

FRANCHISE

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS
TO
KENNETH L. AND BRENDA BERRY**

**SECTION 1
GRANT OF FRANCHISE**

(a) Subject to the terms and conditions of this franchise (“*Franchise*”), the Port of Corpus Christi Authority of Nueces County, Texas, a navigation district and political subdivision of the State of Texas (which navigation district together with its successors and assigns is called “*Authority*” herein), hereby grants this Franchise to Kenneth L. Berry and spouse, Brenda Berry (who together with their successors, legal representatives, heirs and assigns are collectively called “*Berrys*” or “*Grantee*” herein), for the Term specified in Section 1(d) of this Franchise. This Franchise is granted to Grantee in connection with that certain Agreement Pertaining to the Development of Berry Island, Including Littoral Rights Special Warranty Deed, Restrictive Covenant Agreement, Channel Improvement Easement, South Bulkhead Line, Agreement to Grant Franchises, and Related Matters made by and between the Authority and Grantee effective as of the ____ day of January, 2025 (the “*Berry Island Development Agreement*”).

(b) For purposes of this Franchise, the following terms shall have the meaning given to them here:

“*All Corridors*” means the Left Corridor, Middle Corridor, and Right Corridor, collectively.

“*Authority’s Submerged Land*” means all the submerged land belonging to the Authority in the Left Corridor, Middle Corridor, and Right Corridor, collectively, unless the context requires that the Authority’s Submerged Land be limited to the submerged land belonging to the Authority in a particular corridor or corridors.

“*Berry Island*” means the following eight tracts of land described by metes and bounds and depicted in the State Settlement Agreement, together with any accretions thereto: (1) 116.607 -acre Tract described as a portion of the John G. Hatch Survey, Patent No. 506, Volume 10, Abstract No. 373, San Patricio County, Texas, known as “Ingleside Point”; (2) Tract A (submerged 2.956 acres); (3) Tract B (5.839 Acres); (4) Tract D (31.701 acres); (5) Tract E (submerged 0.69 acres); (6) Tract F (3.116 acres); (7) Tract G (submerged 4.871 acres); and (8) Tract H (60.013 acres).

“*Berry Island Submerged Land*” means all of Berry Island below mean high tide.

“*Berry Island Upland*” means all of Berry Island, SAVE AND EXCEPT the Berry Island Submerged Land.

“**Channel Improvement Tract**” means the approximately 15.79-acre tract of land out of Berry Island that is designated as the Channel Improvement Tract in **Exhibit A** attached hereto.

“**Commercial Docks**” means docks, wharves, quays, piers, bulkheads, or other similar structures, collectively, that will be used in connection with navigation-related commerce.

“**Franchise Property**” means all of the upland and submerged land included in the Right Corridor, Middle Corridor, and Left Corridor, collectively.

“**Franchise Upland**” means all of the upland included in the Franchise Property.

“**Grant Date**” means the date on which the Authority’s Port Commissioners voted to grant this Franchise to the Berrys. The Grant Date is specified in Section 10.

“**Grantee Docks**” means all the Commercial Docks constructed after the Effective Date wholly within the Left Corridor. No Commercial Docks may be constructed in whole or in part outside the boundary lines of the Left Corridor.

“**Grantee’s Land**” means the Berry Island Upland.

“**Left Corridor**” means the tract of upland and submerged land labeled as such in **Exhibit B** attached hereto that includes part of the Authority’s Submerged Land and part of Berry Island.

“**Middle Corridor**” means the tract of upland and submerged land labeled as such in **Exhibit B** attached hereto that includes part of the Authority’s Submerged Land and part of the Channel Improvement Tract.

“**Relinquished Tract**” means the 3-acre tract of submerged land within the south end of the Channel Improvement Tract that is designated as the Relinquished Tract in **Exhibit A** attached hereto. For clarity and the avoidance of doubt, the Berrys have relinquished their right to locate docks or berths on this tract and their right to dredge out any portion of this tract.

“**Right Corridor**” means the tract of upland and submerged land labeled as such in **Exhibit B** attached hereto that includes part of the Authority’s Submerged Land and Tract F.

“**South Bulkhead Line**” means the line labeled as such in **Exhibit A** attached hereto. The South Bulkhead Line also divides the Left Corridor from the Middle Corridor.

“**State Settlement Agreement**” means the Compromise and Settlement Agreement, by and between The State of Texas Permanent School Fund and Kenneth Berry, and wife, Brenda Berry, dated to be effective September 1, 1997 and filed under document number 1997033248 of the Official Public Records of Nueces County, Texas; and under File No. 454750 of the Real Property Records of San Patricio County, Texas.

“**Tract F**” means the 3.116-acre tract of land within Berry Island and the Channel Improvement Tract that is designated as Tract F and is depicted in **Exhibit A** attached hereto.

(c) Subject to the terms and conditions of this Franchise, under this Franchise Grantee shall have (i) the right to access the waters of Corpus Christi Bay located inside the boundaries of the Franchise Property from the Grantee Docks or the Franchise Upland, (ii) the right to access the La Quinta Channel from the Grantee Docks where the Franchise Property meets the La Quinta Channel, (iii) the right to construct docks on the Authority’s Submerged Land in the Left Corridor, (iv) the right to dredge ship and barge berths on the Authority’s Submerged Land in the Left Corridor or the Middle Corridor in accordance with Section 2 hereof, and (v) the right to dredge access channels to the La Quinta Channel on the Authority’s Submerged Land in accordance with Section 2 hereof. Without limiting the generality of the foregoing, the Grantee Docks may be used in conjunction with and as complementary to any lawful business, project, plant, facility, infrastructure or enterprise for which Berry Island is utilized now or in the future, which uses may include, by way of illustration and not limitation, shipping, receiving, transporting, storing, manufacturing and blending of all products and commodities of any kind, character or description, whether those products or commodities consist of solids, liquids, gases, and any mix or mixture thereof, and whether hydrocarbon-based or hydrocarbon-related or not.

(d) The term of this Franchise shall begin on the Grant Date described in Section 10 of this Franchise and shall end on November 30, 2074 (“**Term**”); provided, however, that the Authority agrees that it will, upon written application or request made to it by the Berrys, grant one or more additional franchises (each, a “**Subsequent Franchise**”) to the Berrys in accordance with Part V of the Berry Island Development Agreement. In the event the Authority defaults in its obligation to grant a Franchise in accordance with Part V of the Berry Island Development Agreement, the Berrys shall give written notice to the Authority of such default and if, at the end of ninety (90) days from the date such notice is received by the Authority, such default continues then the Littoral Rights Special Warranty Deed in Part I of the Berry Island Development Agreement, the Restrictive Covenant Agreement in Part II of the Berry Island Development Agreement, and the Channel Improvement Easement in Part III of the Berry Island Development Agreement shall be null, void and of no further force or effect, and all right, title and interest of the Authority in, to, under and pursuant to the Littoral Rights Special Warranty Deed, the Restrictive Covenant Agreement and the Channel Improvement Easement shall automatically revert to the Berrys.

SECTION 2 **DREDGING OPERATIONS**

(a) Upon receiving an appropriate permit from the United States Army Corps of Engineers (“**USACE**”) and complying with Section 4(c), Grantee shall have the right to dredge ship and barge berths in the Left Corridor or the Middle Corridor; provided that the vessels moored in these berths may not protrude into the Right Corridor, and (ii) the right to dredge access channels on the Authority’s Submerged Land for Vessels transiting between the La Quinta Channel and the Grantee Docks. Grantee will be permitted to perform these dredging operations without paying any additional consideration to the Authority.

(b) Grantee shall also comply with the terms and conditions of Part III of the Berry Island Development Agreement that apply to any dredging performed by the Grantee on the Channel Improvement Tract or in the Channel Improvement Easement (as established and defined in Part III of the Berry Island Development Agreement).

(c) The Authority owns the Authority's Submerged Land. Upon Grantee's receipt of an appropriate USACE permit and complying with Section 4(c), Grantee may conduct and perform all permitted dredging and excavation operations in, on and under the Authority's Submerged Land as may be necessary, proper or expedient to provide a means of access from the Grantee Docks to the La Quinta Channel. Grantee will be permitted to perform these dredging operations without paying any additional consideration to the Authority.

(d) It is expressly covenanted and agreed, that Grantee shall not deposit any dredge material of any kind on the Channel Improvement Tract or in the Channel Improvement Easement or between the Channel Improvement Easement and the La Quinta Channel.

SECTION 3 **FRANCHISE FEES**

(a) Grantee shall make franchise fee payments to the Authority based on all cargo loaded or unloaded at any Grantee Dock in an amount equal to fifty percent (50%) of the total wharfage that would have been payable to the Authority under the Authority's Tariff 200 (or any successor tariff) had these been public docks or wharves; *provided however*, that if the wharfage rate charged to an Authority customer for the same cargo loaded or unloaded at any Grantee Dock is less than the published wharfage rate, the amount to be paid by Grantee hereunder shall automatically be calculated at the reduced rate for as long as the reduced rate is in effect; and *provided further, however*, that if the other customer's reduced rate is dependent on a minimum volume commitment, then Grantee shall not be charged the discounted rate unless Grantee meets or exceeds this minimum volume commitment. The "***Calculated Wharfage Rate***" for any given cargo at any given time is the wharfage rate for such cargo determined in accordance with this Section 3(a).

(b) Grantee shall also pay to the Authority a security surcharge on each such franchise fee payment equal to the Authority's then-current security surcharge on wharfage published in the Authority's Tariff 200 (or any successor tariff); *provided however*, that if the security surcharge rate charged to an Authority customer for the same cargo loaded or unloaded at any Grantee Dock is less than the published security surcharge rate, the amount to be paid by Grantee hereunder shall automatically be calculated at the reduced rate for as long as the reduced rate is in effect; and *provided further, however*, that if the other customer's reduced rate is dependent on a minimum volume commitment, then Grantee shall not be charged the discounted rate unless Grantee meets or exceeds this minimum volume commitment. The "***Calculated Surcharge Rate***" for any given cargo at any given time is the security surcharge rate for such cargo determined in accordance with this Section 3(b).

(c) As required under Item 2.402 of the Authority's Tariff 200 (or any successor tariff), whenever cargo is being loaded or unloaded at a Grantee Dock, Grantee shall file or cause to be

filed with the Authority's Harbormaster a general cargo wharfage statement ("**General Cargo Wharfage Statement**"). The General Cargo Wharfage Statement shall be accompanied with certified manifests and bills of lading in either printed or electronic form, showing the weight, measurements and description of all cargo loaded or unloaded at the dock. Any other data required for proper statistical information may be reasonably requested by the Authority. The General Cargo Wharfage Statement on inbound cargo must be filed not later than ten (10) consecutive days (Saturday, Sunday and Holidays included) after arrival of the vessel. The General Cargo Wharfage Statement on outbound cargo must be filed not later than 10 (ten) consecutive days (Saturday, Sunday and Holidays included) after vessel sailing.

(d) Upon receipt of a General Cargo Wharfage Statement, the Authority shall submit a franchise fee payment invoice to Grantee for an amount equal to the product of (i) the quantity of the cargo stated in the General Cargo Wharfage Statement, multiplied by (ii) fifty percent (50%) of the Authority's then-current Calculated Wharfage Rate for that type of cargo. Each such franchise fee invoice will also include an amount equal to the Authority's then-current Calculated Surcharge Rate on wharfage.

(e) By accepting this Franchise, Grantee agrees that the foregoing franchise fee payments calculated under this Section 3 are fair and reasonable. Furthermore, Grantee agrees that as long as this Franchise or a Subsequent Franchise is in effect Grantee will not load or unload or permit any other party to load or unload any cargo at a Commercial Dock located on Berry Island that is not subject to the franchise fees payable under this Franchise or a Subsequent Franchise.

(f) Grantee, its successors and permitted assigns, shall keep and maintain a complete and accurate set of books and records showing all cargo loaded or unloaded at the Grantee Docks and on all vessels moored to the Grantee Docks in order that the Authority may ascertain therefrom what franchise fees 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 and upon at least five (5) days' advance notice thereof to Grantee.

(g) All franchise fee invoices are due and payable thirty (30) days after the invoice date. Any invoice remaining unpaid forty-five (45) days after the invoice date will be considered delinquent. The franchise fees payable hereunder shall be (i) made by electronic transfer to an account to be designated by Authority, (ii) delivered to the Authority's Chief Financial Officer at the Authority's administrative offices located at 400 Charles Zahn, Jr. Drive, Corpus Christi, Texas, or such other physical address as Authority may designate from time to time, or (iii) mailed to Authority, Attention: Chief Financial Officer, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other mailing address as Authority shall designate in writing.

(h) Should this Franchise be forfeited or otherwise terminated, the Authority acknowledges that Grantee could still conduct other commercial operations on the upland portion of Berry Island as long as those operations do not ship or receive waterborne cargo and would not otherwise be subject to the franchise fees payable under a franchise like this.

SECTION 4 **CONDITIONS**

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

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

(b) **Berths**. Grantee's berths described in Section 2 shall be maintained by Grantee at a depth sufficient to prevent vessels berthed at these docks from striking bottom due to lowering of the water level from passing vessels or seasonal low tides.

(c) **Plans**. Before submitting a permit application to the USACE for the construction of any structure or any work (including dredging or filling of submerged areas) on the Channel Improvement Tract or the Authority's Submerged Land, Grantee will provide the Authority with copies of the plans for such structure or work (signed and sealed by a Professional Engineer registered in the State of Texas) for the Authority's review and comment. The plans must clearly show the bottom of cut line and top of slope line of any planned dredging. Authority will review and comment on any such plans within thirty (30) days after its receipt of the plans. Upon request of Authority, the parties shall meet to discuss the plans within the ten (10) day period following the request. Grantee shall not submit its permit application to the USACE or begin such construction or work until after this process with the Authority has occurred.

Furthermore, before constructing any structure or commencing any work (including dredging or filling of submerged areas) on the Channel Improvement Tract or the Authority's Submerged Land for which a USACE permit is required, Grantee shall file with the Authority a copy of the USACE permit for the project and any other 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.

(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) **Pollution**. Grantee shall take all reasonable precautions to prevent the pollution of the waters of Corpus Christi Bay and shall comply with all federal and state laws and regulations and municipal ordinances relating to maintaining water quality in Corpus Christi Bay, 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.

(g) **Subject to other Easements.** The rights of Grantee hereunder shall be subject to all easements of every kind heretofore granted by the Authority or retained by the State of Texas and to the right of the Authority to dredge, and to grant easements to the United States and other governmental agencies to dredge, on the channel-side of the South Bulkhead Line.

(h) **Encumbrance.** This Franchise is granted subject to the rights reserved by the State of Texas, and anyone claiming under the State of Texas, in Patent No. 106, Volume 18-B, issued by the State of Texas as sovereign to the Nueces County Navigation District No. 1 on July 31, 1951, recorded in Volume 224, Page 1 of the Deed Records of San Patricio County, Texas and in Volume 455, Page 586 of the Deed Records of Nueces County, Texas.

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, and Grantee shall be responsible for, any and all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys’, 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) which may be brought or instituted or asserted against the Indemnified Parties based on or arising out of or resulting from (i) the failure on the part of the Grantee, its agents, employees, contractors, subcontractors or licensees (collectively, “*Grantee Parties*”) to comply with the provisions of any laws or regulations applicable to the Grantee’s Land or the Grantee Docks, 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 Grantee’s Land or the Grantee Docks; provided, however, that Grantee shall not be obligated to indemnify the Indemnified Parties in any manner whatsoever for their own negligence. The Grantee’s indemnity obligations under this Franchise shall not be limited by a limitation on the amount or type of damages, compensation or benefits owed by Grantee to any employee of Grantee 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, then (1) the Channel Improvement Easement granted in the Berry Island Development Agreement shall automatically become an exclusive easement in favor of the Authority, and (2) the Authority shall have the right to enjoin anyone from (i) using any of the Grantee Docks, (ii) using any ship or barge berths that may have

been constructed in the Middle Corridor or on the Authority's Submerged Land in the Left Corridor pursuant to this Agreement, and/or (iii) using any access channels that may have been constructed on the Authority's Submerged Land. Furthermore, 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. Should this Franchise be forfeited or otherwise terminated, the Authority acknowledges that Grantee could still conduct other commercial operations on the Berry Island Upland as long as those operations do not ship or receive waterborne cargo and would not otherwise be subject to the franchise fees payable under a franchise like this.

SECTION 7 **1997 BOUNDARY AGREEMENT**

(a) Grantee and Authority entered into an agreement effective as of March 27, 1997, regarding (i) the boundary of Grantee's Land, and (ii) the use of certain portions of Grantee's Land (the "**1997 Boundary Agreement**"). Specifically, the 1997 Boundary Agreement provides that Grantee shall not use "**Tract F**" or the frontage of any adjacent tract on Grantee's Land fronting on the La Quinta Channel for access to the La Quinta Channel for industrial purposes without obtaining the prior consent of the Authority, which consent may be conditioned upon such conditions as the Authority may impose in the judgment of its Port Commissioners.

(b) The Authority hereby consents, for as long as this Franchise is in effect and the Grantee is not in default hereunder, to Grantee's use of Tract F and/or the frontage of any adjacent tract on Grantee's Land fronting on the La Quinta Channel for access to or from the La Quinta Channel for industrial purposes.

(c) All other terms and conditions of the 1997 Boundary Agreement shall remain in full force and effect; *provided however*, that Authority understands, recognizes, acknowledges, agrees and consents to the Grantee's dredging of Tract F and adjacent tracts in whole or in part, in connection with and in furtherance of the rights granted to Grantee in Section 1 of this Franchise. In the event of any conflict between the terms and conditions of this Franchise and the terms and conditions of the 1997 Boundary Agreement, the terms and conditions of this Franchise shall control.

SECTION 8 **ASSIGNMENT**

(a) Grantee may 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.

(b) Grantee may also 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 and if Grantee has paid all franchise fees due and payable hereunder at the time of the assignment, Grantee shall be released from any further obligations and duties

hereunder, including by way of illustration and not limitation all duties, obligations and liabilities under Section 3 hereof, but only insofar as such duties, obligations and liabilities 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.

(c) 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 any Grantee Docks on the Transferred Land, and the new owner thereof shall not have the right to access the waters of Corpus Christi Bay from the Transferred Land or any Grantee Docks transferred therewith until such time as the new owner has received a new Franchise from the Authority for such purpose. The Authority shall be under no obligation to grant a Franchise to the new owner of the Transferred Land if the Transferred Land does not include at least one Grantee Dock or a place where a new Grantee Dock could be constructed. If Grantee is contemplating a transaction that would implicate this Section 8(c), Grantee can make application to the Authority for a new Franchise in advance of the closing of the partial sale, assignment, or transfer so as not to disrupt the transferee's ability to use the Grantee Docks located on the Transferred Land after closing. Furthermore, the form of the new Franchise shall be in the form of this Franchise.

(d) 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 **RECORDING OF FRANCHISE**

In order to give full and fair notice of the binding effect of this Franchise on the parties' successors, heirs, legal representatives and permitted assigns, the parties shall upon Grantee's

acceptance hereof file this Franchise of record in the real property records of Nueces County, Texas and San Patricio County, Texas.

SECTION 10
PASSAGE AND ACCEPTANCE

A majority of the Authority's Port Commissioners voted to grant this Franchise at a duly called meeting of the Port Commission held on January 21, 2025 (the "***Grant Date***"). Notice of this Franchise was published at Grantee's expense once a week for three consecutive weeks before the Grant Date in a daily newspaper of general circulation within the Authority's boundaries. Grantee must file its written acceptance of this Franchise with the Authority within thirty (30) days after the Grant Date (the "***Acceptance Deadline***") by delivering a duly executed and acknowledged copy of the Grantee's Acceptance Page to the Authority's Chief Financial Officer on or before the Acceptance Deadline.

SECTION 11
MISCELLANEOUS

(a) **Attorneys' Fees.** In any action or proceeding brought to enforce or interpret any provision of this Franchise, or where any provision hereof is validly asserted as a defense, the prevailing party in such action or proceeding shall be entitled to its reasonable attorneys' fees, expenses and costs incurred in connection with the action or proceeding.

(b) **Force Majeure.** Whenever this Franchise sets a time period for the Authority or Grantee to act, the party required to perform the act will not be liable to the other party, and the computation of the time period will exclude any delays due to any cause or causes beyond the control of such party, including but not limited to acts of God, fires, storms, hurricanes, floods, wars (whether or not affecting the United States of America), service interruptions involving a pipeline, rebellions, insurrections, riots, explosions, strikes, lockouts, vandalism, criminal acts, terrorism, and compliance with rules, regulations, or orders of any governmental authority ("***force majeure***"). But no such *force majeure* will excuse Grantee's obligations to timely pay the franchise fees described in Section 3 of this Franchise or any other sums of money due to the Authority hereunder.

(c) **Applicable Law.** **THIS FRANCHISE IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS FRANCHISE TO THE LAW OF ANOTHER JURISDICTION.** Venue of any action arising out of this Franchise will be in Nueces County, Texas.

(d) **Notices.** Any notice, request or other communication under this Franchise shall be given in writing and shall be delivered by certified mail, return receipt requested, or by nationally recognized overnight carrier, or by electronic mail upon confirmation receipt. Any such notice shall be deemed to have been received on the date of the receipt thereof by the receiving party. All notices delivered hereunder shall be made to respective parties at the address specified below:

Port of Corpus Christi Authority
of Nueces County, Texas:
400 Charles Zahn, Jr. Drive 78401
Corpus Christi, Texas
Attention: Kent A. Britton
Chief Executive Officer
E-mail: kbritton@pocca.com
Tel: (361) 885-6114

Kenneth L. Berry
Brenda Berry
2802 N. Shoreline Blvd.
Corpus Christi, Texas 78403
ATTENTION: Mr. Kenneth L. Berry
E-mail: theberryco@aol.com
Tel: (361) 877-7766

With a copy to:
Don M. Kennedy
Attorney at Law
27814 Harmony Branch Drive
Spring, Texas 77386
Email: DMKatty@aol.com
Tel: (713) 828-4316

(e) **Invalidity of Provisions.** If any one or more of the phrases, sentences, clauses, paragraphs or sections of this Franchise shall be declared invalid by the final and unappealable order, decree or judgment of any court, this Franchise shall be construed as if it did not contain such phrases, sentences, clauses, paragraphs or sections, provided that such construction does not substantially alter the material benefits and burdens of the Authority and Grantee as set forth in this Franchise.

(f) **Authority to Execute.** Each of Grantee and the Authority warrants and represents unto the other party that each person executing this Franchise on behalf of Grantee and the Authority was authorized to do so, and upon request, it will deliver to the other party reasonable evidence of that person's authority to execute this Franchise.

(g) **Written Amendments.** No change in any term of this Franchise will be effective, and no subsequent agreement concerning the subject matter of this Franchise will be enforceable, unless the Authority and Grantee each sign and deliver to the other a written instrument evidencing the change or agreement.

(h) **Written Waivers.** No waiver or discharge of any provision of this Franchise is valid unless it is in a writing that is signed by the party against whom it is sought to be enforced. 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.

(i) **Exclusion of Prior Drafts.** Drafts of this Franchise and prior correspondence regarding this Franchise shall not be used by the Authority or Grantee as evidence of the intent of the parties or otherwise be admissible in evidence in interpreting this Franchise.

(j) **Parties Bound.** All covenants, conditions and agreements of this Franchise shall run with the land and shall apply to and be binding upon the Authority and Grantee and their respective legal representatives, successors, heirs and permitted assigns (when assignment is made in accordance with the provisions hereof).

(k) **Interpretation.** Both the Authority and Grantee and their respective legal counsel have reviewed and have participated in the preparation of this Franchise. Accordingly, no presumption will apply in favor of either the Authority or Grantee in the interpretation of this Franchise or in the resolution of the ambiguity of any provision hereof.

[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 January, 2025.

PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS

By: _____
_____,
Port Commission Chairman

ATTEST:

_____,
Port Commission Secretary

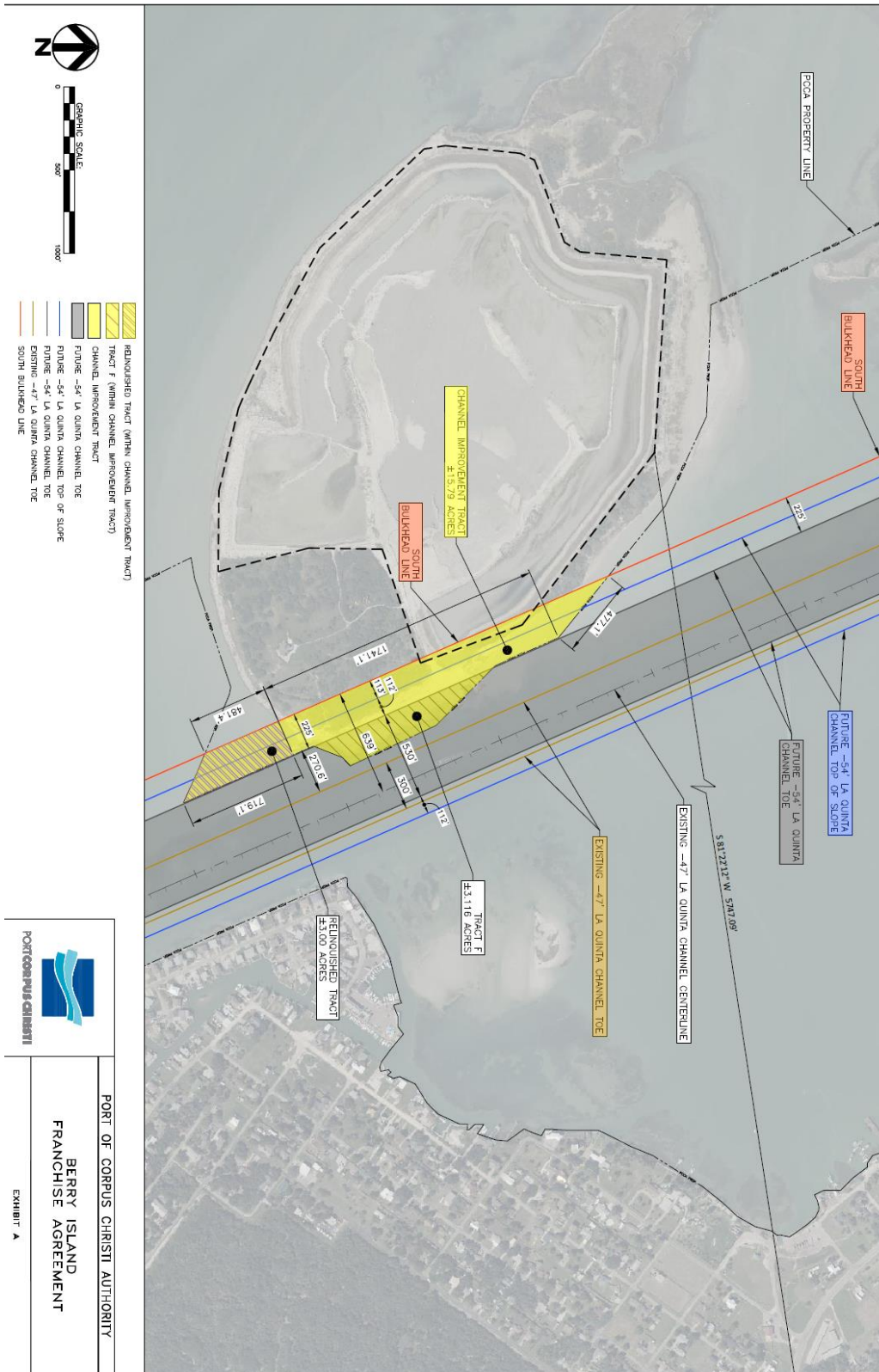
STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of January, 2025, 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

EXHIBIT A

Aerial Photograph of Berry Island Showing the Channel Improvement Tract, South Bulkhead Line, Relinquished Tract, and Tract F



ACCEPTANCE OF GRANTEE

Kenneth L. Berry and Brenda Berry hereby accept and agree to be bound by the terms and conditions of the above and foregoing Franchise covering Grantee's Land (aka Berry Island), which was granted to us by the Port of Corpus Christi Authority of Nueces County, Texas.

EXECUTED this ____ day of January, 2025.

Kenneth L. Berry

Brenda Berry

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of January, 2025, by Kenneth L. Berry.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of January, 2025, by Brenda Berry.

NOTARY PUBLIC, STATE OF TEXAS