



PORTCORPUSCHRISTI



- Immediate Release -

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Port Commissioners Approved the First Reading of a Franchise Agreement with Canyon Supply & Logistics, LLC

Corpus Christi, TX – Port Commissioners approved today the first reading of a franchise agreement with Canyon Supply & Logistics, LLC.

(See attached franchise agreement)

About Port Corpus Christi

The primary economic engine of the Coastal Bend, Port Corpus Christi is one of the 10 largest ports in the United States in total tonnage. The Port's mission statement is to “serve as a regional economic development catalyst while protecting and enhancing its existing industrial base and simultaneously working to diversify its international maritime cargo business.” Strategically located on the western Gulf of Mexico, with a straight, 45’ deep channel, the Port provides quick access to the Gulf and the entire United States inland waterway system. The Port delivers outstanding access to overland transportation with on-site and direct connections to three Class-1 railroads and uncongested interstate and state highways. The Port is protected by a state-of-the-art security department and an award-winning Environmental Management System. With an outstanding management and operations staff, Port Corpus Christi is clearly “*More Than You Can Sea.*”

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS
TO
CANYON SUPPLY & LOGISTICS, LLC**

RECITALS:

Whereas, by a special warranty deed dated _____ (“Deed”), Port of Corpus Christi Authority of Nueces County, Texas (“Authority”), conveyed to Canyon Supply & Logistics, LLC, a Texas limited liability company whose mailing address is 5005 Riverway, Suite 250, Houston, Texas 77056 (“Grantee”), approximately 186.546 acres of land located in San Patricio County, Texas, and being the same property as Tract G in the survey plat attached hereto as Exhibit A, which is incorporated herein by this reference (the “Upland Property”); and

Whereas, by the Deed the Authority also conveyed to the Grantee an easement (the “Appurtenant Easement”) on approximately 84.60 acres of submerged land located in Nueces County, Texas, adjacent to the Upland Property, and being the same property as Tract IV in the survey plat attached hereto as Exhibit B, which is incorporated herein by this reference (the “Submerged Lands”); and

Whereas, the Deed contains a restrictive covenant (the “Restrictive Covenant”) running with the Upland Property and the Appurtenant Easement that the Grantee, its successors and assigns, shall not access or permit others to access the waters in Nueces or San Patricio County, Texas, including Corpus Christi Bay, the Corpus Christi Ship Channel and the La Quinta Ship Channel (all of such waters and waterways being collectively referred to herein as the “Waters of Nueces County”), from any wharf, quay, pier, bulkhead, or dock, together with any breasting or mooring structures associated therewith, now or hereafter erected on the Upland Property or the Submerged Lands for any business purpose without first obtaining a franchise from Grantor to do so in substantially the form attached to the Deed; and

Whereas, Grantee has asked the Authority to grant it a franchise that would give Grantee the right of access to the Waters of Nueces County from Grantee’s wharfs, quays, piers, bulkheads, or docks, together with any breasting or mooring structures associated therewith, now or hereafter erected on the Upland Property or the Submerged Lands (collectively, the “Grantee’s Marine Facilities,” whether one or more) for the purposes described herein; and

Whereas, the Restrictive Covenant does not require a franchise in order to access the Waters of Nueces County from the Grantee’s Marine Facilities for recreational boating, swimming and sport fishing and related and incidental recreational uses (collectively, “Recreational Uses”);

Now, therefore, by action of the Port Commission of the Authority:

SECTION 1
GRANT

Subject to the terms and conditions of this franchise, the Authority hereby grants to Grantee, its successors and permitted assigns, for the term specified in this Section 1, the right of access to the Waters of Nueces County from Grantee's Marine Facilities for purposes including and reasonably related to the following: shipping property or commodities to, from, or across Grantee's Marine Facilities; the Local Business Use (as hereinafter described) of Grantee's Marine Facilities; constructing, operating, maintaining, repairing, replacing, upgrading, and/or removing Grantee's Marine Facilities; and dredging of the Submerged Lands as is necessary or appropriate to facilitate the construction, operation, repair, and maintenance of Grantee's Marine Facilities. The term of this franchise shall begin on the Effective Date described in Section 10 of this franchise and shall end on _____, 2042.

The term "Local Business Use", as used herein, means any business use or use for a profit other than the shipment of a property or commodity by water in trade or commerce in the usual sense of carriage of goods by water as cargo. Local Business Use shall not be construed to include Recreational Uses. By way of illustration, but not in limitation, Local Business Use, within the meaning of this franchise, shall include the following: operating and providing facilities for the operation of commercial fishing boats; providing berthing space and service facilities for military ships; providing berthing space and service facilities for pleasure or commercial boats, including the operation of a marine service station to supply water, fuel, oil and other items necessary for pleasure or commercial boats or vessels; chartering, leasing, selling or renting pleasure boats or any kind of boats; operating dredges, tug boats or barges; carrying passengers for hire or on charter for pay; handling vessels for, or movement or shipment of commodities, equipment and supplies used by or in connection with, oil, gas and mineral exploration, drilling and production operations in navigable waters or otherwise, including loading, unloading, and storage facilities for commodities, equipment and supplies used by or in connection with said oil, gas and mineral exploration, drilling and production operations in navigable waters or otherwise; the operation of a ship repair or construction yard, or vessels used in connection therewith; dry boat storage or launching facilities; and operation of a marine railway.

SECTION 2
DREDGING

Grantee may conduct and perform all dredging operations in, on and under the Submerged Lands as may be necessary, proper or expedient in connection with the use of the Submerged Lands as a means of navigating from Grantee's Marine Facilities to the Corpus Christi Ship Channel.

SECTION 3
RENTALS

For the rights granted to it hereunder, Grantee shall pay to the Authority a monthly rental equal to the greater of the Variable Rent or the Fixed Rent as those terms are defined in this

Section 3. There is no rental or fee for accessing the Waters of Nueces County from Grantee's Marine Facilities for Recreational Purposes.

For purposes of this franchise, "Variable Rent" means with respect to any calendar month an amount equal to the product of (i) the quantity of the property or commodities shipped by water to, from, or across the Grantee's Marine Facilities during such month, multiplied by (ii) fifty percent (50%) of Authority's then current tariff wharfage rate on the same type of property or commodities.

For purposes of this franchise, "Fixed Rent" means with respect to any calendar month an amount equal to the product of (i) the Fixed Rental Rate (as hereinafter defined and calculated for that month), multiplied by (ii) the total number of linear feet of mooring or berthing space on the faces or sides of all of Grantee's wharfs, quays, or piers situated on the Upland Property or Submerged Lands that month. The sides of piers not more than 2.5 feet wide and used as a means to reach mooring lines shall not be counted. If both sides of a pier are utilized for berthing purposes, then twice its length shall be counted in determining the linear footage of berthing space. Authority's representatives shall have the right to verify the Grantee's linear footage from time to time with reasonable notice to Grantee.

For purposes of this franchise, the "Fixed Rental Rate" shall be \$2.00 per linear foot per month for the five-year period beginning on the Effective Date of this franchise (as defined in Section 10 hereof). The Fixed Rental Rate for the next five-year period and each five-year period thereafter (each, a "Five-Year Period") shall equal the product of (i) \$2.00 per linear foot per month, multiplied by (ii) the CPI Adjustment Factor (as hereinafter defined) for that period.

"CPI Adjustment Factor" means, for any Five-Year Period, the number obtained by dividing (i) the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100) (Not Seasonally Adjusted) published by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index") for the third calendar month immediately preceding the month in which the Five-Year Period begins, by (ii) the Consumer Price Index for the month in which the Effective Date occurs.

Grantee agrees that the foregoing rentals are fair and reasonable. The rental for each month shall be calculated and paid to Authority at its offices in Corpus Christi, Texas, not later than the fifteenth (15th) day of the following month. Grantee shall keep and maintain a complete and accurate set of books and records of vessels using Grantee's Marine Facilities for general cargo business and the kinds and amounts of cargos loaded upon or discharged from such vessels and shall make monthly reports thereon together with the proper payment therefor to Authority. Such books and records shall be subject to the inspection by the Authority, its agents and attorneys, at any and all reasonable times within twelve (12) months thereafter; otherwise rental calculations shall conclusively deemed to be correct. Grantee shall not be required to maintain such records for more than two (2) years after the calendar year to which they pertain unless then in dispute.

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, subject to matters beyond its reasonable control, conduct its operations on Grantee's Marine Facilities so as not to create any unusual fire or health hazard and will keep the premises neat and clean.

- B. **Plans.** Before commencing any work on Grantee's Marine Facilities, or the Submerged Lands 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 work to be undertaken to the Authority for its approval, and Grantee shall not begin such 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 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.

- C. **Compliance.** Grantee shall perform all 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.

- D. **Slips.** Grantee's slips along Grantee's Marine Facilities 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.

- E. **Pollution**. Grantee shall take all reasonable precautions to prevent the pollution of the Waters of Nueces County. Grantee shall also comply with all state and federal laws and regulations and municipal ordinances relating to maintaining water quality in the Waters of Nueces County, 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.
- F. **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.

SECTION 5 **INDEMNITY**

Grantee shall defend, indemnify and hold harmless Authority and its commissioners, officers, directors, managers, employees, and agents (for the purposes of this Section 5, the “Indemnified Parties”) from and against, and Grantee shall be responsible for, any and all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, costs and expenses (including reasonable attorneys’ and experts’ fees and expenses), suits, and costs of any settlement or judgment, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (all of which are hereinafter collectively called “Claims”), which may be brought or instituted or asserted after the Effective Date on account of or growing out of or arising from or relating to (i) any failure on the part of the Grantee, its owners, officers, directors, managers, employees, or agents (for the purposes of this Section 5, the “Grantee Parties”) to comply with the provisions of this franchise, or to comply with the provisions of any laws, ordinances, rules, regulations, or codes applicable to the Grantee’s Marine Facilities after the Effective Date, or (ii) any and all injuries or damages, including death, to persons or properties relating to the condition, use or occupancy of the Grantee’s Marine Facilities after the Effective Date, including the alteration, repair or maintenance of any improvements thereon (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 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 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. Grantee shall have the right to retain counsel of its choosing to defend the Indemnified Parties against any Indemnified Claim and shall have the right to direct the defense. The Indemnified Parties shall fully cooperate with the Grantee and selected counsel. Without relieving Grantee of its obligations under this Section 5, if Grantee does not assume the defense of an Indemnified Claim, the Indemnified Parties, at their election and expense, may defend or participate in the defense of such Claim with attorneys and representatives of their own choosing.

SECTION 6
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, if Grantee fails to observe or perform 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, for a period of sixty (60) days after receipt by Grantee of written notice from the Authority advising it fully of the kind, nature and extent of such failure and requesting that it be remedied, unless the Authority shall agree in writing to an extension of the sixty-day period prior to its expiration; provided, however, that if the failure stated in the notice can be corrected, but cannot be corrected within the sixty-day period the Authority will not unreasonably withhold its consent to an extension of time if corrective action is instituted within the sixty-day period and diligently pursued until the failure is corrected. Any notice pursuant to this Section 6 shall be mailed to Grantee by registered or certified mail at the address for notice set forth on the Grantee's acceptance page attached hereto, or at such other address as Grantee may designate to Authority in writing.

SECTION 7
NO EFFECT ON DEED

The rights and privilege of Grantee and the Authority arising out of the Deed 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, which shall not be unreasonably withheld, assign Grantee's rights and obligations under this franchise to any individual or business entity that leases all of the Grantee's Marine Facilities or otherwise has the right to use all of the Grantee's Marine Facilities, but Grantee shall not be released thereby from any obligations and duties assumed hereunder by such lessee or user without the express written consent of Authority, which may be withheld in its sole discretion. Authority will not consent to such a release unless it is satisfied the lessee or user has the financial capacity to perform the Grantee's obligations and duties under this franchise.

Grantee may, with the prior written consent of the Authority, which shall not be unreasonably withheld, assign its rights and obligations under this franchise to any individual or business entity that purchases or otherwise acquires title to all of the Grantee's Marine Facilities. 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 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 Grantee's Marine Facilities, this franchise shall automatically terminate with respect to the transferred portion of Grantee's Marine Facilities, and the new owner thereof shall not have the right to access the Waters of Nueces County from the transferred portion of Grantee's Marine Facilities until such time as the new owner has received a new franchise from the Authority for such purpose in accordance with the terms of the Deed.

In the event Grantee sells any of the Grantee's Marine Facilities to a buyer, the actions or inactions of the buyer with respect to such facilities, such as a default under its franchise or failure to obtain a franchise for such facilities, shall have no effect on any retained interests or rights of Grantee under this franchise.

A sale of any of Grantee's Marine Facilities to a buyer may, as deemed appropriate by Grantee, include a performance deed of trust ("Performance Deed of Trust"). Failure of the buyer to comply with obligations under such a Performance Deed of Trust may, as deemed appropriate by Grantee, result in a reversion of the purchased facilities back to the Grantee for an amount equal to the lesser of (i) the purchase price paid by the buyer or (ii) the present fair market value of the such facilities, without regard to any increase in value, such as due to improvements by the buyer.

Any assignment of a Grantee's rights and obligations under this franchise in connection with a lease of the Grantee's Marine Facilities may include quality controls, as deemed appropriate by Grantee, which if not met by the lessee may result in various remedies deemed appropriate by Grantee, including, without limitation, a termination of the assignment, such that the Grantee would reacquire its rights under 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 covenants 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 this franchise as required by law shall be borne by the Grantee.

SECTION 10
PASSAGE, PUBLICATION AND ACCEPTANCE

A majority of the Authority's Port Commissioners voted to grant this franchise at meetings of the Port Commission held on December 13, 2011, January 10, 2012, and February 14, 2012, and the final form of this franchise was approved at the last of these meetings. This franchise shall not become effective until it has been published in full in its final form at the expense of Grantee once a week for three consecutive weeks in the *Corpus Christi Caller Times*, a daily newspaper of general circulation published inside the boundaries of the Authority (the "Publication Requirement"). 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 (the "Acceptance Requirement"). The effective date of

this franchise (“Effective Date”) shall be the first day of the first calendar month after the date on which both the Publication Requirement and the Acceptance Requirement have been satisfied.

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 14th day of February, 2012.

PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS

By: _____
_____,
Port Commission Chairman

ATTEST:

_____,
Port Commission Secretary

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2012, by _____, Chairman of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, and _____, 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

Canyon Supply & Logistics, LLC, hereby accepts the above and foregoing franchise covering its wharfs, quays, piers, bulkheads and docks, and any breasting or mooring structures associated therewith, now or hereafter erected on the 798.790-acre tract of upland property or the 116.427-acre tract of submerged land described therein, which was granted to it by Port of Corpus Christi Authority of Nueces County, Texas, and further agrees that Canyon Supply & Logistics, LLC, its successors and permitted assigns, shall in all things be bound by the terms and conditions of said franchise.

EXECUTED this ____ day of _____, 2012.

Canyon Supply & Logistics, LLC

By: _____

Name: _____

Title: _____

Grantee's Address:

Canyon Supply & Logistics, LLC
5005 Riverway, Suite 250
Houston, Texas 77056
Attn: Richard L. Fuqua

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2012, by _____, _____ of Canyon Supply & Logistics, LLC

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT B

Tract IV - 84.60 acres

