar to this franchise.

SECTION 4 **CONDITIONS**

This franchise is granted with reasonable conditions for the protection of the Authority and its property and the property of its tenants, to-wit:

A. Hazards. Grantee will at all times conduct its operations so as not to create any unusual fire or health hazard.

B. Railways. Grantee will not for itself or for others, except with the consent of the Authority, build or operate a railway terminal on Grantee's Land for use in connection with the exercise of the rights granted by this franchise; provided, however, that Grantee may build or use spur railroad tracks in connection with its business and the exercise of its rights under this franchise. Any tracks constructed by Grantee shall be used for switching or loading tracks for the convenience of Grantee for handling its cargo.

C. Plans. Before constructing any structure or commencing any work (including dredging or filling of submerged areas) on Grantee's Land or the Authority's submerged land lying between the Channel and the South Bulkhead Line for which a U. S. Department of the Army permit is required and before filing application for any such permit, Grantee will submit plans of such structure or work to the Authority for its approval. Grantee shall not begin such construction or work until it has obtained the Authority's written approval of such plans, which approval shall not be unreasonably withheld. Authority will review and approve or disapprove any such plans within sixty (60) days after its receipt of the plans. Grantee shall file with the Authority a copy of any permit or license it obtains from any governmental agency in connection with any construction or work described in this Section 4, and any documents placing conditions on or amending them in any way.

To facilitate the Authority's review of the plans, Grantee shall submit two (2) sets of formal plans that clearly define the project. The drawings must be prepared in a standard engineering format (24" x 36" drawings) and show all physical features and improvements in and around the project site and must be signed and sealed by a Professional Engineer registered in the State of Texas. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the project site and any area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, existing channel depth elevations, etc., must be included with the formal plans submitted. The site plan must clearly show the bottom of cut line and top of slope line of any planned dredging. If any dredging is planned by Grantee that will, in Authority's judgment, based upon customary dredging operations, result in removal of a substantial quantity of earth or material from, or damage to, adjacent real property, Grantee must obtain the written permission of the adjacent property owner to carry out such dredging for the project and submit it to the Authority with the formal plans.

D. Compliance. Grantee shall perform all construction or work described in this Section 4 in conformity with applicable building codes and all applicable federal, state and other governmental laws and regulations; and Grantee must comply with any applicable provisions of the code of the National Fire Protection Association.

E. Slips. Grantee's slips along the South Bulkhead Line shall be maintained by Grantee at a depth sufficient to prevent vessels berthed at the docks there from striking bottom due to lowering of the water level from passing vessels or seasonal low tides.

F. Pollution. Grantee shall take all reasonable precautions to prevent the pollution of the Channel and shall faithfully observe all regulations adopted by the Authority to prevent the discharge of pollutants into the Channel. Grantee shall also comply with all federal and state laws and regulations and municipal ordinances relating to maintaining water quality in the

Channel, and will file with the Authority copies of all permits received by Grantee relating to water quality to the extent relating to its activities hereunder.

G. Rules and Regulations. This franchise shall be subject to such reasonable rules and regulations as the Authority presently has in effect or may invoke in the future which apply to all individuals or entities holding similar franchises granted by the Authority.

H. Dredging Easements. The rights of Grantee hereunder shall be subject to all easements of every kind heretofore granted by the Authority and to the right of the Authority to dredge, and to grant easements to the United States and other governmental agencies to dredge, north of the South Bulkhead Line.

SECTION 5 **INDEMNITY**

Grantee shall defend, indemnify and hold harmless Authority, its commissioners, officers, directors, managers, employees, and agents (for the purposes of this Section 5, the “Indemnified Parties”) from and against any and all expenses and liabilities for, and resulting from, the sole, joint, concurrent, or comparative negligence of Grantee, its agents or employees (collectively, “Grantee Parties”), in connection with the exercise by Grantee of the rights and privileges granted herein (each an “Indemnified Claim”) EVEN IF THE INDEMNIFIED CLAIM IS CAUSED BY THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PARTIES; provided, however, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence of the Grantee Parties and the Indemnified Parties, then Grantee’s obligation to the Indemnified Parties shall only extend to the percentage of the total responsibility of the Grantee Parties in contributing to such Indemnified Claim. In Indemnified Claims against any Indemnified Party by or for an employee of a Grantee Party, the Grantee’s indemnification obligation under this Section 5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Grantee Party under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts.

SECTION 6 **DEFAULT**

In the event of default of Grantee in the performance of any of the terms and conditions herein stipulated to be done by it, or required of it under any valid law, rule or regulation of the government of the United States of America or the State of Texas, and in event such default is not cured or is not in the process of being cured in a reasonably diligent manner within sixty (60) days after the Authority has sent a written notice by registered or certified mail to Grantee at its business address, advising it of the nature and extent of such default, this franchise shall be subject to forfeiture at the instance of the Authority by suit in a State District Court located in Nueces County, Texas.

SECTION 7
NO EFFECT ON MUTUAL CONVEYANCE

The rights and privilege of Grantee and the Authority arising out of that certain mutual conveyance dated June 29, 1957, of record in Volume 780, pages 503 through 512, Deed Records of Nueces County, Texas, executed by the Nueces County Navigation District No. 1 and by Mary Dunn Meaney (“Mutual Conveyance”), are hereby expressly recognized and confirmed and in no wise abridged, lessened or diminished by the granting of this franchise and its acceptance by Grantee or by any surrender, cancellation or forfeiture of the same.

SECTION 8
ASSIGNMENT

Grantee may, with the prior written consent of the Authority, assign Grantee’s rights and obligations under this franchise to any individual or business entity that leases or otherwise has the right to use Grantee’s Land, but Grantee shall not be released thereby from its obligations and duties hereunder.

Grantee may, with the prior written consent of the Authority, assign this franchise to any individual or business entity that purchases or otherwise acquires title to all of the Grantee’s Land. Any such assignee of this franchise, shall file written evidence of such assignment and of assignee’s acceptance of the same in the office of the Authority. If Grantee assigns this franchise in accordance with the terms and conditions of this paragraph, Grantee shall be released from any further obligations and duties hereunder only insofar as such obligations and duties arise from and after the effective date of such assignment, it being specifically understood that any such assignment shall not have the effect of releasing Grantee from any obligations or duties hereunder which may have accrued at any time prior to the effective date of such assignment.

If Grantee sells, assigns, or transfers title to only a portion of the Grantee’s Land (the “Transferred Land”), this franchise shall automatically terminate with respect to the Transferred Land, and the new owner thereof shall not have the right to access the Channel from the Transferred Land until such time as the new owner has received a new permit or franchise from the Authority for such purpose in accordance with the terms of the Mutual Conveyance described in Section 7 of this franchise.

Grantee shall have the right to convey this franchise by mortgage, deed of trust or any other security instrument. If Grantee shall be in default of any of the covenants or conditions of this franchise, the holder of the mortgage, deed of trust or other security instrument may, before forfeiture is invoked by the Authority, make any and all payments and do and perform any and all acts or things which may be necessary to prevent a forfeiture of this franchise and the party making such payments or performing such acts or things shall thereby be subrogated to all rights of the Grantee under this franchise. The Authority agrees that if the holder of any mortgage, deed of trust or other security instrument delivers a copy of such instrument to the Authority, together with the address to which it desires notices to be sent, the Authority will send to the holder at the address specified copies of all written notices to be served on Grantee under and pursuant to the terms of this franchise. It is understood that the mortgagee, trustee and

beneficiary of any security instrument shall in no way be liable to the Authority for any payments or for the performance of any other covenants and conditions of this franchise until such time as it shall acquire by assignment or conveyance from Grantee or by foreclosure or other proceedings provided by law or by the terms of the security instrument all the right, title and interest of Grantee under this franchise; provided, however, that any party who shall acquire said right, title and interest of Grantee, as above provided, shall thereby become liable for all payments and the performance of all other covenants and conditions theretofore and thereafter required to be made by Grantee under the franchise, as fully and to the same extent as if Grantee itself would have been if it still had retained its right, title and interest hereunder.

SECTION 9
GENERAL

All covenants, conditions and agreements of this franchise shall apply to and be binding upon the Authority and Grantee and their respective legal representatives, successors and permitted assigns (when assignment is made in accordance with the provisions hereof). This franchise is made under the applicable laws of the State of Texas and if any term, clause, provision, part or portion of this franchise shall be adjudged invalid or illegal for any reason, the validity of any other part or portion hereof shall not be affected thereby, and the invalid or illegal portion thereof shall be deleted and ignored as if the same had not been written herein. If any of the rights and authorities granted hereunder are in excess of the authority of the Authority, then the rights and authorities shall be limited to such as the Authority is authorized to grant, under the applicable laws. The failure of Grantee or of the Authority to insist upon the strict performance of any of the covenants and conditions of this franchise, or the consent, either express or implied, of either party hereto to any act or omission by the other party in breach or default hereof, shall not be deemed or construed to be a waiver of any such covenant or condition except for that particular instance only and shall not constitute or be construed as a waiver of such covenant or condition or of any further or future breach or default thereof. The expense of publishing notice of this franchise as required by law shall be borne by the Grantee.

SECTION 10
PASSAGE AND ACCEPTANCE

A majority of the Authority's Port Commissioners voted to grant this franchise at meetings of the Port Commission held on _____, 2014, _____, 2014, and _____, 2014, and the final form of this franchise was approved at the last of these meetings. Grantee must file its written acceptance of this franchise with the Authority within thirty (30) days after the date on which this franchise was finally approved by the Authority's Port Commissioners, and such written acceptance shall be duly acknowledged by the person or persons executing the same. This franchise shall take effect when the Grantee files its written acceptance of it with the Authority in accordance with this Section.

[The Authority's signature page follows this page]

IN WITNESS WHEREOF, the Authority has caused this franchise to be signed by the Chairman of the Port Commission and attested by the Secretary of the Port Commission this _____ day of _____, 2014.

PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS

By: _____
Judy Hawley,
Port Commission Chairman

ATTEST:

Charles W. Zahn, Jr.,
Port Commission Secretary

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2014, by Judy Hawley, Chairman of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, and Charles W. Zahn, Jr., Secretary of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Port Authority.

NOTARY PUBLIC, STATE OF TEXAS

ACCEPTANCE OF GRANTEE

The Texas Fuel and Asphalt Company, LLC, hereby accepts the above and foregoing franchise covering 1.03 acres of land, which was granted to it by Port of Corpus Christi Authority of Nueces County, Texas, and further agrees that The Texas Fuel and Asphalt Company, LLC, its successors and permitted assigns, shall in all things be bound by the terms and conditions of said franchise.

EXECUTED this ____ day of _____, 2014.

THE TEXAS FUEL AND ASPHALT
COMPANY, LLC

By: _____

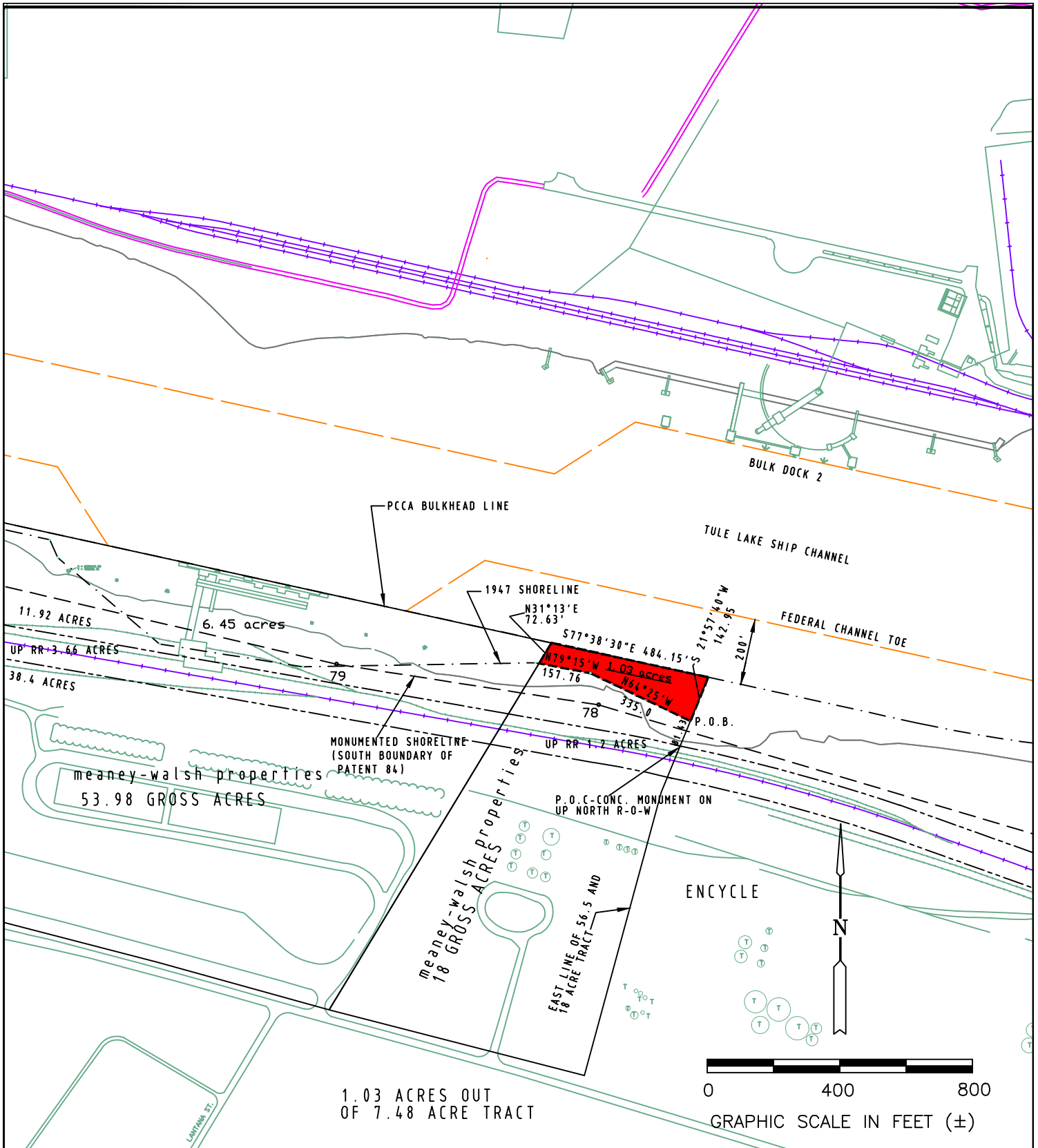
Printed Name: _____

Title: _____


STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____, _____ of The Texas Fuel and Asphalt Company, LLC, on behalf of said company

NOTARY PUBLIC, STATE OF TEXAS



NO.	DATE	REVISION



PORT CORPUSCHRISTI

PORT OF CORPUS CHRISTI AUTHORITY

**THE TEXAS FUEL AND ASPHALT
COMPANY COMPANY, LLC
FRANCHISE**