

EXHIBIT "A"

Legal Description of the Access Area

[see attached]

950% DRAFT

LEGAL DESCRIPTION

SEGMENT 1 0.123 ACRES

BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND CONTAINING **0.123 ACRES** SITUATED IN THE *RICHARD AND ROBERT VINCE SURVEY, ABSTRACT No. 76, HARRIS COUNTY, TEXAS*, AND BEING OUT OF A CALLED 415.0 ACRE TRACT AS RECORDED IN HARRIS COUNTY CLERK'S FILE No. RP-2019-479581; SAID **0.123 ACRE TRACT** BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO-WIT:

COMMENCING at a point in the east margin of Penn City Road for the southwest corner of the Missouri Pacific Railroad called 75.253 acre tract as recorded in Volume 4245, Page 527, Deed Records Harris County, Texas, same being the northwest corner of said 415.0 acre tract;

THENCE South 03 degrees 17 minutes 44 seconds East, a distance of 37.31 feet with the east margin of said Penn City Road, same being the west line of said 415.0 acre tract to a point for the northwest corner and **POINT OF BEGINNING** of this herein described tract;

THENCE South 86 degrees 19 minutes 58 seconds East, a distance of 159.13 feet across said 415.0 acre tract to a point for the northeast corner of this herein described tract;

THENCE South 50 degrees 36 minutes 58 seconds East, a distance of 51.39 feet with the south line of said 75.253 acre tract, same being the north line of said 415.0 acre tract to a point for the southeast corner of this herein described tract;

THENCE North 86 degrees 19 minutes 58 seconds West, a distance of 197.19 feet across said 415.0 acre tract to a point in the east margin of said Penn City Road for the southwest corner of this herein described tract;

THENCE North 03 degrees 17 minutes 44 seconds West, a distance of 30.22 feet with the east margin of said Penn City Road, same being the west line of said 415.0 acre tract to the **POINT OF BEGINNING** and containing **0.123 acres**.

BEARING STRUCTURE AND COORDINATES ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS SOUTH CENTRAL ZONE.

PROP-ALT-RD-3A-2-10-2020

LEGAL DESCRIPTION

**SEGMENT 3
0.476 ACRES**

BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND CONTAINING 0.476 ACRES SITUATED IN THE RICHARD AND ROBERT VINCE SURVEY, ABSTRACT No. 76, HARRIS COUNTY, TEXAS, AND BEING OUT OF A CALLED 415.0 ACRE TRACT AS RECORDED IN HARRIS COUNTY CLERK'S FILE No. RP-2019-479581; SAID 0.476 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO-WIT:

COMMENCING at a point in the west margin of Beltway 8, same being the south line of the Missouri Pacific Railroad called 75.253 acre tract as recorded in Volume 4245, Page 527, Deed Records Harris County, Texas for the northeast corner of said 415.0 acre tract;

THENCE South 02 degrees 41 minutes 04 seconds East, a distance of 22.66 feet with the west margin of said Beltway 8, same being the east line of said 415.0 acre tract to a point for the northeast corner and **POINT OF BEGINNING** of this herein described tract;

THENCE South 02 degrees 41 minutes 04 seconds East, a distance of 30.70 feet with the west margin of said Beltway 8, same being the east line of said 415.0 acre tract to a point for the southeast corner of this herein described tract;

THENCE North 80 degrees 28 minutes 07 seconds West, a distance of 166.38 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE North 69 degrees 05 minutes 25 seconds West, a distance of 97.85 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE North 76 degrees 16 minutes 32 seconds West, a distance of 206.54 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE North 79 degrees 33 minutes 43 seconds West, a distance of 191.73 feet across said 415.0 acre tract to a point for the southwest corner of this herein described tract;

THENCE North 47 degrees 24 minutes 10 seconds West, a distance of 62.21 feet across said 415.0 acre tract to a point for the northwest corner of this herein described tract;

THENCE South 81 degrees 55 minutes 42 seconds East, a distance of 52.93 feet with the south line of said 75.253 acre tract, same being the north line of said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE South 47 degrees 24 minutes 10 seconds East, a distance of 9.96 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE South 79 degrees 33 minutes 43 seconds East, a distance of 183.94 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE South 76 degrees 16 minutes 32 seconds East, a distance of 209.29 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE South 69 degrees 05 minutes 25 seconds East, a distance of 96.74 feet across said 415.0 acre tract to a point for a corner of this herein described tract;

THENCE South 80 degrees 28 minutes 07 seconds East, a distance of 156.90 feet to the **POINT OF BEGINNING** and containing 0.476 acres.

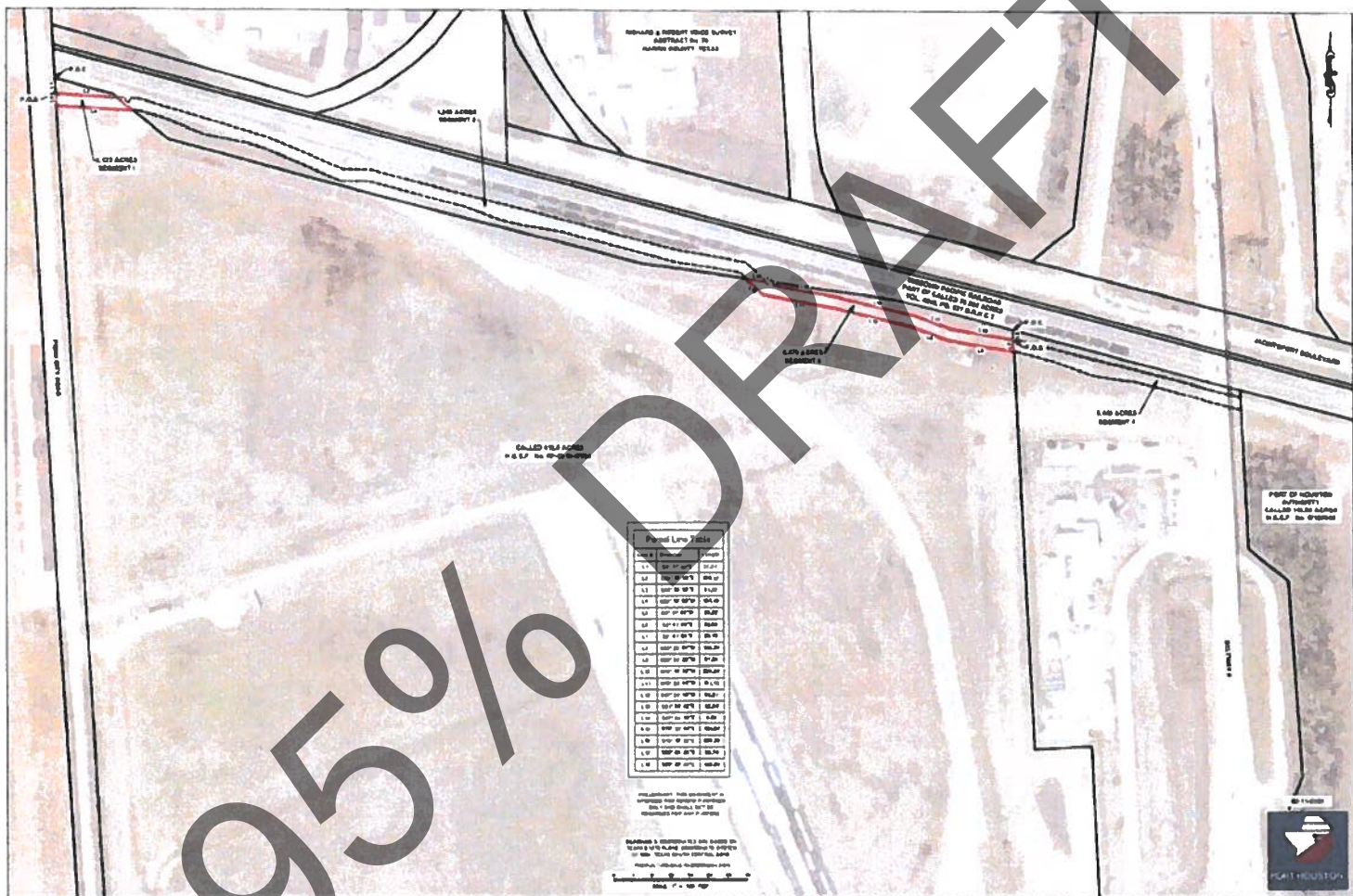
BEARING STRUCTURE AND COORDINATES ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83 TEXAS SOUTH CENTRAL ZONE

EXHIBIT "A-1"

Depiction of the Access Area

[see attached]

95% DRAFT



PORT OF HOUSTON AUTHORITY

**TECHNICAL SPECIFICATION FOR PROJECT 11: BOGGY BAYOU TO SIMS BAYOU:
BELTWAY 8 DMPA SITE PREPARATION**

APPENDIX E: Temporary Access Road Agreements

E-3. Harris County Access License Agreement, File No. 2020-0249, dated August 12, 2020

95% DRAFT

ACCESS LICENSE AGREEMENT

FILE NO.: 2020-0249

HARRIS COUNTY: **HARRIS COUNTY, TEXAS**, a political subdivision of the State of Texas

HARRIS COUNTY ADDRESS: C/o Harris County Toll Road Authority
7701 Wilshire Place Dr., Houston, Texas 77040

HARRIS COUNTY EMERGENCY CONTACT: Mike Perez, Engineering Manager / 713-252-7130

LICENSEE: **PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS**, a political subdivision of the State of Texas

LICENSEE'S ADDRESS: 111 East Loop North, Houston, Texas 77029
Attn: Senior Director – Real Estate

LICENSE AREA: A 0.426 tract of land in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas, as more particularly described in **Exhibit A**, attached hereto and made a part hereof

PERMITTED ACTIVITIES: Ingress and Egress by Licensee as a means of access to its adjacent property to perform activities in support of construction work on its property, and other such activities as further described in Section 2 below.

EFFECTIVE DATE: The date of commencement of the Term as described below under “Term” and in Section 4 hereof.

TERM: Four Years, commencing and ending in accordance with Sections 4 and 5 below.

THIS ACCESS LICENSE AGREEMENT (“**Access License**”) is made and entered as of the Effective Date between Harris County and Licensee, with reference to the following. Capitalized terms not otherwise defined herein shall have the meanings set forth above.

A. Licensee’s property is used by the Licensee Port of Houston Authority of Harris County, Texas for the establishment, improvement, and conduct of harbors and for the construction, maintenance and operation of facilities or aids to the establishment, improvement or operation of harbors. Licensee’s property is used for public purposes and for the development of commerce.

B. The grant of license in this Access License for use by Licensee is in accordance with the mandates set out in Section A, above.

C. That Harris County grant permission for Licensee to enter for a period not to exceed four years (unless extended per paragraph 4) upon that certain real property owned by Harris County defined (on the first page hereof) above as the License Area, for the Permitted Activities referenced above.

D. The Port Commission, by Minute Numbers shown underneath the Port Authority’s signature, has authorized Licensee to enter into this Access License and thereby accept the grant of permission described in this Access License (including Section 1.a. below), in accordance with the terms and conditions of this Access License.

Therefore, in consideration of the mutual covenants contained in this Access License, Harris County and Licensee hereby agree as follows:

1. License.

a. Harris County hereby grants to Licensee a non-exclusive license and permission (the “License”) for ingress and egress of Licensee and Licensee’s designees, contractors and any subcontractors (together, “Licensee’s Contractors”), and their vehicles, machinery, equipment, or other personal property (“**Licensee’s Property**”) on and across the License Area for the purpose of the Permitted Activities, during the Term, subject to the terms, conditions, and restrictions set forth herein.

b. The parties to this Access License understand that Licensee’s Contractors are the prime contractors coordinating the Permitted Activities in accordance with the terms of a construction contract with Licensee. Licensee agrees that Licensee’s Contractors will be advised of the terms of this Access License and Licensee will require Licensee’s Contractors to comply with applicable provisions of this Access License.

c. The right of Licensee and Licensee’s Contractors to use the License Area is subordinate to the rights of Harris County as owner of the License Area and as set forth herein. In exercising the rights under this Access License, Licensee shall at all times act, and cause Licensee’s Contractors to act, in compliance with all of Licensee’s duties under this Access License, and in the manner directed by Harris County so as not to disrupt Harris County or other authorized user’s operations on or adjacent to the License Area including access to any pipeline or other permissions that may have been granted on or under the License Area which at all times shall be made known by Harris County to the Licensee. The license given hereby shall not in any way

prevent Harris County from operating across the License Area, provided that Harris County shall retain the right to cross the License Area from time to time in locations to be determined in coordination with all parties and so long as it does not unreasonably interfere with the Permitted Activities of Licensee or Licensee's Contractors.

d. The Licensee is hereby given notice of other contractors working in the area. During the term of this License, there will be limited periods where access to the License Area is restricted in order to facilitate the continued construction of the Sam Houston Tollway bridge over Jacintoport Blvd. and the adjacent railroad tracks. Activities that will cause the License Area to be restricted to the Licensee include, but are not limited to, demolition of the existing bridge, construction of new foundations, columns, and bent caps, setting of bridge girders, placement of deck forms, and placement of concrete bridge deck and traffic rail. Harris County will make reasonable effort to provide advanced notice (~72 hours) to the Licensee prior to access being restricted. However, emergent circumstances may arise where advanced notice is not possible. While Harris County will endeavor to minimize these circumstances, their existence shall not limit Harris County's ability to restrict access to the License Area by the Licensee as long as the circumstances exist.

e. Licensee understands and agrees that the license and permission granted herein is for nonexclusive use of the License Area and that similar permission may be given to others for activities including but not limited to installation, maintenance, and use of pipelines and utility lines within, under, and across the License Area, subject to the terms of this Access License and provided that such permissions granted to and use by third parties shall not unreasonably interfere with the Permitted Activities of Licensee or Licensee's Contractors.

f. In its exercise of the license and permission granted herein, Licensee shall: (i) procure all permits and licenses, including any required federal permits, pay all charges and fees, and give all notices necessary and incidental to the prosecution of the Permitted Activities; (ii) conduct, and cause Licensee's Contractors to conduct, its activities in compliance with all applicable laws, rules, and regulations applicable to Licensee, Licensee's Contractors, or to the License Area.

g. Nothing contained in this Access License and no action or inaction by Harris County shall be deemed or construed to mean that Harris County has granted Licensee any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the License Area, including but not limited to the grant of a lien, license, or easement in the License Area.

2. Permitted Activities. The activities permitted under this Access License are set out below ("Permitted Activities):

a. Activities directly in support of construction work pertaining to the Port of Houston Authority and United States Army Corps of Engineers' federal project of the deepening and widening of the Houston Ship Channel, including without necessary limitation, the ingress and egress of trucks and other equipment in the first twelve months of the Term for the purpose of bunker demolition, clearing and grubbing, and site preparation work (dike construction, weir installation, drainage improvements, utility relocation) on the Port of Houston Authority's adjacent Beltway 8 property for the use of a non-permanent dredge placement area. After the site

preparation work has been completed in the first twelve months, the remainder of the Term will be for the ingress and egress of Licensee and Licensee's Contractors for general maintenance of the dredge placement area. Should Licensee require additional time for the activities described above in this paragraph 2.a., it may extend the time for conducting such activities for up to an additional 60 days by written notice to Harris County.

b. Licensee shall have the right to carry out on the License Area uses reasonably associated with the Permitted Activities. Further, Licensee shall construct and maintain in good condition a heavy haul road using aggregate rock. Licensee shall remove all improvements at the end of the Term. No change may be made in the Permitted Activities without prior written approval of Harris County.

3. Specifically Excluded Activities.

a. This License Agreement only conveys a right to Licensee to enter and conduct Permitted Activities on the License Area. Licensee shall not use or encroach on any non-public area outside the License Area not licensed to, leased to, or owned by Licensee or to which it does not otherwise have consent to do so from the property owner or legal occupant.

b. Licensee's activities under this Access License shall not impede, impair, disrupt, interfere with, interrupt, or otherwise burden the operations of Harris County or any other authorized user of the License Area, any neighboring property, or the Houston Ship Channel, except as reasonably contemplated by the Permitted Activities.

c. Licensee shall not construct any improvements on or make any alterations to the License Area other than are allowed by the Permitted Activities, or with prior written approval by Harris County.

d. Nothing in this Access License shall be construed to convey to Licensee (i) a right of personnel to occupy the License Area overnight, or (ii) a right to exclude from the License Area authorized agents or other licensees of Harris County. Nothing in this paragraph prevents the Licensee from working during night hours, weekend, holidays or other times pursuant to this Access License, and in compliance with otherwise applicable law.

4. **Term.** The Term of this Access License shall continue in force for a period of four (4) years commencing upon the date when Permitted Activities will commence as set forth in written notice from Licensee to Harris County, and terminating four years after said date or earlier in accordance with Section 5. The parties acknowledge that the Permitted Activities are related to the federal project of deepening and widening the Houston Ship Channel.

5. Termination.

a. Notwithstanding anything in this Access License to the contrary, in the event Licensee defaults under this Access License and fails to cure such default within 30 business days after notice thereof from Harris County, or longer if required in the exercise of all reasonable diligence to cure, Harris County may, at its sole discretion, terminate this Access License.

b. The License granted herein shall be cancelled and this Access License shall terminate prior to the end of the full Term in the event and at such time that Licensee no longer requires access to the License Area for the Permitted Activities.

c. Licensee may at any time surrender the license rights herein granted or any part thereof, upon thirty (30) days advance written notice to Harris County. Such surrender shall terminate this Access License.

d. Immediately upon expiration or other termination of this Access License, the License and all rights granted by Harris County hereunder shall expire, and Licensee shall remove or cause the removal all of Licensee's Property from the License Area and shall have no other rights of entry on or use of the License Area.

6. **Fee.** There are no fees for this License Agreement.

7. **Condition of License Area.**

a. Licensee acknowledges and represents that it has independently and personally inspected the License Area and that Licensee has entered into this Access License based upon such examination and inspection, and each of them accept the License Area in its present condition, AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

b. Licensee agrees to keep the License Area in a good, clean, safe, operable, and well-kept condition, normal wear and tear excepted, free from any damage resulting from or arising out of the License granted hereunder; provided that Licensee has no duty or responsibility for the actions or use of the License Area by any third parties not under its control.

c. At the expiration or other termination of this Access License, Licensee shall reasonably restore the License Area to its original condition, normal wear and tear excepted, from any damage arising from its exercise of the License rights hereunder. Licensee shall remove all of Licensee's Property and any other tools, equipment, and personal property brought upon the License Area. If Harris County is required to remove any of Licensee's Property from the License Area or conduct any repairs to the License Area, which repairs are in any way attributable to damage resulting from Licensee's breach of the foregoing, Licensee shall be liable to Harris County for all costs incurred by Harris County in connection with such removal, disposal, and/or cleanup.

d. Licensee warrants that it shall use its commercially reasonable efforts to conduct its activities on the License Area throughout the Term in such a manner as to prevent the escape, release, or discharge of any Hazardous Material (as defined in Section 8) onto the surface, or into the subsurface, of the License Area or in or onto any adjacent waters. In the event of any escape, release, or discharge of Hazardous Material from such activities, Licensee hereby agrees that Licensee shall, at its sole cost and expense: (a) timely report any such escape, release, or discharge to the appropriate local, state, and/or federal environmental authorities as required by applicable regulation or law; and (b) immediately undertake environmental investigatory and corrective action to clean up such Hazardous Material in full compliance with all statutes and governmental regulations applicable thereto. Nothing in this paragraph requires Licensee to be responsible for

corrective action to clean up Hazardous Materials on the License Area that did not escape, release, or discharge because of Licensee's activities.

8. Hazardous Materials.

a. Licensee shall not, by itself or through Licensee's Contractors or other person or entity, cause or permit any Hazardous Materials to be generated, treated, or stored on or about or brought to the License Area. For the purposes of this Access License, the term "**Hazardous Materials**" includes any flammables, explosives, radioactive materials, hazardous waste, petroleum products or other hydrocarbons, chemicals, toxic substances, or related materials, including all substances regulated under or defined as "hazardous substances," "hazardous materials," or "toxic substances" in (as amended) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, et seq.; the Port Authority's Tariffs; the Texas Solid Waste Disposal Act, Texas Health & Safety Code § 361.001, et seq.; or any other Legal Requirement in any way applicable to Licensee, the Permitted Activities, or the License Area. For the purposes of this Access License, a "**Legal Requirement**" means any of the following, including all future amendments, revisions, restatements, and updates thereto and to the extent applicable in any way to Licensee and its business or operations, the License, or the License Area: (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, permits, certificates, mandates, or ordinances of any governmental entity; (ii) insurance requirements; (iii) environmental requirements, including environmental practices, policies, procedures, rules, regulations, or directives established by Harris County or by any other governmental entity that has regulatory or other jurisdiction; (iv) security requirements, including, but not limited to, any security plans, policies, procedures, rules, regulations, or directives established by Harris County or by any governmental entity that has regulatory jurisdiction; and (v) any other documents, instruments, or agreements relating to the License Area or to which the License Area may be bound or encumbered.

b. Licensee's violation of environmental Legal Requirements that may expose Harris County to fines or penalties as the owner of the License Area shall obligate Licensee to immediately pay all fines and penalties levied against Harris County that are attributable, in any way, to the actions or omissions of Licensee. Licensee shall similarly obligate Licensee's Contractor to pay such fines or penalties for any such violations by it or its subcontractors.

9. Insurance.

a. Prior to entering the License Area, Licensee's Contractor shall submit, a certificate of insurance, satisfactory to Harris County that meet the requirements set out in this subsection. Subsequent proof of insurance/renewal documentation shall be provided to Harris County prior to the expiration date of the coverage.

b. Licensee's Contractor shall obtain and maintain in full force and effect for the duration of this Access License, and any extension hereof, at Contractor's sole expense, at a minimum the insurance coverage as indicated below. Alternative policies or combinations of policies meeting coverage specifications Coverage should be written on an occurrence basis by companies authorized to do business in the State of Texas and rated "A-, VII" or better by A.M.

Best Company and/or be placed with Lloyds Underwriters or other financially sound insurance carrier acceptable to Harris County.

	<u>Type</u>	<u>Amount</u>
i.	Workers' Compensation	Statutory
	Employers' Liability	\$1Million/\$1Million/\$1Million
	Longshore & Harbor Workers' Compensation (if exposure exists)	Statutory

1. Workers' Compensation coverage applicable for all employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, performing work for the Licensee, or entering upon the License Area.
2. If Licensee is a sole proprietorship without employees and which will not be using any subcontractor(s) in the performance of the Contract Work, it may request a waiver of required workers' compensation insurance.

ii.	Commercial General Liability (CGL)	\$1 Million per occurrence \$2 Million Aggregate
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1. Shall include Premises/Operations, Independent Contractors, Products and Completed Operations, Personal Injury, Bodily Injury, Broad Form Contractual Liability and Property Damage, Explosion, Collapse, and Underground Hazards.
2. Must contain a "severability of interests" provision and cover cross-suits between insureds.

iii.	Business Automobile Liability (Any auto)	\$1 Million per accident
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iv.	Umbrella Liability	\$ 2 Million per occurrence
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c. Harris County shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by Harris County.

d. All policies, except for workers' compensation and Environmental Impairment Liability (if applicable), shall designate the following as an "Additional Insured" *either* by an "Automatic Additional Insured" *or* a specific endorsement: "Harris County, its Commissioners, officers, employees, agents, and legal representatives."

e. All policies shall provide a waiver of subrogation in favor of Harris County.

f. In addition to any other remedies Harris County may have upon Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Harris County shall have the right to order Licensee to cease access to and

activities on the License Area, until Licensee demonstrates compliance with Port Authority requirements.

g. Nothing contained herein shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's activities on the License Area.

h. Nothing contained herein shall ever be construed to place upon Harris County in any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with Licensee's and Licensee's Contractor's activities on the License Area.

i. The above provisions of this section 9 are the insurance requirements of Harris County.

10. Indemnification and Release. (Political Subdivisions)

a. ***Licensee Indemnification.*** Licensee and Harris County acknowledge they are political subdivisions of the State of Texas and are subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Licensee and Harris County therefore agree to the provisions in this section 10 in lieu of Harris County's standard indemnity requirements.

b. ***Licensee's Contractor Indemnification.*** Licensee agrees and represents that (through its contract or contracts with Licensee's Contractor for the construction project related to the Permitted Activities, or through other means acceptable to Harris County), Licensee's Contractor agrees to and shall comply with the provisions of this section 10(b), and Licensee, upon Harris County's request, shall furnish Harris County with a copy of the below agreement to indemnify Harris County.

i. **INDEMNITY.** Subject only to the proportionate responsibility and liability allocation provisions set forth in section 10(b)(ii) below, to the maximum extent allowed by law, Licensee's Contractor shall indemnify, defend (upon Harris County's request), and hold harmless Harris County, as well as Harris County's commissioners, officers, directors, partners, and employees, (collectively with Harris County, the "**Indemnitees**"), from and against all claims, lawsuits, actions, proceedings, losses, costs, damages, injuries, assessments, fines, penalties, liens, judgments, reasonable and necessary attorneys' fees and court costs, or awards of any kind or nature whatsoever, including, but not limited to, any loss of or damage to the License Area or Harris County's property or its business operations property or its business operations (regardless of whether a third party asserts a claim), and the loss of or damage to any property or injury to (including, but not limited to, emotional distress) or death of any person, asserted by any person, firm, governmental agency, or corporation whomsoever (including, without limitation, Licensee's Contractor and their employees, invitees, contractors, and subcontractors or their employees, and Harris County's employees, invitees, tenants, contractors, subcontractors, and their employees, including survivors claiming under

the wrongful death statute) that relate to, arise out of, or are otherwise connected with Licensee's Contractor's exercise of the License rights hereunder or any other activities on the License Area, including, but not limited to, any violation of any Legal Requirement or the imposition of any obligation to protect health or the environment, including the violation of any environmental regulatory law or regulation or the escape, release, migration, explosion, burning, inhalation of, or exposure to any Hazardous Materials located on or originating from the License Area as a result of Licensee's Contractor's presence or operations thereon (collectively, a "**Liability**"). This indemnification applies even if such Liabilities are due in part to any Indemnitees' concurrent (but not sole) negligence or fault, breach of contract or warranty, violation of statute, or strict liability without regard to fault; provided, however, that Licensee's Contractor's obligation under this Section shall not extend to the percentage of damages caused by Harris County's own negligence or other fault, breach of contract or warranty, violation of statute, or strict liability without regard to fault.

ii. **Limitation.** If either (i) an agreement between Harris County and Licensee's Contractor (or their respective insurers) is reached or (ii) a final, non-appealable judgment or order is issued by a judicial, regulatory, or arbitral body or authority with proper jurisdiction over the subject matter in question is rendered holding that Indemnitees were liable for a Liability, then the indemnity obligations of Licensee's Contractor under section 10(b)(i) above and the release obligations of Licensee's Contractor under section 10(b)(iii) below shall be limited to the remaining percentage(s) of the Liability not attributable to Indemnitee's negligence.

iii. **RELEASE.** Subject only to the proportionate responsibility and liability allocation provisions set forth in section 10(b)(ii), Licensee's Contractor hereby releases the Indemnitees from and assumes for itself all Liabilities in any way relating to Licensee's Contractor's presence on or use of the License Area. Notwithstanding anything to the contrary contained herein, Licensee's Contractor hereby further waives any claims against and releases the Indemnitees from all Liabilities and other claims, causes of actions, losses, costs, damages, or injuries of every kind, which are caused by, arise out of or in connection with, or are related to (i) any lapse in or failure by Indemnitees to provide security; (ii) acts of terrorism, vandalism, theft, burglary or other criminal acts, war, acts of God, fire, explosion flood or endemic; or (iii) the condition, repair, replacement, maintenance, damage, or destruction (or other casualty, including fire) of the License Area.

c. Nothing contained in or implied by this Access License shall be construed to limit, waive, or impair any of Harris County's or the Port of Houston Authority's sovereign or governmental immunities under state or federal law.

d. This Section 10 shall survive the cancellation, termination, or expiration of the Term of this Access License, settlement of underlying third-party claims and, provided that notice and the right to participate in the investigation, defense, and resolution (including settlement) of the applicable third party claim has been provided, shall apply to voluntary settlements made by either Port Authority or Licensee with such third party. This Section 10 shall not be unilaterally cancelable by either party.

11. Notices.

a. All notices and other communications given pursuant to this Access License shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth on the first page hereof, or delivered in person to the intended addressee. Notice mailed in the aforesaid manner shall become effective three business days after deposit; notice given in any other manner, and any notice given to Harris County, shall be effective only upon receipt by the intended addressee.

b. Licensee shall provide Harris County with current information for an emergency contact person. Harris County's Emergency Contact at the time of issuance of this Access License is set forth on the first page hereof.

c. Licensee shall notify Harris County within thirty calendar (30) days of any changes to the Licensee Name, Licensee Address, Emergency Contact name, address, or telephone number, or to the Licensee's Contractor name and contact information.

d. Each party shall have the continuing right to change its address for notice by giving fifteen (15) days prior written notice to the other party in accordance with this section.

12. Miscellaneous.

a. This Access License and Licensee's rights under this Access License are subject to the terms, provisions and conditions of any easements, restrictions, covenants, conditions, mineral reservations, leases, or other encumbrances which now or in the future may affect the License Area.

b. This Access License constitutes the entire agreement between the parties. This Access License may be amended only by a written document duly executed by Harris County and Licensee, and any alleged amendment which is not so documented shall not be effective as to either party.

c. Licensee shall have no right or authority to assign or delegate, in whole or in part, any of its rights or obligations under this Access License to any third party.

d. Licensee agrees to comply with any and all Legal Requirements.

e. This Access License will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Access License shall be in Harris County, Texas.

f. Whenever possible, each provision of this Access License shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision under this Access License shall be invalid, illegal, or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of this Access License shall not be affected or impaired thereby.

g. This Access License is not intended to, nor shall it be deemed or construed as a

contract for services or to bind Harris County to convey the License Area or any other property to Licensee. Nothing contained in this Access License and no future action or inaction by Harris County shall be deemed or construed to mean that Harris County has contracted with Licensee to perform any activity on the License Area, including but not limited to the Permitted Activities pursuant to this Access License. Under no circumstance shall Licensee be entitled to reimbursement from Harris County for any activities permitted by the License on the License Area.


h. The persons executing this Access License on behalf of the Licensee, Harris County, as applicable, each execute this Access License solely in his/her capacity as a representative of Licensee, Harris County, as applicable, as noted on the signature page hereto, and not in his/her individual capacity, and shall have no personal liability under or in connection with any covenant, representation, or warranty made herein.

Executed by the parties on the dates set out below their signatures, but effective as of the Effective Date. This Access License may be executed in more than one counterpart, each of which shall be an original, but all of which shall constitute but one instrument.

[Signature Pages Follow]

LICENSEE:

**PORT OF HOUSTON AUTHORITY
OF HARRIS COUNTY, TEXAS**

By 
John A. Moseley
Chief Commercial Officer

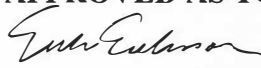
Date August 12, 2020

MINUTE NO. 2020-0520-13

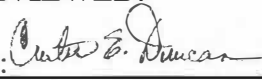
APPROVED AS TO SUBSTANCE:

By:  Digitally signed by R.D. Tanner
Date: 2020.08.12 14:47:11
-05'00'
RD Tanner, Senior Director - Real Estate

APPROVED AS TO FORM:


Port Authority Counsel

REVIEWED:

By: 
Curtis Duncan, Controller

HARRIS COUNTY, TEXAS

By _____
LINA HIDALGO
County Judge

Date _____

VINCE RYAN
County Attorney

By _____
Assistant County Attorney

95% DRAFT

Exhibit A:

95% DRAFT

EXHIBIT "A"

RICHARD & ROBERT VINCE SURVEY
ABSTRACT No. 76
HARRIS COUNTY, TEXAS

MISSOURI PACIFIC RAILROAD
PART OF CALLED 75.253 ACRES
VOL. 4245, PG. 527 D.R.H.C.T.

JACINTO PORT BOULEVARD

0.426 ACRES

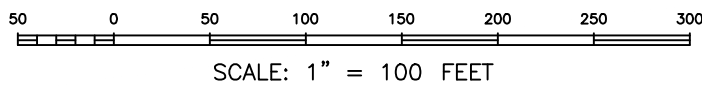
CALLED 415.0 ACRES
H.C.C.F. No. RP-2019-479581

PORT OF HOUSTON
AUTHORITY
CALLED 145.69 ACRES
H.C.C.F. No. W109648

BELTWAY 8

L1	94.36	S72° 28' 44.58"E
L2	74.82	S75° 16' 38.36"E
L3	186.03	S79° 42' 43.68"E
L4	90.44	S55° 26' 12.96"E
L5	155.84	S75° 28' 30.54"E
L6	22.98	S87° 46' 18.04"E
L7	30.11	S2° 41' 39.05"E
L8	28.80	N87° 46' 18.04"W
L9	164.37	N75° 28' 30.54"W
L10	89.29	N55° 26' 12.96"W
L11	180.74	N79° 42' 43.68"W
L12	77.40	N75° 16' 38.36"W
L13	84.86	N69° 52' 48.24"W
L14	27.90	N2° 41' 04.09"W

BEARINGS & COORDINATES ARE BASED ON
TEXAS STATE PLANE COORDINATE SYSTEM
OF 1983, TEXAS SOUTH CENTRAL ZONE.



PRELIMINARY, THIS DOCUMENT IS
INTENDED FOR REVIEW PURPOSES
ONLY AND SHALL NOT BE
RECORDED FOR ANY PURPOSE.

E1-1-621 04-21-2020



PORT OF HOUSTON AUTHORITY
TECHNICAL SPECIFICATION FOR PROJECT 11: BOGGY BAYOU TO SIMS BAYOU:
BELTWAY 8 DMPA SITE PREPARATION

APPENDIX E: Temporary Access Road Agreements

E-4. HCTRA Access License Agreement for Port of Houston activities, dated August 25, 2020

95% DRAFT



HARRIS COUNTY TOLL ROAD AUTHORITY

August 25, 2020

Commissioners Court
Administration Building
Houston, TX 77002

**SUBJECT: Recommendation that Commissioners Court approve an Access License Agreement between Harris County, Texas and the Port of Houston Authority of Harris County, Texas for ingress and egress access across Harris County right-of-way to support Port of Houston activities
Precinct 2**

Dear Court Members:

It is recommended that Commissioners Court approve an Access License Agreement between Harris County, Texas and the Port of Houston Authority of Harris County, Texas for ingress and egress access across Harris County right-of-way to support Port of Houston activities.

The Toll Road Authority recommends that all appropriate officials be granted authority to take all necessary actions to execute this Agreement. Attached are five (5) originals. Please return two (2) fully executed originals to the Toll Road Authority. This Agreement has been reviewed and approved by the Harris County Attorney's Office.

Sincerely,

Peter W. Key
Interim Executive Director

PWK:JCT:py
Attachments

cc: HCTRA Management
Tisha Laws
Mike Perez, P.E.
Agenda File

	YES	NO	ABSTAIN
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Presented to Commissioners Court

August 25, 2020

Approve: G/E

ACCESS LICENSE AGREEMENT

FILE NO.: 2020-0249

HARRIS COUNTY: HARRIS COUNTY, TEXAS, a political subdivision of the State of Texas

HARRIS COUNTY ADDRESS: C/o Harris County Toll Road Authority
7701 Wilshire Place Dr., Houston, Texas 77040

HARRIS COUNTY EMERGENCY CONTACT: Mike Perez, Engineering Manager / 713-252-7130

LICENSEE: PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS, a political subdivision of the State of Texas

LICENSEE'S ADDRESS: 111 East Loop North, Houston, Texas 77029
Attn: Senior Director – Real Estate

LICENSE AREA: A 0.426 tract of land in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas, as more particularly described in Exhibit A, attached hereto and made a part hereof

PERMITTED ACTIVITIES: Ingress and Egress by Licensee as a means of access to its adjacent property to perform activities in support of construction work on its property, and other such activities as further described in Section 2 below.

EFFECTIVE DATE: The date of commencement of the Term as described below under “Term” and in Section 4 hereof.

TERM: Four Years, commencing and ending in accordance with Sections 4 and 5 below.

THIS ACCESS LICENSE AGREEMENT ("Access License") is made and entered as of the Effective Date between Harris County and Licensee, with reference to the following. Capitalized terms not otherwise defined herein shall have the meanings set forth above.

A. Licensee's property is used by the Licensee Port of Houston Authority of Harris County, Texas for the establishment, improvement, and conduct of harbors and for the construction, maintenance and operation of facilities or aids to the establishment, improvement or operation of harbors. Licensee's property is used for public purposes and for the development of commerce.

B. The grant of license in this Access License for use by Licensee is in accordance with the mandates set out in Section A, above.

C. That Harris County grant permission for Licensee to enter for a period not to exceed four years (unless extended per paragraph 4) upon that certain real property owned by Harris County defined (on the first page hereof) above as the License Area, for the Permitted Activities referenced above.

D. The Port Commission, by Minute Numbers shown underneath the Port Authority's signature, has authorized Licensee to enter into this Access License and thereby accept the grant of permission described in this Access License (including Section 1.a. below), in accordance with the terms and conditions of this Access License.

Therefore, in consideration of the mutual covenants contained in this Access License, Harris County and Licensee hereby agree as follows:

1. License.

a. Harris County hereby grants to Licensee a non-exclusive license and permission (the "License") for ingress and egress of Licensee and Licensee's designees, contractors and any subcontractors (together, "Licensee's Contractors"), and their vehicles, machinery, equipment, or other personal property ("Licensee's Property") on and across the License Area for the purpose of the Permitted Activities, during the Term, subject to the terms, conditions, and restrictions set forth herein.

b. The parties to this Access License understand that Licensee's Contractors are the prime contractors coordinating the Permitted Activities in accordance with the terms of a construction contract with Licensee. Licensee agrees that Licensee's Contractors will be advised of the terms of this Access License and Licensee will require Licensee's Contractors to comply with applicable provisions of this Access License.

c. The right of Licensee and Licensee's Contractors to use the License Area is subordinate to the rights of Harris County as owner of the License Area and as set forth herein. In exercising the rights under this Access License, Licensee shall at all times act, and cause Licensee's Contractors to act, in compliance with all of Licensee's duties under this Access License, and in the manner directed by Harris County so as not to disrupt Harris County or other authorized user's operations on or adjacent to the License Area including access to any pipeline or other permissions that may have been granted on or under the License Area which at all times shall be made known by Harris County to the Licensee. The license given hereby shall not in any way

prevent Harris County from operating across the License Area, provided that Harris County shall retain the right to cross the License Area from time to time in locations to be determined in coordination with all parties and so long as it does not unreasonably interfere with the Permitted Activities of Licensee or Licensee's Contractors.

d. The Licensee is hereby given notice of other contractors working in the area. During the term of this License, there will be limited periods where access to the License Area is restricted in order to facilitate the continued construction of the Sam Houston Tollway bridge over Jacintoport Blvd. and the adjacent railroad tracks. Activities that will cause the License Area to be restricted to the Licensee include, but are not limited to, demolition of the existing bridge, construction of new foundations, columns, and bent caps, setting of bridge girders, placement of deck forms, and placement of concrete bridge deck and traffic rail. Harris County will make reasonable effort to provide advanced notice (~72 hours) to the Licensee prior to access being restricted. However, emergent circumstances may arise where advanced notice is not possible. While Harris County will endeavor to minimize these circumstances, their existence shall not limit Harris County's ability to restrict access to the License Area by the Licensee as long as the circumstances exist.

e. Licensee understands and agrees that the license and permission granted herein is for nonexclusive use of the License Area and that similar permission may be given to others for activities including but not limited to installation, maintenance, and use of pipelines and utility lines within, under, and across the License Area, subject to the terms of this Access License and provided that such permissions granted to and use by third parties shall not unreasonably interfere with the Permitted Activities of Licensee or Licensee's Contractors.

f. In its exercise of the license and permission granted herein, Licensee shall: (i) procure all permits and licenses, including any required federal permits, pay all charges and fees, and give all notices necessary and incidental to the prosecution of the Permitted Activities; (ii) conduct, and cause Licensee's Contractors to conduct, its activities in compliance with all applicable laws, rules, and regulations applicable to Licensee, Licensee's Contractors, or to the License Area.

g. Nothing contained in this Access License and no action or inaction by Harris County shall be deemed or construed to mean that Harris County has granted Licensee any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the License Area, including but not limited to the grant of a lien, license, or easement in the License Area.

2. Permitted Activities. The activities permitted under this Access License are set out below ("Permitted Activities):

a. Activities directly in support of construction work pertaining to the Port of Houston Authority and United States Army Corps of Engineers' federal project of the deepening and widening of the Houston Ship Channel, including without necessary limitation, the ingress and egress of trucks and other equipment in the first twelve months of the Term for the purpose of bunker demolition, clearing and grubbing, and site preparation work (dike construction, weir installation, drainage improvements, utility relocation) on the Port of Houston Authority's adjacent Beltway 8 property for the use of a non-permanent dredge placement area. After the site

preparation work has been completed in the first twelve months, the remainder of the Term will be for the ingress and egress of Licensee and Licensee's Contractors for general maintenance of the dredge placement area. Should Licensee require additional time for the activities described above in this paragraph 2.a., it may extend the time for conducting such activities for up to an additional 60 days by written notice to Harris County.

b. Licensee shall have the right to carry out on the License Area uses reasonably associated with the Permitted Activities. Further, Licensee shall construct and maintain in good condition a heavy haul road using aggregate rock. Licensee shall remove all improvements at the end of the Term. No change may be made in the Permitted Activities without prior written approval of Harris County.

3. Specifically Excluded Activities.

a. This License Agreement only conveys a right to Licensee to enter and conduct Permitted Activities on the License Area. Licensee shall not use or encroach on any non-public area outside the License Area not licensed to, leased to, or owned by Licensee or to which it does not otherwise have consent to do so from the property owner or legal occupant.

b. Licensee's activities under this Access License shall not impede, impair, disrupt, interfere with, interrupt, or otherwise burden the operations of Harris County or any other authorized user of the License Area, any neighboring property, or the Houston Ship Channel, except as reasonably contemplated by the Permitted Activities.

c. Licensee shall not construct any improvements on or make any alterations to the License Area other than are allowed by the Permitted Activities, or with prior written approval by Harris County.

d. Nothing in this Access License shall be construed to convey to Licensee (i) a right of personnel to occupy the License Area overnight, or (ii) a right to exclude from the License Area authorized agents or other licensees of Harris County. Nothing in this paragraph prevents the Licensee from working during night hours, weekend, holidays or other times pursuant to this Access License, and in compliance with otherwise applicable law.

4. **Term.** The Term of this Access License shall continue in force for a period of four (4) years commencing upon the date when Permitted Activities will commence as set forth in written notice from Licensee to Harris County, and terminating four years after said date or earlier in accordance with Section 5. The parties acknowledge that the Permitted Activities are related to the federal project of deepening and widening the Houston Ship Channel.

5. Termination.

a. Notwithstanding anything in this Access License to the contrary, in the event Licensee defaults under this Access License and fails to cure such default within 30 business days after notice thereof from Harris County, or longer if required in the exercise of all reasonable diligence to cure, Harris County may, at its sole discretion, terminate this Access License.

b. The License granted herein shall be cancelled and this Access License shall terminate prior to the end of the full Term in the event and at such time that Licensee no longer requires access to the License Area for the Permitted Activities.

c. Licensee may at any time surrender the license rights herein granted or any part thereof, upon thirty (30) days advance written notice to Harris County. Such surrender shall terminate this Access License.

d. Immediately upon expiration or other termination of this Access License, the License and all rights granted by Harris County hereunder shall expire, and Licensee shall remove or cause the removal all of Licensee's Property from the License Area and shall have no other rights of entry on or use of the License Area.

6. **Fee.** There are no fees for this License Agreement.

7. **Condition of License Area.**

a. Licensee acknowledges and represents that it has independently and personally inspected the License Area and that Licensee has entered into this Access License based upon such examination and inspection, and each of them accept the License Area in its present condition, AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

b. Licensee agrees to keep the License Area in a good, clean, safe, operable, and well-kept condition, normal wear and tear excepted, free from any damage resulting from or arising out of the License granted hereunder; provided that Licensee has no duty or responsibility for the actions or use of the License Area by any third parties not under its control.

c. At the expiration or other termination of this Access License, Licensee shall reasonably restore the License Area to its original condition, normal wear and tear excepted, from any damage arising from its exercise of the License rights hereunder. Licensee shall remove all of Licensee's Property and any other tools, equipment, and personal property brought upon the License Area. If Harris County is required to remove any of Licensee's Property from the License Area or conduct any repairs to the License Area, which repairs are in any way attributable to damage resulting from Licensee's breach of the foregoing, Licensee shall be liable to Harris County for all costs incurred by Harris County in connection with such removal, disposal, and/or cleanup.

d. Licensee warrants that it shall use its commercially reasonable efforts to conduct its activities on the License Area throughout the Term in such a manner as to prevent the escape, release, or discharge of any Hazardous Material (as defined in Section 8) onto the surface, or into the subsurface, of the License Area or in or onto any adjacent waters. In the event of any escape, release, or discharge of Hazardous Material from such activities, Licensee hereby agrees that Licensee shall, at its sole cost and expense: (a) timely report any such escape, release, or discharge to the appropriate local, state, and/or federal environmental authorities as required by applicable regulation or law; and (b) immediately undertake environmental investigatory and corrective action to clean up such Hazardous Material in full compliance with all statutes and governmental regulations applicable thereto. Nothing in this paragraph requires Licensee to be responsible for

corrective action to clean up Hazardous Materials on the License Area that did not escape, release, or discharge because of Licensee's activities.

8. **Hazardous Materials.**

a. Licensee shall not, by itself or through Licensee's Contractors or other person or entity, cause or permit any Hazardous Materials to be generated, treated, or stored on or about or brought to the License Area. For the purposes of this Access License, the term "**Hazardous Materials**" includes any flammables, explosives, radioactive materials, hazardous waste, petroleum products or other hydrocarbons, chemicals, toxic substances, or related materials, including all substances regulated under or defined as "hazardous substances," "hazardous materials," or "toxic substances" in (as amended) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, et seq.; the Port Authority's Tariffs; the Texas Solid Waste Disposal Act, Texas Health & Safety Code § 361.001, et seq.; or any other Legal Requirement in any way applicable to Licensee, the Permitted Activities, or the License Area. For the purposes of this Access License, a "**Legal Requirement**" means any of the following, including all future amendments, revisions, restatements, and updates thereto and to the extent applicable in any way to Licensee and its business or operations, the License, or the License Area: (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, permits, certificates, mandates, or ordinances of any governmental entity; (ii) insurance requirements; (iii) environmental requirements, including environmental practices, policies, procedures, rules, regulations, or directives established by Harris County or by any other governmental entity that has regulatory or other jurisdiction; (iv) security requirements, including, but not limited to, any security plans, policies, procedures, rules, regulations, or directives established by Harris County or by any governmental entity that has regulatory jurisdiction; and (v) any other documents, instruments, or agreements relating to the License Area or to which the License Area may be bound or encumbered.

b. Licensee's violation of environmental Legal Requirements that may expose Harris County to fines or penalties as the owner of the License Area shall obligate Licensee to immediately pay all fines and penalties levied against Harris County that are attributable, in any way, to the actions or omissions of Licensee. Licensee shall similarly obligate Licensee's Contractor to pay such fines or penalties for any such violations by it or its subcontractors.

9. **Insurance.**

a. Prior to entering the License Area, Licensee's Contractor shall submit, a certificate of insurance, satisfactory to Harris County that meet the requirements set out in this subsection. Subsequent proof of insurance/renewal documentation shall be provided to Harris County prior to the expiration date of the coverage.

b. Licensee's Contractor shall obtain and maintain in full force and effect for the duration of this Access License, and any extension hereof, at Contractor's sole expense, at a minimum the insurance coverage as indicated below. Alternative policies or combinations of policies meeting coverage specifications Coverage should be written on an occurrence basis by companies authorized to do business in the State of Texas and rated "A-, VII" or better by A.M.

Best Company and/or be placed with Lloyds Underwriters or other financially sound insurance carrier acceptable to Harris County.

<u>Type</u>	<u>Amount</u>
i. Workers' Compensation	Statutory
Employers' Liability	\$1 Million/\$1 Million/\$1 Million
Longshore & Harbor Workers' Compensation (if exposure exists)	Statutory

1. Workers' Compensation coverage applicable for all employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, performing work for the Licensee, or entering upon the License Area.
2. If Licensee is a sole proprietorship without employees and which will not be using any subcontractor(s) in the performance of the Contract Work, it may request a waiver of required workers' compensation insurance.

ii. Commercial General Liability (CGL)	\$1 Million per occurrence \$2 Million Aggregate
--	---

1. Shall include Premises/Operations, Independent Contractors, Products and Completed Operations, Personal Injury, Bodily Injury, Broad Form Contractual Liability and Property Damage, Explosion, Collapse, and Underground Hazards.
2. Must contain a "severability of interests" provision and cover cross-suits between insureds.

iii. Business Automobile Liability (Any auto)	\$1 Million per accident
--	--------------------------

iv. Umbrella Liability	\$ 2 Million per occurrence
------------------------	-----------------------------

c. Harris County shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by Harris County.

d. All policies, except for workers' compensation and Environmental Impairment Liability (if applicable), shall designate the following as an "Additional Insured" *either* by an "Automatic Additional Insured" *or* a specific endorsement: "Harris County, its Commissioners, officers, employees, agents, and legal representatives."

e. All policies shall provide a waiver of subrogation in favor of Harris County.

f. In addition to any other remedies Harris County may have upon Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Harris County shall have the right to order Licensee to cease access to and

activities on the License Area, until Licensee demonstrates compliance with Port Authority requirements.

g. Nothing contained herein shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's activities on the License Area.

h. Nothing contained herein shall ever be construed to place upon Harris County in any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with Licensee's and Licensee's Contractor's activities on the License Area.

i. The above provisions of this section 9 are the insurance requirements of Harris County.

10. Indemnification and Release. (Political Subdivisions)

a. ***Licensee Indemnification.*** Licensee and Harris County acknowledge they are political subdivisions of the State of Texas and are subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Licensee and Harris County therefore agree to the provisions in this section 10 in lieu of Harris County's standard indemnity requirements.

b. ***Licensee's Contractor Indemnification.*** Licensee agrees and represents that (through its contract or contracts with Licensee's Contractor for the construction project related to the Permitted Activities, or through other means acceptable to Harris County), Licensee's Contractor agrees to and shall comply with the provisions of this section 10(b), and Licensee, upon Harris County's request, shall furnish Harris County with a copy of the below agreement to indemnify Harris County.

i. **INDEMNITY.** Subject only to the proportionate responsibility and liability allocation provisions set forth in section 10(b)(ii) below, to the maximum extent allowed by law, Licensee's Contractor shall indemnify, defend (upon Harris County's request), and hold harmless Harris County, as well as Harris County's commissioners, officers, directors, partners, and employees, (collectively with Harris County, the "**Indemnitees**"), from and against all claims, lawsuits, actions, proceedings, losses, costs, damages, injuries, assessments, fines, penalties, liens, judgments, reasonable and necessary attorneys' fees and court costs, or awards of any kind or nature whatsoever, including, but not limited to, any loss of or damage to the License Area or Harris County's property or its business operations property or its business operations (regardless of whether a third party asserts a claim), and the loss of or damage to any property or injury to (including, but not limited to, emotional distress) or death of any person, asserted by any person, firm, governmental agency, or corporation whomsoever (including, without limitation, Licensee's Contractor and their employees, invitees, contractors, and subcontractors or their employees, and Harris County's employees, invitees, tenants, contractors, subcontractors, and their employees, including survivors claiming under

the wrongful death statute) that relate to, arise out of, or are otherwise connected with Licensee's Contractor's exercise of the License rights hereunder or any other activities on the License Area, including, but not limited to, any violation of any Legal Requirement or the imposition of any obligation to protect health or the environment, including the violation of any environmental regulatory law or regulation or the escape, release, migration, explosion, burning, inhalation of, or exposure to any Hazardous Materials located on or originating from the License Area as a result of Licensee's Contractor's presence or operations thereon (collectively, a "**Liability**"). This indemnification applies even if such Liabilities are due in part to any Indemnitees' concurrent (but not sole) negligence or fault, breach of contract or warranty, violation of statute, or strict liability without regard to fault; provided, however, that Licensee's Contractor's obligation under this Section shall not extend to the percentage of damages caused by Harris County's own negligence or other fault, breach of contract or warranty, violation of statute, or strict liability without regard to fault.

ii. **Limitation.** If either (i) an agreement between Harris County and Licensee's Contractor (or their respective insurers) is reached or (ii) a final, non-appealable judgment or order is issued by a judicial, regulatory, or arbitral body or authority with proper jurisdiction over the subject matter in question is rendered holding that Indemnitees were liable for a Liability, then the indemnity obligations of Licensee's Contractor under section 10(b)(i) above and the release obligations of Licensee's Contractor under section 10(b)(iii) below shall be limited to the remaining percentage(s) of the Liability not attributable to Indemnitee's negligence.

iii. **RELEASE.** Subject only to the proportionate responsibility and liability allocation provisions set forth in section 10(b)(ii), Licensee's Contractor hereby releases the Indemnitees from and assumes for itself all Liabilities in any way relating to Licensee's Contractor's presence on or use of the License Area. Notwithstanding anything to the contrary contained herein, Licensee's Contractor hereby further waives any claims against and releases the Indemnitees from all Liabilities and other claims, causes of actions, losses, costs, damages, or injuries of every kind, which are caused by, arise out of or in connection with, or are related to (i) any lapse in or failure by Indemnitees to provide security; (ii) acts of terrorism, vandalism, theft, burglary or other criminal acts, war, acts of God, fire, explosion flood or endemic; or (iii) the condition, repair, replacement, maintenance, damage, or destruction (or other casualty, including fire) of the License Area.

c. Nothing contained in or implied by this Access License shall be construed to limit, waive, or impair any of Harris County's or the Port of Houston Authority's sovereign or governmental immunities under state or federal law.

d. This Section 10 shall survive the cancellation, termination, or expiration of the Term of this Access License, settlement of underlying third-party claims and, provided that notice and the right to participate in the investigation, defense, and resolution (including settlement) of the applicable third party claim has been provided, shall apply to voluntary settlements made by either Port Authority or Licensee with such third party. This Section 10 shall not be unilaterally cancelable by either party.

11. Notices.

a. All notices and other communications given pursuant to this Access License shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth on the first page hereof, or delivered in person to the intended addressee. Notice mailed in the aforesaid manner shall become effective three business days after deposit; notice given in any other manner, and any notice given to Harris County, shall be effective only upon receipt by the intended addressee.

b. Licensee shall provide Harris County with current information for an emergency contact person. Harris County's Emergency Contact at the time of issuance of this Access License is set forth on the first page hereof.

c. Licensee shall notify Harris County within thirty calendar (30) days of any changes to the Licensee Name, Licensee Address, Emergency Contact name, address, or telephone number, or to the Licensee's Contractor name and contact information.

d. Each party shall have the continuing right to change its address for notice by giving fifteen (15) days prior written notice to the other party in accordance with this section.

12. Miscellaneous.

a. This Access License and Licensee's rights under this Access License are subject to the terms, provisions and conditions of any easements, restrictions, covenants, conditions, mineral reservations, leases, or other encumbrances which now or in the future may affect the License Area.

b. This Access License constitutes the entire agreement between the parties. This Access License may be amended only by a written document duly executed by Harris County and Licensee, and any alleged amendment which is not so documented shall not be effective as to either party.

c. Licensee shall have no right or authority to assign or delegate, in whole or in part, any of its rights or obligations under this Access License to any third party.

d. Licensee agrees to comply with any and all Legal Requirements.

e. This Access License will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Access License shall be in Harris County, Texas.

f. Whenever possible, each provision of this Access License shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision under this Access License shall be invalid, illegal, or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of this Access License shall not be affected or impaired thereby.

g. This Access License is not intended to, nor shall it be deemed or construed as a

contract for services or to bind Harris County to convey the License Area or any other property to Licensee. Nothing contained in this Access License and no future action or inaction by Harris County shall be deemed or construed to mean that Harris County has contracted with Licensee to perform any activity on the License Area, including but not limited to the Permitted Activities pursuant to this Access License. Under no circumstance shall Licensee be entitled to reimbursement from Harris County for any activities permitted by the License on the License Area.


h. The persons executing this Access License on behalf of the Licensee, Harris County, as applicable, each execute this Access License solely in his/her capacity as a representative of Licensee, Harris County, as applicable, as noted on the signature page hereto, and not in his/her individual capacity, and shall have no personal liability under or in connection with any covenant, representation, or warranty made herein.

Executed by the parties on the dates set out below their signatures, but effective as of the Effective Date. This Access License may be executed in more than one counterpart, each of which shall be an original, but all of which shall constitute but one instrument.

[Signature Pages Follow]

LICENSEE:


**PORT OF HOUSTON AUTHORITY
OF HARRIS COUNTY, TEXAS**

By 
John A. Moseley
Chief Commercial Officer


Date August 12, 2020

MINUTE NO. 2020-0520-13

APPROVED AS TO SUBSTANCE:

By:  Digitally signed by R.D. Tanner
Date: 2020.08.12 14:47:11
-0500
RD Tanner, Senior Director - Real Estate


APPROVED AS TO FORM:


Port Authority Counsel

REVIEWED:

By: 
Curtis Duncan, Controller

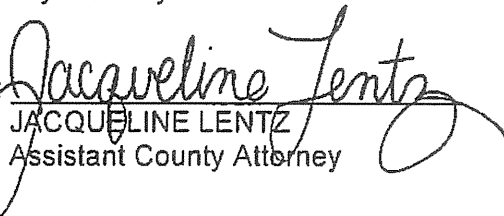
HARRIS COUNTY, TEXAS

By: 

LINA HIDALGO
County Judge

Date: August 25, 2020

VINCE RYAN
County Attorney

By: 

JACQUELINE LENTZ
Assistant County Attorney

95% DRAFT

Exhibit A:

95% DRAFT

EXHIBIT "A"

RICHARD & ROBERT VINCE SURVEY
ABSTRACT No. 76
HARRIS COUNTY, TEXAS

MISSOURI PACIFIC RAILROAD
PART OF CALLED 75.253 ACRES
VOL. 4245, PG. 527 D.R.H.C.T.

N: 13842215.16
E: 3190637.28

0.426 ACRES

CALLED 415.0 ACRES
H.C.C.F. No. RP-2019-479581

L1	94.36	S72° 28' 44.58"E
L2	74.82	S75° 16' 38.36"E
L3	186.03	S79° 42' 43.68"E
L4	90.44	S55° 26' 12.96"E
L5	155.84	S75° 28' 30.54"E
L6	22.98	S87° 46' 18.04"E
L7	30.11	S2° 41' 39.05"E
L8	28.80	N87° 46' 18.04"W
L9	164.37	N75° 28' 30.54"W
L10	89.29	N55° 26' 12.96"W
L11	180.74	N79° 42' 43.68"W
L12	77.40	N75° 16' 38.36"W
L13	84.86	N69° 52' 48.24"W
L14	27.90	N2° 41' 04.09"W

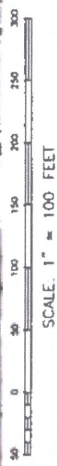
PORT OF HOUSTON
AUTHORITY
CALLED 145.69 ACRES
H.C.C.F. No. W109648

BELTWAY 8

JACINTO PORT BOULEVARD

PRELIMINARY, THIS DOCUMENT IS
INTENDED FOR REVIEW PURPOSES
ONLY AND SHALL NOT BE
RECORDED FOR ANY PURPOSE.

BEARINGS & COORDINATES ARE BASED ON
TEXAS STATE PLANE COORDINATE SYSTEM
OF 1983, TEXAS SOUTH CENTRAL ZONE.



E1-1-621 04-21-2020



ORDER OF COMMISSIONERS COURT
Authorizing an Access License Agreement with the Port of Houston Authority
of Harris County, Texas

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on August 25, 2020, with all members present except none.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING AN ACCESS LICENSE AGREEMENT BETWEEN HARRIS COUNTY, TEXAS AND THE PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS FOR INGRESS AND EGRESS ACCESS ACROSS HARRIS COUNTY RIGHT-OF-WAY TO SUPPORT PORT OF HOUSTON ACTIVITIES

Commissioner A. Garcia introduced an order and moved that Commissioners Court adopt the order. Commissioner Ellis seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute on behalf of Harris County an Access License Agreement between Harris County, Texas and the Port of Houston Authority of Harris County, Texas for ingress and egress access across Harris County right-of-way to support Port of Houston activities. The Agreement is incorporated by reference and made a part of this order for all intents and purposes as though set out in full word for word.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

Presented to Commissioners Court

August 25, 2020

Approve: G/E

PORT OF HOUSTON AUTHORITY
TECHNICAL SPECIFICATION FOR PROJECT 11: BOGGY BAYOU TO SIMS BAYOU:
BELTWAY 8 DMPA SITE PREPARATION

APPENDIX E: Temporary Access Road Agreements

E-5. HCTRA Access License Agreement for Ship Channel Bridge Program, dated June 9, 2020

95% DRAFT

June 9, 2020

	YES	NO	ABSTAIN
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Commissioners Court
Administration Building
Houston, Texas 77002

SUBJECT: Recommendation that Commissioners Court approve an Access License Agreement with the Port of Houston Authority of Harris County, Texas for Traylor Bros. Inc. and Zachry Construction Corporation d/b/a Ship Channel Constructors to construct a portion of the Ship Channel Bridge Program Precinct 2

Dear Court Members:

It is recommended that Commissioners Court approve an Access License Agreement with the Port of Houston Authority of Harris County, Texas for Traylor Bros. Inc. and Zachry Construction Corporation d/b/a Ship Channel Constructors to construct a portion of the Ship Channel Bridge Program.

The Toll Road Authority recommends that all appropriate officials be granted authority to take all necessary actions to execute this Agreement. Attached are five (5) originals. Please return two (2) fully executed originals to the Toll Road Authority. This Agreement has been reviewed and approved by the Harris County Attorney's Office.

Sincerely,



Peter W. Key
Interim Executive Director

Presented to Commissioners Court

PWK:JCT:py
Attachments

June 9, 2020

cc: HCTRA Management
Mike Perez, P.E.
Tisha Laws
Agenda File

Approve: E/G

ACCESS LICENSE AGREEMENT

FILE NO.: 2018-0201

PORT AUTHORITY: PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS, a political subdivision of the State of Texas

PORT AUTHORITY'S ADDRESS: 111 East Loop North, Houston, Texas 77029
Attn: Real Estate Director

LICENSEE: HARRIS COUNTY, TEXAS, a political subdivision of the State of Texas

LICENSEE'S ADDRESS: c/o Harris County Toll Road Authority
7701 Wilshire Place Dr., Houston, Texas 77040

LICENSEE EMERGENCY CONTACT/TEL.: Mike Perez, Senior Staff Engineer / 713-587-7903

LICENSEE'S CONTRACTORS: (1) Traylor Bros. Inc., (an Indiana corporation) and Zachry Construction Corporation (a Texas corporation) d/b/a Ship Channel Constructors, a Texas joint venture operating under the Texas general partnership law, having its address at 15015 East Freeway B, Channelview, Texas 77530; (2) Zachry Construction Corporation, a Texas corporation, having its address at P.O. Box 33240, San Antonio, TX 78265; and (3) such other contractors as approved in writing by the Port Authority prior to commencement of any work within the License Area.

LICENSE AREA: A 1.6010 acres (69,742 square feet) tract of land in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas, and a 0.2394 of an acre (10,428 square feet) tract of land in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas, as more particularly described in Exhibit A, attached hereto and made a part hereof

PERMITTED ACTIVITIES: Enter upon the License Area to perform activities in support of certain construction work, and other such activities as further described in Section 2

EFFECTIVE DATE: July 1, 2020

TERM: Eight (8) years from the Effective Date, co-terminus with the

Access License Agreement (Southside Main Line Railroad Right-of-Way) Temporary Construction Workspace – Port Authority File Number 201-0084, being an agreement between Port Authority, Port Terminal Railroad Association, and Harris County, Texas for a 0.0530 acres (2,308 square feet) tract of land in the Thomas Earle Survey, A-18, Harris County, Texas, or earlier termination in accordance with Section 5

**ADMINISTRATION
FEE:**

Waived

LICENSE FEE:

Waived

EXHIBITS:

Exhibit A: Description and/or depiction of a 1.6010 acre (69,742 square feet) tract of land in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas, and a 0.2394 of an acre (10,428 square feet) tract of land in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas (the “License Area” herein)

95% DRAFT

THIS ACCESS LICENSE AGREEMENT ("Access License") is made and entered as of the Effective Date between the Port Authority and Licensee, with reference to the following. Capitalized terms not otherwise defined herein shall have the meanings set forth above.

A. Port Authority property, including the License Area, is used by the Port Authority for the establishment, improvement, and conduct of harbors and for the construction, maintenance and operation of facilities or aids to the establishment, improvement or operation of harbors. Port Authority property is used for public purposes and for the development of commerce.

B. The grant of license in this Access License for use of Port Authority property is in accordance with the mandates set out in Section A, above.

C. That the Port Authority grant permission for Licensee to enter for a period not to exceed ten years, upon that certain real property owned by the Port Authority defined (on the first page hereof) above as the License Area, for the Permitted Activities referenced above.

D. The Port Commission, by Minute Numbers shown underneath the Port Authority's signature, has authorized the grant of permission described in this Access License, in accordance with the terms and conditions of this Access License.

Therefore, in consideration of the mutual covenants contained in this Access License, the Port Authority and Licensee hereby agree as follows:

1. **License.**

a. The Port Authority hereby licenses and grants permission to Licensee a non-exclusive license (the "License") for ingress and egress of Licensee and Licensee's Contractor, and their vehicles, machinery, equipment, or other personal property ("Licensee's Property") on and across the License Area for the purpose of the Permitted Activities, during the Term, subject to the terms, conditions, and restrictions set forth herein.

b. The parties to this Access License understand that Licensee's Contractor (as defined on the first page hereof) is the prime contractor coordinating the Permitted Activities in accordance with the terms of a construction contract with Licensee. Licensee agrees that Licensee's Contractor will be advised of the terms of this Access License and Licensee will require Licensee's Contractor to comply with applicable provisions of this Access License.

c. The right of Licensee and Licensee's Contractors to use the License Area is subordinate to the rights of the Port Authority. In exercising the rights under this Access License, Licensee shall at all times act, and cause Licensee's Contractors to act, in compliance with all of Licensee's duties under this Access License, and in the manner directed by the Port Authority so as not to disrupt Port Authority or other authorized user's operations on or adjacent to the License Area including access to any pipeline or other permissions that may have been granted on or under the License Area. The license given hereby shall not in any way prevent the Port Authority from operating across the License Area. Port Authority retains the right to cross the License Area from time to time in locations to be determined in coordination with all parties and

so long as it does not unreasonably interfere with the Permitted Activities of Licensee or Licensee's Contractor.

d. Licensee understands and agrees that the license and permission granted herein is for nonexclusive use of the License Area and that similar permission may be given to others for activities including but not limited to installation, maintenance, and use of pipelines and utility lines within, under, and across the License Area, subject to the terms of this Access License.

e. In its exercise of the license and permission granted herein, Licensee shall: (i) procure all permits and licenses, including any required federal permits, pay all charges and fees, and give all notices necessary and incidental to the prosecution of the Permitted Activities; (ii) conduct, and cause Licensee's Contractors to conduct, its activities in compliance with all applicable laws, rules, and regulations applicable to Licensee, Licensee's Contractors, or to the License Area.

f. Should any wetland delineation be necessary on the License Area, Licensee shall submit a copy of the permit application to Port Authority.

g. Nothing contained in this Access License and no action or inaction by the Port Authority shall be deemed or construed to mean that the Port Authority has granted Licensee any right, power, or permission to do any act or make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, or charge to the License Area, including but not limited to the grant of a lien, license, or easement in the License Area.

2. **Permitted Activities.** The activities permitted under this Access License are set out below ("Permitted Activities):

a. Activities directly in support of construction work pertaining to the Sam Houston Tollway Bridge over the Houston Ship Channel, including:

- i. Survey work;
- ii. Installation and removal of environmental controls and materials;
- iii. Installation and removal of a temporary crossing for personnel and equipment access, and for major material deliveries;
- iv. Utility investigation (Potholing);
- v. Work supporting and related to the drilled shaft foundation construction on adjacent tracts;
- vi. Work supporting and related to the bridge substructure construction on adjacent tracts;
- vii. Work supporting and related to the bridge superstructure construction on adjacent tracts;
- viii. Work supporting and related to the bridge railing and fencing construction on adjacent tracts;
- ix. Work supporting and related to bridge illumination, painting, signage, and fiber communication network (CTMS) construction on adjacent tracts; and
- x. Work supporting and related to various inspections and cleaning operations of the spans.

b. Licensee shall have the right to carry out on the License Area uses reasonably associated with the Permitted Activities. No change may be made in the Permitted Activities without prior written approval of the Port Authority.

3. Specifically Excluded Activities.

a. This License only conveys a right to Licensee to enter and conduct Permitted Activities on the License Area. Licensee shall not use or encroach on any non-public area outside the License Area not licensed to, leased to, or owned by Licensee or to which it does not otherwise have consent to do so from the property owner or legal occupant.

b. Licensee's activities under this Access License shall not impede, impair, disrupt, interfere with, interrupt, or otherwise burden the operations of the Port Authority or any other authorized user of the License Area, any neighboring property, or the Houston Ship Channel, except as reasonably contemplated by the Permitted Activities.

c. Licensee shall not construct any improvements on or make any alterations to the License Area other than are allowed by the Permitted Activities, or with prior written approval by the Port Authority.

d. Nothing in this Access License shall be construed to convey to Licensee (i) a right of personnel to occupy the License Area overnight, or (ii) a right to exclude from the License Area authorized agents or other licensees of the Port Authority. Nothing in this paragraph prevents the Licensee from working during night hours pursuant to this Access License.

4. **Term.** The Term of this Access License shall commence on the Effective Date and (subject to earlier termination as herein provided) shall continue in force for a period of eight (8) years, co-terminus with the Access License Agreement (Southside Main Line Railroad Right-of-Way) Temporary Construction Workspace – Port Authority File Number 201-0084 - being an agreement between Port Authority, Port Terminal Railroad Association, and Harris County, Texas for a 0.0530 acres (2,308 square feet) tract of land in the Thomas Earle Survey, A-18, Harris County, Texas.

5. Termination.

a. Notwithstanding anything in this Access License to the contrary, in the event Licensee defaults under this Access License and fails to cure such default within 30 business days after notice thereof from Port Authority, or longer if required in the exercise of all reasonable diligence to cure, Port Authority may, at its sole discretion, terminate this Access License.

b. The License granted herein shall be cancelled and this Access License shall terminate prior to the end of the full Term in the event and at such time that Licensee no longer requires access to the License Area for the Permitted Activities.

c. Licensee may at any time surrender the license rights herein granted or any part thereof, upon thirty (30) days advance written notice to the Port Authority. Such surrender shall terminate this Access License.

d. Immediately upon expiration or other termination of this Access License, the License and all rights granted by the Port Authority hereunder shall expire, and Licensee shall remove or cause the removal all of Licensee's Property from the License Area and shall have no other rights of entry on or use of the License Area.

e. Notwithstanding the foregoing, Port Authority may, at its sole discretion and without recourse by Licensee, upon prior notice terminate this Access License if Licensee ceases or fails to use or occupy the License Area for a period of twelve (12) consecutive months.

f. Any payment, repair, insurance, or indemnification obligations of this Access License arising during the Term, whether or not known or fully accrued on the date of termination, shall survive the expiration or termination for any reason of this Access License.

6. **Fee.** For this Access License, Licensee agrees and promises to pay to the Port Authority the Administration Fee and the License Fee.

7. **Condition of License Area.**

a. Licensee acknowledges and represents that it and Licensee's Contractors has independently and personally inspected the License Area and that each of them have entered into this Access License based upon such examination and inspection, and each of them accept the License Area in its present condition, AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

b. Licensee agrees to keep the License Area in a good, clean, safe, operable, and well-kept condition, normal wear and tear excepted, free from any damage resulting from or arising out of the License granted hereunder.

c. At the expiration or other termination of this Access License, Licensee shall reasonably restore the License Area to its original condition from any damage arising from its exercise of the License rights hereunder. Licensee shall remove all of Licensee's Property and any other tools, equipment, and personal property brought upon the License Area. If the Port Authority is required to remove any of Licensee's property from the License Area or conduct any repairs to the License Area, which repairs are in any way attributable to damage resulting from Licensee's breach of the foregoing, Licensee shall be liable to the Port Authority for all costs incurred by the Port Authority in connection with such removal, disposal, and/or cleanup.

d. Licensee warrants that it shall use its commercially reasonable efforts to conduct its activities on the License Area throughout the Term in such a manner as to prevent the escape, release, or discharge of any Hazardous Material (as defined in Section 8) onto the surface, or into the subsurface, of the License Area or in or onto any adjacent waters. In the event of any escape, release, or discharge of Hazardous Material from such activities, Licensee hereby agrees that Licensee shall, at its sole cost and expense: (a) timely report any such escape, release, or discharge to the appropriate local, state, and/or federal environmental authorities as required by

applicable regulation or law; and (b) immediately undertake environmental investigatory and corrective action to clean up such Hazardous Material in full compliance with all statutes and governmental regulations applicable thereto. Nothing in this paragraph requires Licensee to be responsible for corrective action to clean up Hazardous Materials on the License Area that did not escape, release, or discharge because of Licensee's activities.

8. Hazardous Materials.

a. Licensee shall not, by itself or through Licensee's Contractors or other person or entity, cause or permit any Hazardous Materials to be generated, treated, or stored on or about or brought to the License Area in contravention of the rates, rules, regulations, policies, and tariffs issued, adopted, amended, and reissued by the Port Authority from time to time, including without limitation Tariff No. 8 (collectively, "**the Port Authority's Tariffs**") or any other applicable Legal Requirement (as defined herein). For the purposes of this Access License, the term "**Hazardous Materials**" includes any flammables, explosives, radioactive materials, hazardous waste, petroleum products or other hydrocarbons, chemicals, toxic substances, or related materials, including all substances regulated under or defined as "hazardous substances," "hazardous materials," or "toxic substances" in (as amended) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, et seq.; the Port Authority's Tariffs; the Texas Solid Waste Disposal Act, Texas Health & Safety Code § 361.001, et seq.; or any other Legal Requirement in any way applicable to Licensee, the Permitted Activities, or the License Area. For the purposes of this Access License, a "**Legal Requirement**" means any of the following, including all future amendments, revisions, restatements, and updates thereto and to the extent applicable in any way to Licensee and its business or operations, the License, or the License Area: (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, permits, certificates, mandates, or ordinances of any governmental entity; (ii) the Port Authority's Tariffs; (iii) insurance requirements; (iv) environmental requirements, including environmental practices, policies, procedures, rules, regulations, or directives established by the Port Authority or by any other governmental entity that has regulatory or other jurisdiction; (v) security requirements, including, but not limited to, any security plans, policies, procedures, rules, regulations, or directives established by the Port Authority or by any governmental entity that has regulatory jurisdiction; and (vi) any other documents, instruments, or agreements relating to the License Area or to which the License Area may be bound or encumbered.

b. Licensee's or Licensee's Contractor's violation of environmental Legal Requirements that may expose the Port Authority to fines or penalties as the owner of the License Area shall obligate Licensee to immediately pay all fines and penalties levied against the Port Authority that are attributable, in any way, to the actions or omissions of Licensee.

9. Insurance.

a. Prior to entering the License Area, Licensee shall submit, and shall cause Licensee's Contractor to submit, a certificate of insurance, satisfactory to the Port Authority's Risk Management Department, that meet the requirements set out in this subsection. Subsequent

proof of insurance/renewal documentation shall be provided to the Port Authority prior to the expiration date of the coverage. Only the Port Authority Director of Risk Management has authority to waive or modify any requirement contained in this section 9.

b. Licensee's financial integrity is of interest to the Port Authority. Licensee's Contractor may maintain reasonable deductibles or self-insured retentions in such amounts as approved by the Port Authority. Licensee's Contractor shall obtain and maintain in full force and effect for the duration of this Access License, and any extension hereof, at Licensee's Contractor's sole expense, at a minimum the insurance coverage as indicated below. Alternative policies or combinations of policies meeting coverage specifications may be used subject to prior Port Authority Risk Management approval. Coverage should be written on an occurrence basis by companies authorized to do business in the State of Texas and rated "A-, VII" or better by A.M. Best Company and/or be placed with Lloyds Underwriters or another financially sound insurance carrier acceptable to Port Authority Risk Management.

<u>Type</u>	<u>Amount</u>
i. Workers' Compensation Employers' Liability Longshore & Harbor Workers' Compensation (if exposure exists)	Statutory \$1 Million/\$1 Million/\$1 Million Statutory
1. All employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, performing work for the Licensee, or entering upon the License Area, must be covered by Workers' Compensation. 2. If Licensee is a sole proprietorship without employees and which will not be using any subcontractor(s) in the performance of the Contract Work, it may request a waiver of required workers' compensation insurance; if such a waiver is requested, then Licensee, as sole proprietor, agrees to indemnify and hold harmless Port Authority.	
ii. Commercial General Liability (CGL)	\$1 Million per occurrence \$2 Million Aggregate
1. Shall include Premises/Operations, Independent Contractors, Products and Completed Operations, Personal Injury, Bodily Injury, Broad Form Contractual Liability and Property Damage, Explosion, Collapse, and Underground Hazards. 2. Must contain a "severability of interests" provision, and cover cross-suits between insureds.	
iii. Business Automobile Liability (Any auto)	\$1 Million per accident

iv. Umbrella Liability

\$20 Million per occurrence

c. The Port Authority shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Port Authority.

d. All policies, except for workers' compensation and Environmental Impairment Liability (if applicable), shall designate the following as an "Additional Insured" *either* by an "Automatic Additional Insured" *or* a specific endorsement: "Port Authority, its Commissioners, officers, employees, agents, and legal representatives."

e. All policies shall provide a waiver of subrogation in favor of the Port Authority.

f. In addition to any other remedies the Port Authority may have upon Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Port Authority shall have the right to order Licensee to cease access to and activities on the License Area, until Licensee demonstrates compliance with Port Authority requirements.

g. Nothing contained herein shall be construed as limiting in any way the extent to which Licensee may be held responsible for payments of damages to persons or property resulting from Licensee's activities on the License Area.

h. Nothing contained herein shall ever be construed to place upon the Port Authority in any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with Licensee's and Licensee's Contractor's activities on the License Area.

i. The above provisions of this section 9 are the insurance requirements of the Port Authority.

10. **Indemnification and Release.** (Political Subdivisions)

a. ***Licensee Indemnification***

i. Licensee and the Port Authority acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Licensee and the Port Authority therefore agree to the provisions in this section 10 in lieu of the Port Authority's standard indemnity requirements.

ii. To the extent allowed by law, Licensee shall be responsible for the negligence of Licensee and Licensee's employees, contractors, agents, business invitees, and other persons under Licensee's control, supervision, or direction ("Licensee's Employees and Controlled Persons"). If any action of Licensee or Licensee's Employees and Controlled Persons in the

exercise of the Permitted Use results in damage to the License Area, Licensee will, at the Port Authority's discretion, either repair such damage or make an appropriate settlement with the Port Authority. In no event shall such repair or settlement exceed the fair market value of the fee title to the License Area at the time immediately preceding such damage. Licensee's liability under this clause is subject to the availability of appropriations for such payment. The provisions of this clause are without prejudice to any rights the Port Authority may have to make a claim under applicable laws for any damages other than those provided for herein.

iii. Licensee agrees that the Port Authority shall not be responsible or liable for injuries to persons or damages to the License Area when such injuries or damages are caused by or result from Licensee's use of the License Area under the terms of this Access License and are not due to the active negligence of the Port Authority.

b. *Licensee's Contractor Indemnification.* Licensee agrees and represents that (through its contract or contracts with Licensee's Contractor for the construction project related to the Permitted Activities, or through other means acceptable to the Port Authority), Licensee's Contractor agrees to and shall comply with the provisions of this section 10(b), and Licensee, upon the Port Authority's request, shall furnish the Port Authority with a copy of the below agreement to indemnify the Port Authority.

i. INDEMNITY. Subject only to the proportionate responsibility and liability allocation provisions set forth in section 10(b)(ii) below, to the maximum extent allowed by law, Licensee's Contractor shall indemnify, defend (upon the Port Authority's request), and hold harmless the Port Authority, as well as the Port Authority's commissioners, officers, directors, partners, and employees, (collectively with the Port Authority, the "Indemnitees"), from and against all claims, lawsuits, actions, proceedings, losses, costs, damages, injuries, assessments, fines, penalties, liens, judgments, reasonable and necessary attorneys' fees and court costs, or awards of any kind or nature whatsoever, including, but not limited to, any loss of or damage to the License Area or the Port Authority's property or its business operations property or its business operations (regardless of whether a third party asserts a claim), and the loss of or damage to any property or injury to (including, but not limited to, emotional distress) or death of any person, asserted by any person, firm, governmental agency, or corporation whomsoever (including, without limitation, Licensee's Contractor and their employees, invitees, contractors, and subcontractors or their employees, and the Port Authority's employees, invitees, tenants, contractors, subcontractors, and their employees, including survivors claiming under the wrongful death statute) that relate to, arise out of, or are otherwise connected with Licensee's Contractor's exercise of the License rights hereunder or any other activities on the License Area, including, but not limited to, any violation of any Legal Requirement or the imposition of any obligation to protect health or the environment, including the violation of any environmental regulatory law or regulation or the escape, release, migration, explosion, burning, inhalation of, or exposure to any Hazardous Materials located on or originating from the License Area as a result of Licensee's Contractor's presence or operations thereon (collectively, a "Liability"). This indemnification applies even if such Liabilities are due in part to any Indemnitees' concurrent (but not sole) negligence or fault, breach of contract or warranty, violation of statute, or strict liability without regard to fault; provided, however, that Licensee's

Contractor's obligation under this Section shall not extend to the percentage of damages caused by the Port Authority's own negligence or other fault, breach of contract or warranty, violation of statute, or strict liability without regard to fault.

ii. **Limitation.** If either (i) an agreement between the Port Authority and Licensee's Contractor (or their respective insurers) is reached or (ii) a final, non-appealable judgment or order is issued by a judicial, regulatory, or arbitral body or authority with proper jurisdiction over the subject matter in question is rendered holding that Indemnitees were liable for a Liability, then the indemnity obligations of Licensee's Contractor under section 10(b)(i) above and the release obligations of Licensee's Contractor under section 10(b)(iii) below shall be limited to the remaining percentage(s) of the Liability not attributable to Indemnitee's negligence.

iii. **RELEASE.** Subject only to the proportionate responsibility and liability allocation provisions set forth in section 10(b)(ii), Licensee's Contractor hereby releases the Indemnitees from and assumes for itself all Liabilities in any way relating to Licensee's Contractor's presence on or use of the License Area. Notwithstanding anything to the contrary contained herein, Licensee's Contractor hereby further waives any claims against and releases the Indemnitees from all Liabilities and other claims, causes of actions, losses, costs, damages, or injuries of every kind, which are caused by, arise out of or in connection with, or are related to (i) any lapse in or failure by Indemnitees to provide security; (ii) acts of terrorism, vandalism, theft, burglary or other criminal acts, war, acts of God, fire, explosion or flood; or (iii) the condition, repair, replacement, maintenance, damage, or destruction (or other casualty, including fire) of the License Area.

c. Nothing contained in or implied by this Access License shall be construed to limit, waive, or impair any of Harris County's and the Port Authority's sovereign or governmental immunities under state or federal law.

d. This Section 10 shall survive the cancellation, termination, or expiration of the Term of this Access License, settlement of underlying third-party claims and, provided that notice and the right to participate in the investigation, defense, and resolution (including settlement) of the applicable third party claim has been provided, shall apply to voluntary settlements made by either Port Authority or Licensee with such third party. This Section 10 shall not be unilaterally cancelable by either party.

11. **Notices.**

a. All notices and other communications given pursuant to this Access License shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth on the first page hereof, or delivered in person to the intended addressee. Notice mailed in the aforesaid manner shall become effective three business days after deposit; notice given in any other manner, and any notice given to the Port Authority, shall be effective only upon receipt by the intended addressee.

b. Licensee shall provide Port Authority with current information for an emergency

contact person. Licensee's Emergency Contact at the time of issuance of this Access License is set forth on the first page hereof.

c. Licensee shall notify Port Authority within thirty calendar (30) days of any changes to the Licensee Name, Licensee Address, Emergency Contact name, address, or telephone number, or to the Licensee's Contractor name and contact information.

d. Each party shall have the continuing right to change its address for notice by giving fifteen (15) days prior written notice to the other party in accordance with this section.

12. Miscellaneous.

a. This Access License and Licensee's rights under this Access License are subject to the terms, provisions and conditions of any easements, restrictions, covenants, conditions, mineral reservations, leases, or other encumbrances which now or in the future may affect the License Area.

b. This Access License constitutes the entire agreement between the parties. This Access License may be amended only by a written document duly executed by Port Authority and Licensee, and any alleged amendment which is not so documented shall not be effective as to either party.

c. Licensee shall have no right or authority to assign or delegate, in whole or in part, any of its rights or obligations under this Access License to any third party.

d. Licensee agrees to comply with any and all Legal Requirements.

e. This Access License will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Access License shall be in Harris County, Texas.

f. Whenever possible, each provision of this Access License shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision under this Access License shall be invalid, illegal, or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of this Access License shall not be affected or impaired thereby.

g. This Access License is not intended to, nor shall it be deemed or construed as a contract for services or to bind the Port Authority to convey the License Area or any other property to Licensee. Nothing contained in this Access License and no future action or inaction by the Port Authority shall be deemed or construed to mean that the Port Authority has contracted with Licensee to perform any activity on the License Area, including but not limited to the Permitted Activities pursuant to this Access License. Under no circumstance shall Licensee be entitled to reimbursement from the Port Authority for any activities permitted by the License on the License Area.

h. The persons executing this Access License on behalf of the Licensee, the Port

Authority, as applicable, each execute this Access License solely in his/her capacity as a representative of Licensee, the Port Authority, as applicable, as noted on the signature page hereto, and not in his/her individual capacity, and shall have no personal liability under or in connection with any covenant, representation, or warranty made herein.

Executed by the parties on the dates set out below their signatures, but effective as of the Effective Date. This Access License may be executed in more than one counterpart, each of which shall be an original, but all of which shall constitute but one instrument.

[Signature Pages Follow]

950% DRAFT

PORT AUTHORITY:

PORT OF HOUSTON AUTHORITY

By R.D. Tanner Digitally signed by R.D. Tanner
Date: 2020.05.20 13:55:54
-05'00'
RD Tanner, Senior Director – Real Estate

Date _____

MINUTE NO. 2018-0925-13

APPROVED AS TO FORM:

Thomas G. Schroeter Digitally signed by Thomas G. Schroeter
Date: 2020 05 20 08:57:38 -05'00'
Port Authority Counsel

REVIEWED:

By: Curtis E. Duncan Digitally signed by Curtis E. Duncan
Date: 2020 05 20 13:57:26 -05'00'
Curtis Duncan, Controller

HARRIS COUNTY

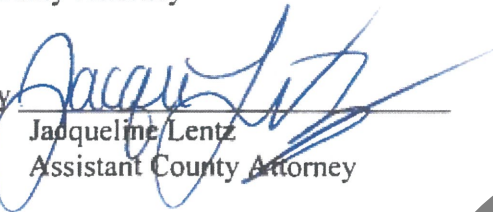
By 

LINA HIDALGO
County Judge

Date June 09, 2020

APPROVED AS TO FORM:

VINCE RYAN
County Attorney

By 

Jacqueline Lentz
Assistant County Attorney

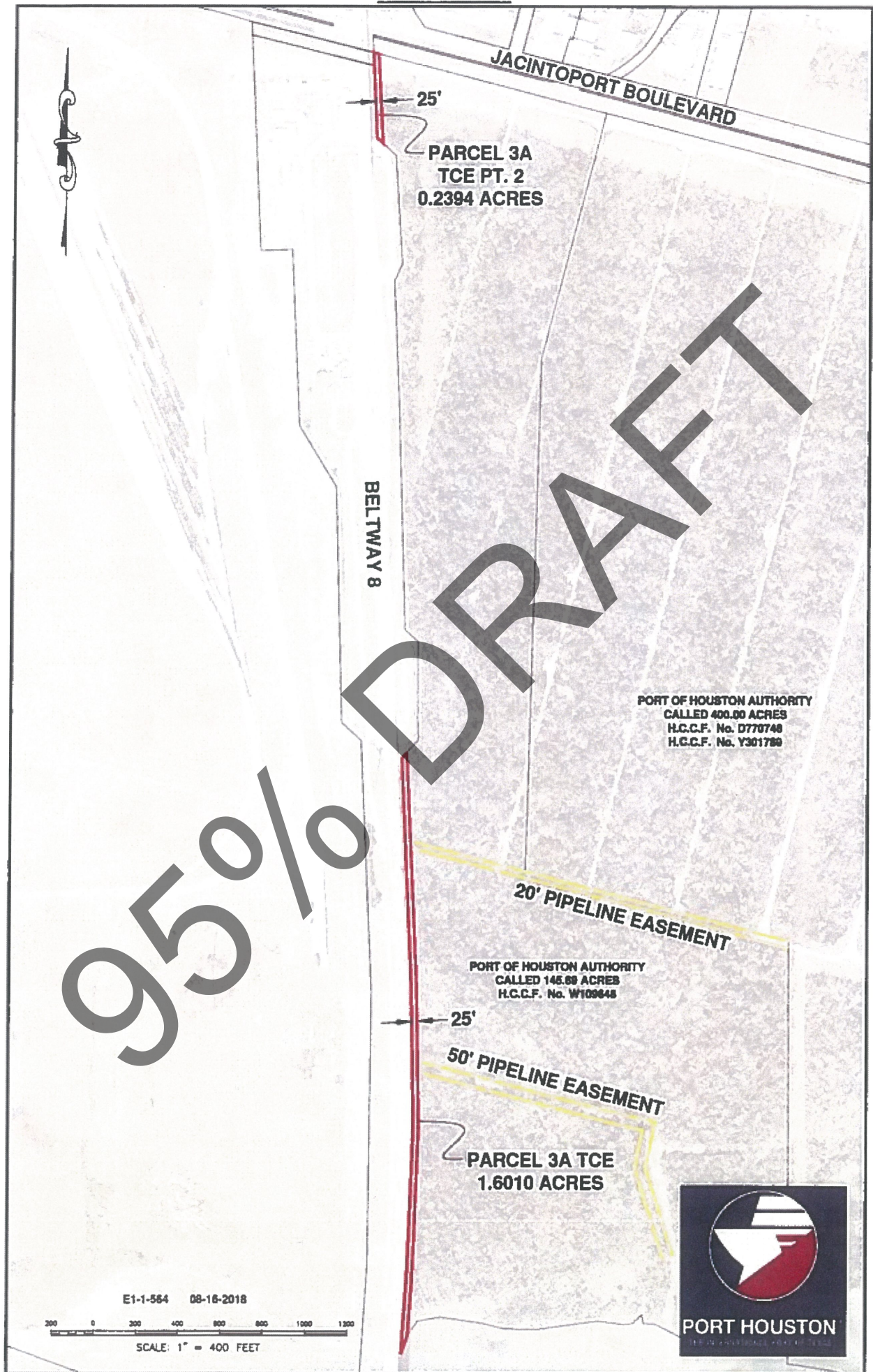
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EXHIBITS

Exhibit A:

95% DRAFT

EXHIBIT "A"



ORDER OF COMMISSIONERS COURT
Authorizing an Access License Agreement with the Port of Houston Authority of
Harris County, Texas

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on June 09, 2020, with all members present except none.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING AN ACCESS LICENSE AGREEMENT WITH THE
PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS FOR
TRAYLOR BROS. INC. AND ZACHRY CONSTRUCTION CORPORATION
D/B/A SHIP CHANNEL CONSTRUCTORS TO CONSTRUCT A PORTION
OF THE SHIP CHANNEL BRIDGE PROGRAM

Commissioner Ellis introduced an order and moved that Commissioners Court adopt the order. Commissioner A. Garcia seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute on behalf of Harris County an Access License Agreement with the Port of Houston Authority of Harris County, Texas for Traylor Bros. Inc. and Zachry Construction Corporation d/b/a Ship Channel Constructors to construct a portion of the Ship Channel Bridge Program. The Agreement is incorporated by reference and made a part of this order for all intents and purposes as though set out in full word for word.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

Presented to Commissioners Court

June 9, 2020

Approve: E/G

PORT OF HOUSTON AUTHORITY
TECHNICAL SPECIFICATION FOR PROJECT 11: BOGGY BAYOU TO SIMS BAYOU:
BELTWAY 8 DMPA SITE PREPARATION

APPENDIX E: Temporary Access Road Agreements

E-6. PHA Beltway 8 Temporary Access Road Letters of No Objection, dated June 23, 2020

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June 23, 2020

Mr. Kenny Ozuna
Area Bridge Section Manager
HDR Engineering, Inc.
4828 Loop Central Drive, Suite 800
Houston, Tx 77081-2220

Re: Beltway 8 Temporary Access Road Letters of No Objection

Dear Mr. Ozuna:

Per the temporary access agreement (paragraph 6, page 3) between Port of Houston Authority (PHA) and Texas Deep Water Partners (TDWP), PHA recently completed its Letter of No Objection (LONO) coordination with the ten (10) identified companies that have utilities along or within the Beltway 8 temporary access road between the northeast corner of Beltway 8 and Penn City Road.

During the LONO coordination, three companies — Colonial, Energy Transfer, and Enterprise — issued LONOs contingent on specific guidelines for their pipeline crossings; however, not all the criteria are relevant to our project. **Table 1** includes an overview of *some* of the requirements that pertain to the design, construction, and use of the temporary access road. The coordination correspondence and the full guidelines for each of the companies are included in the following attachment and should be reviewed thoroughly to include any information into the temporary access road design package.

Table 1. LONO Guideline Requirements

GUIDELINE REQUIREMENT	COLONIAL	ENERGY TRANSFER	ENTERPRISE
CONSTRUCTION MATERIAL	Matting, if rutting occurs over pipeline	Matting	Matting
GROUND COVER	--	48 inches	5 feet
NOTIFICATION	--	Notice prior to construction only in excavation events	Notification 48 hours prior to construction
DRAWINGS	--	Finalized plans and profiles drawings at least 30 days prior to any construction activity	As-built drawings of the pipeline encroachment submitted within 120 days of the encroachment across the easement



PORT HOUSTON™
THE INTERNATIONAL PORT OF TEXAS

To comply with all LONO guideline regulations, a map showing all utility easements (and their associated restrictions or requirements) along the temporary access road should be developed and included with final design package.

Thank you,

GARRY McMAHAN

Garry McMahan
Director, Channel Operations

Attachment

Cc: Neil McLellan, P.E., HDR Engineering
Lori S. Brownell, P.E., D.NE, Port Houston
Richard Ruchhoeft, P.E., Port Houston

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95% DRAFT

Colonial

From: [Williams, Kiley](#)
To: [Chris Gossett](#); [Johnston, Herbert D.](#)
Cc: [Garry McMahan](#)
Subject: RE: Port Houston Beltway 8 Property
Date: Friday, April 3, 2020 9:21:23 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Chris,

If Colonial has 6' or more of cover over its lines where you guys are wanting to cross it should be fine as long as the road doesn't begin to rut up, if that starts to happen temporary matting will be required.

Dale – could you please verify the depths of Colonial's lines where they are wanting to cross?

Thank you,
Kiley Williams
Colonial Pipeline
ROW Manager – GCD
O: (409) 291-5655
C: (409) 658-3047

From: Chris Gossett <cgossett@porthouston.com>
Sent: Thursday, April 2, 2020 12:06 PM
To: Williams, Kiley <KWilliam@colpipe.com>; Johnston, Herbert D. <hdjohnston@colpipe.com>
Cc: Garry McMahan <gmcman@porthouston.com>
Subject: [External Message] RE: Port Houston Beltway 8 Property

WARNING: This email originated outside of Colonial Pipeline.
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Kiley,

We understand your request to place matting over your pipeline to protect it. However, we want to point out there is an existing caliche road over your pipeline. See attached photo. Do you believe this existing road would protect your pipeline sufficiently or do you still want matting?

Thanks,

Chris Gossett
Coordinator, Channel Operations

cid:image006.jpg@01D24EFE.F0FFEE90



E: cgossett@porthouston.com • PortHouston.com

O: 713.670.2839

111 East Loop North • Houston, Texas 77029



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From: Chris Gossett

Sent: Friday, March 6, 2020 9:59 AM

To: Williams, Kiley <KWilliam@colpipe.com>; Johnston, Herbert D. <hdjohnston@colpipe.com>

Subject: RE: Port Houston Beltway 8 Property

Kiley,

Thanks for the response. Our target start time is in April. Once I get more details I will forward.

Thanks,

Chris Gossett

Coordinator, Channel Operations

cid:image006.jpg@01D24EFE.F0FFEE90



E: cgossett@porthouston.com • PortHouston.com

O: 713.670.2839

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From: Williams, Kiley <KWilliam@colpipe.com>

Sent: Friday, March 6, 2020 9:33 AM

To: Chris Gossett <cgossett@porthouston.com>; Johnston, Herbert D. <hdjohnston@colpipe.com>

Subject: FW: Port Houston Beltway 8 Property

Chris,

I was forwarded your email by Mike Herman, in our Atlanta office, from now on please send your emails directly to me. After reviewing the attached plans, the only requirement Colonial will have is that temporary matting be placed down over Colonial's 40" pipeline just to the east of Penn City Rd. I have also included Dale Johnston on this email, Dale is the local ROW Inspector for the Houston area. When do you anticipate the work starting?

Thank you,
Kiley Williams
Colonial Pipeline
ROW Manager – GCD
O: (409) 291-5655
C: (409) 658-3047

From: Chris Gossett <cgossett@porthouston.com>
Sent: Thursday, March 5, 2020 4:56 PM
To: Herman, Michael R. <mherman@colpipe.com>
Subject: [External Message] Port Houston Beltway 8 Property

WARNING: This email originated outside of Colonial Pipeline.
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Mike,

The Port Authority is getting ready to clear and grub our Beltway 8 property. The property is located immediately east of Beltway 8 along Jacintoport Blvd. We are trying to start in April clearing the land. In the process of clearing we will be hauling away trees and concrete located on the property. I've attached a drawing that shows the proposed haul route. This route is through a neighboring property owner directly west of Beltway 8 and east of Penn City Road. They are requesting from the Port concurrence from all utility/pipeline companies that they have no issue with the proposed activity and to provide – if necessary – any protective requirements for the proposed activity. Please let me know if you have any questions.

Thanks,

Chris Gossett
Coordinator, Channel Operations

cid:image006.jpg@01D24EFE.F0FFEE90



From: [Johnston, Herbert D.](#)
To: [Chris Gossett](#)
Cc: [Williams, Kiley](#); [Garry McMahan](#)
Subject: Re: [External Message] RE: Port Houston Beltway 8 Property
Date: Friday, April 3, 2020 2:04:09 PM

Colonial 40" P/L has 13'7" cover on the south side of the railroad at the vent pipe. I don't see a problem with crossing over the Colonial Pipeline on the caleche road with the cover we have on the 40".

Best Regards,

Dale Johnston

Sent from my iPad

> On Apr 2, 2020, at 12:13 PM, Chris Gossett <cgossett@porthouston.com> wrote:
>
>

Colonial Pipeline Notice - This e-mail message (including any attachment) contains information that may be confidential, be protected by attorney-client or other privilege, or constitute non-public information. If you are not the intended recipient, please notify the sender by electronic mail or telephone and delete the original message without making any copies. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

Energy Transfer

95% DRAFT

From: [Aruwajoye, Olubodun](#)
To: [Chris Gossett](#); [Garry McMahan](#); [Kyle Clark](#)
Cc: [Speir, Clayton](#); [Janacek, Jacob D](#); [Denney, Thomas](#); [Vivola, Megan](#)
Subject: RE: Beltway 8 Site Clearing
Date: Monday, May 4, 2020 3:04:34 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[Texas Crossing Guidelines.pdf](#)

Chris,

Please consider this a letter of no objection (LONO) regarding the crossing of the HFOTCO line via the access road from Penn City Rd to E of Beltway 8, while hauling away the trees and concrete from your Beltway 8 property.

Note that the review was done based on a maximum gross weight of 80,000 lbs (after being loaded). Any equipment with a gross weight in excess of 80,000 lbs. is not permitted to cross.

This LONO is contingent on the following;

1. No work may be performed on our easement without a Sunoco Pipeline representative present. Contact Clayton Speir at Clayton.Speir@energytransfer.com or 281-960-2581.
2. Any revisions to the original plans will have to be re-submitted for further review.
3. Use of vibratory equipment of any kind over or around the pipeline will require engineering review and approval.
4. Energy Transfer crossing guidelines(attached) must be adhered to at all times.

Please communicate any changes to the planned execution timeline of June 2020.

Regards,
Olu Aruwajoye

From: Janacek, Jacob D <JACOB.JANACEK@energytransfer.com>
Sent: Thursday, April 30, 2020 8:47 AM
To: Chris Gossett <cgossett@porthouston.com>; Aruwajoye, Olubodun <olubodun.aruwajoye@energytransfer.com>; Speir, Clayton <Clayton.Speir@energytransfer.com>
Cc: Garry McMahan <gmcman@porthouston.com>; Kyle Clark <kclark@porthouston.com>

Subject: RE: Beltway 8 Site Clearing

Chris,

We confirmed out depths and our cover is 5.42'

I still need to get with our engineering team and discuss requirements in response to the wheel load calcs.

Has Enterprise responded with crossing requirements?

They have similar depths and seem to be more parallel to the proposed road than our pipe is.

Thanks.

jake

From: Chris Gossett <cgossett@porthouston.com>

Sent: Thursday, April 30, 2020 8:26 AM

To: Janacek, Jacob D <JACOB.JANACEK@energytransfer.com>; Aruwajoye, Olubodun <olubodun.aruwajoye@energytransfer.com>; Speir, Clayton <Clayton.Speir@energytransfer.com>

Cc: Garry McMahan <gmcghan@porthouston.com>; Kyle Clark <kclark@porthouston.com>

Subject: RE: Beltway 8 Site Clearing

Jake,

Good Morning. I'm just checking to see if you have had a chance to review the pipeline crossing?

Thanks,

Chris Gossett

Coordinator, Channel Operations

cid:image006.jpg@01D24EFE.F0FFEE90



E: cgossett@porthouston.com • PortHouston.com

O: 713.670.2839

111 East Loop North • Houston, Texas 77029



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GENERAL GUIDELINES FOR THIRD-PARTY CONSTRUCTION OR MAINTENANCE ACTIVITIES

Energy Transfer Company and its affiliates and related companies (“ETC”) are dedicated to the highest safety standards in the continued operation of their pipelines and facilities. Of utmost importance to ETC is the continued safety of the public and its pipeline and facilities during construction and other activities on, across, over or under its right-of-way. ETC is therefore pleased to provide these general guidelines (“Guidelines”) for third-party construction, blasting, installation or modification of pipelines, underground utilities, roads, streets, driveways, ditches, drainage canals or any other type of temporary or permanent structure or obstruction or any other encroachment on, over, across, or paralleling, ETC’s right-of-way (hereinafter referred to as “Crossing” or “Crossings”).

These Guidelines are intended to be consistent with §756.123 of the Texas Health and Safety Code and are further based upon industry standards and practice. These Guidelines are merely guidelines and upon notification to ETC of a proposed Crossing, as required by the Texas Health and Safety Code, each proposed Crossing and its corresponding finalized plans and profile drawings will be evaluated by ETC and the third-party requesting such Crossing, pending final approval.

1. Notification

- a. The party requesting such Crossing shall use its best efforts to provide ETC with its finalized plans and profile drawings at least thirty days (30) days prior to any related construction or maintenance activity. The pipeline facility shall include, but is not limited to, rights-of-way, fee properties, easements, pipelines, meter and regulator buildings, and valve sites (“ETC Pipeline Facility” or “Facilities”). Unless otherwise agreed to by ETC in writing, no equipment shall enter onto ETC’s Pipeline Facility unless an ETC representative is on location.
- b. No excavation shall occur in the vicinity of ETC’s pipeline facility until:
 - 1) In accordance with State approved Notification Centers, ETC shall be notified at least 48 hours in advance of any construction or maintenance activity. ETC currently utilizes the Texas Excavation Safety System (TESS) as its notification center. You must contact the TESS notification center at 811 or 1-800-344-8377, in addition to contacting ETC’s field representative _____ at _____, before commencing any Crossing at or near ETC’s Pipeline Facility; and
 - 2) Unless otherwise agreed to by ETC in writing, an ETC inspector is on site to monitor the excavation activities.

2. Drawings for Proposed Construction or Maintenance

Any proposed construction or maintenance activity in the vicinity of ETC’s Pipeline Facility will require submittal of final plans and profile drawings for prior review and approval by ETC. One (1) copy of these drawings must be submitted to ETC’s Encroachment Department via e-mail Encroachments@energytransfer.com. All plans and drawings must show in detail, all of

ETC's Pipeline Facility, its corresponding right-of-way, and any other landmarks that will assist ETC to determine the location of the proposed Crossing and the affects of the proposed construction or maintenance activity on ETC's Pipeline Facility.

3. Encroachment Agreement

In certain instances, due to the type of Crossing required and the probable impact upon ETC's Facilities, An encroachment agreement may be necessary for proposed construction or maintenance within ETC's Pipeline Facility. ETC shall be responsible for preparing such encroachment agreement and shall bear the cost and expense in such preparation. Such encroachment agreement shall outline the responsibilities, conditions, and liabilities of the parties and must be fully executed and in ETC's possession prior to commencing any construction activity.

4. Insurance Coverage

In certain instances, due to the type of crossing required and the probable impact upon ETC's Facilities, ETC may require evidence of comprehensive general liability insurance coverage prior to any construction or maintenance activity in the vicinity of its Facilities. In the event that ETC requires evidence of comprehensive general liability insurance, ETC and/or its affiliates and related companies, whichever the case may be, shall be named as additional insured.

5. Crossing Pipelines with Equipment

To protect ETC's pipelines or related Facilities from additional external loading, ETC may perform a field survey and an engineering study to determine the effects of any proposed activity over its pipelines or related Facilities. Mats, timber, bridges, or other protective materials deemed necessary and appropriate by ETC may be required and placed over ETC's pipelines or related Facilities for the duration of any loading. E-mail Encroachments@energytransfer

6. Excavation, Cuts, or Fill near ETC's Pipeline Facility

- a. Unless otherwise agreed to by ETC in writing, an ETC representative will be on location prior to and during construction activity within ETC's Pipeline Facility.
- b. No heavy equipment of any type will be permitted to work directly over ETC's pipelines or related Facilities, unless otherwise agreed to in writing by ETC.
- c. All excavation within eighteen inches (18") of any pipeline will be performed by hand. At the discretion of ETC's onsite representative, excavators may be required to hand dig beginning at a distance greater than eighteen (18) inches.
- d. All excavations within ETC's Pipeline Facility shall be backfilled with a minimum of eight (8) inch lifts of backfill material, clean and free from rock, trash, concrete, rubbish, or hazardous material and compacted to a minimum standard proctor density of 95% using mechanical compaction equipment. Where pipeline padding is reduced, proper screenings will be replaced before backfill and compaction occurs. Soil backfill must be compacted to the satisfaction of the ETC onsite inspector so that settling does not occur.
- e. No grade cuts will be permitted within ETC's Pipeline Facility unless otherwise agreed to in writing by ETC and with ETC's representative on location. An engineering study may

be performed to ensure that the lateral stability of ETC's pipelines or related Facilities are not affected.

- f. When boring under ETC's pipelines or related Facilities, the party with the approved Crossing plans and drawings shall expose a minimum of twenty-four (24) inches below the bottom of each pipeline to ensure vertical separation of not less than twenty-four (24) inches of clearance. Plan and profile drawings are required for all proposed borings.
- g. No fill shall be permitted within ETC's Pipeline Facility unless otherwise agreed to in writing by ETC. In no event, shall more than twenty-four inches (24") of earthen fill material (pipeline cover not to exceed 7ft.), free from any rocks, trash, concrete, rubbish, rebar, hazardous materials, etc., be permitted within ETC's Pipeline Facility, unless otherwise agreed to in writing by ETC.
- h. Earthen cover over ETC's pipelines shall be thirty-six (36) inches or no less than what was originally there prior to any construction. In the event that ETC determines that a lesser cover will not increase the risk to the public or increase the risk of a break, leak, rupture or other damage to ETC's pipelines or related Facilities, ETC may allow a lesser earthen cover, in a minimum amount as determined solely within the discretion of ETC.
- i. No trash or debris shall be placed in any excavation or left in or on ETC's Pipeline Facility.

7. Aboveground Appurtenances, Structures and Obstructions

Unless otherwise agreed to in writing by ETC, no aboveground appurtenances, structures, or obstructions of a temporary or permanent nature shall be located within ETC's Pipeline Facility that, in any way, interfere with operating, maintaining, accessing, inspecting, repairing, modifying, replacing or relocating such Facilities. The appurtenances, structures, and obstructions include, but are not limited to, the following: buildings, structures, signage, utility poles, steel towers, guy wires, other structures supporting aerial lines, satellite dishes, manholes, catch basins, utility pedestals, transformers, fire hydrant, large spoils of earthen materials, decks, pools, boats, RV's, trailers, storage of hazardous or non-hazardous materials.

8. Proposed Pipe and Utility Lines

a. General Guidelines:

- 1. For the safety of the public and to lessen the risk of a break, leak, rupture or other damage to ETC's Pipeline Facility and in furtherance of the Texas Health and Safety Code, ETC's Pipeline Facility shall be positively located by ETC before any Crossings are constructed or installed near ETC's Pipeline Facility. Unless otherwise agreed to in writing by ETC, ETC requires a minimum clearance of twenty-four (24) inches be maintained between ETC's pipeline (top, bottom, and sides) or related Facilities and any foreign line or facilities for open trench crossing.
- 2. All foreign lines shall fully cross ETC's Pipeline Facility preferably at ninety degrees (90) or at an angle of not less than forty-five degrees (45°), or as near as possible thereto. Buried utility lines must be identified with permanent above-ground markers where lines enter and exit ETC's right-of-way, which rights to install and maintain the markers, shall be the responsibility of the foreign line owner. Longitudinal occupancy of ETC's Pipeline Facility will not be permitted.

3. No manholes, valves or other appurtenances will be permitted within ETC's Pipeline Facility.
4. Vertical and horizontal bends shall be minimized within ETC's Pipeline Facility.
5. ETC's Pipeline Facility is cathodically protected. All other cathodically protected facilities that enter or cross ETC's Pipeline Facility must have test leads installed. Any inquiries for cooperative testing should be directed to the attention of ETC's Field Representative on location. Any Utility crossings that may be negatively affected by ETC cathodic protection will need to be designed accordingly (i.e. coated, cased, etc.)
6. All underground utilities (other than residential telephone, cable TV and 24 volt DC power lines) may require plastic identification tape installed no closer than eighteen (18) inches above the line.

b. Water or Forced Sewer Lines

All water and sewer lines shall be either (1) ductile iron or steel casing (coated to protect it from ETC's cathodic protection) or (2) encased plastic schedule 80 PVC for a minimum of 5-feet on either side of any ETC pipeline or related Facilities. Forced sewer lines shall have no piping connections located within 5-feet of any ETC pipeline or related Facilities or placed within ETC's pipeline easement.

c. Communication, Power or Combustible Material Lines

1. All underground fiber optic cables, telephone and television cables (other than residential telephone and cable TV) crossing ETC's Pipeline Facility shall be either installed in rigid steel conduit or schedule 80 PVC conduit encased in orange concrete (4-inches thick in all directions) for the full width of the right-of-way.
2. All underground electric cables except 24 volt DC power lines (including single residential service drops) crossing ETC's facilities shall be either installed in rigid steel conduit or schedule 80 PVC conduit encased in red concrete (4-inches in all directions) for the full width of the right-of-way. Except if it is necessary for residential service drop to cross above, then no concrete encasement, just red caution tape for full width of the ROW in conduit and permanent markers.
3. ETC recommends that all underground residential telephone, cable TV and 24 volt DC power lines be encased in plastic conduit for the full width of the right-of-way.
4. ETC recommend if the residential telephone, cable TV and 24 volt DC power lines are bored underground with 5-foot separation and that is dependent on voltage so e-mail Encroachments@energytransfer.com for verification

d. Exclusive Easement Construction

1. When constructing a directional drill across ETC's easement a minimum separation of ten (10) feet must be maintained between the outside diameter of the bottom of

ETC's pipeline and the top of any of your facilities within ETC's exclusive easement area

2. When constructing a conventional bore across ETC's easement a minimum separation of three (3) feet must be maintained between the outside diameter of the bottom of ETC's pipeline and the top of any of your facilities within ETC's exclusive easement area
3. When constructing an open cut across ETC's easement a minimum separation of two (2) feet must be maintained between the outside diameter of the bottom of ETC's pipeline and the top of any of your facilities within ETC's exclusive easement area
4. When installing any pipeline across ETC's exclusive easement, no bends are allowed within the entire width of the exclusive easement

9. **Proposed Roads, Streets, Driveways, Access ways and Parking Lots**

- a. Load stress will be calculated by ETC to determine if any protection of the pipeline is required for roadways, streets, driveways, access ways, etc., planned to cross ETC's Pipeline Facility. In the event it is determined by ETC that the roadways, streets, driveways, access ways, etc., will increase a risk to the public or increase a risk of a break, leak, rupture or other damage to ETC's Pipeline Facility, ETC may require, at the sole cost and expense of the party requesting such Crossing, the installation of protective material as may be deemed necessary by ETC to protect the public or ETC's Pipeline Facility.
- b. The preferred minimum earth cover over ETC's Pipeline Facility is forty-eight (48) inches at all roadways, streets, driveways, access ways, etc., including adjacent ditch lines. In the event that ETC determines that a lesser cover will not increase a risk to the public or increase a risk of a break, leak, rupture or other damage to the pipeline or related Facilities, ETC may allow a lesser earth cover, in a minimum amount as determined solely within the discretion of ETC. In the event the required amount of cover is not obtainable as reflected in finalized plan and profile drawings, ETC may require the installation of protective material at no expense to ETC. Cover shall be measured from the top of ETC's pipeline to the surface of the road.
- c. Roads and streets crossing over ETC's Pipeline Facility shall cross at an angle of not less than forty-five degrees (45°), or as near as possible thereto. Crossings should be over straight pipe and at locations free of any crossovers. Longitudinal occupancy of the right-of-way will not be permitted.
- d. No parking areas or the like will be allowed on, over or across ETC's Pipeline Facility unless ETC determines that the parking areas, etc. will not increase a risk or restrain access to its facilities, increase a risk to the public and/or increase a risk of a break, leak, rupture or other damage to the Facilities and the party requesting such Crossing installs, at its sole cost and expense, any protective material as deemed necessary by ETC to protect the public or ETC's Pipeline Facility.
- e. Permanent pipeline marker(s), provided by ETC, will be installed at all road crossings.

10. **Disposal Systems**

No aerobic septic systems, septic tanks, liquid disposal systems, or hazardous waste disposal systems will be allowed on ETC's Pipeline Facility or within twenty-five (25) feet of ETC's

Pipeline Facility, unless otherwise agreed to in writing by ETC. This will include, but is not limited to, affluent from sewage disposal systems, the discharge of any hydrocarbon substance, the discharge or disposal of any regulated waste, or any other discharge that may prove damaging or corrosive to ETC's Pipeline Facility.

11. Impoundment of Water

- a. In order to provide for the adequate maintenance and operation of ETC's Pipeline Facility, the impoundment of water on ETC's Pipeline Facility will not be allowed.
- b. Temporary soil erosion and sediment control devices and storm water detention basins/traps will not be permitted on ETC's Pipeline Facility unless otherwise agreed to in writing by ETC.

12. Blasting

To the extent it impacts the lateral stability or otherwise endangers or interferes with the efficiency, safety, or convenient operation of ETC's Pipeline Facility, no explosive detonations will be permitted within 300-feet of ETC's Pipeline Facility without: (1) prior blast plan impact analysis and written approval from ETC and (2) ETC's representative on site during blasting. To determine if the detonation stresses will be detrimental to the safety of ETC's Pipeline Facility, information required to complete ETC's "Blasting Data Sheet" must be submitted to ETC for evaluation and approval no less than 30 days prior to the proposed date of blasting activity. The contractor performing the blasting will be required to verify by signature the proposed blasting plan.

13. Landscaping & Irrigation Systems

Landscaping within ETC's Pipeline Facility is limited to lawn and low growing (less than three 3-feet at maturity), shallow rooted shrubbery. Unless otherwise agreed to in writing by ETC and the party requesting such Crossing in an encroachment agreement, planting of shrubbery and installation of irrigation systems within ETC's Pipeline Facility shall be at the risk of the landowner and, in any event, will not be permitted closer than five (5) feet from either side of ETC's pipeline or related Facilities. Irrigation systems shall not be directly installed longitudinally over ETC's Pipeline Facility and shall not be buried deeper than 12-inches, regardless of location, from the surface of the ground within ETC's Pipeline Facility. No trees or crepe myrtles (unless dwarf variety) are permitted.

14. Pipeline Markers

The party request such Crossing will ensure that all temporary and permanent pipeline markers installed by ETC are protected and maintained at all times during construction or Crossing related activity. Any permanent markers damaged or removed will be replaced by ETC at the sole expense of the party requesting such Crossing. No work will be allowed to commence until, in the opinion of ETC, sufficient pipeline markers are in place. Unauthorized damage or removal of pipeline markers is punishable by Federal law.

15. Right of Ingress and Egress

The party requesting such Crossing shall have the right to install fences on, over and across the Facilities, provided, however, that ETC shall have the unrestricted right of ingress and egress to its Facilities at all times. ETC, at its sole option and discretion, may require the party requesting such Crossing to install, at its sole cost and expense and for ETC's benefit, a walk

gate at least three (3) feet in width for residential lots or gate at least twelve (12) feet in width for rural areas at each fence crossing. ETC shall provide a lock for such gate(s). Said gate(s) shall be installed as to provide ETC with ingress and egress access to its pipeline or related facilities and to minimize vehicular and equipment travel over ETC's pipeline or Facilities. The party requesting such Crossing shall be responsible for keeping the enclosed portion of ETC's pipeline or related Facilities free of any debris or trash. ETC's pipeline or related Facilities shall be positively located by ETC before any fences are constructed or installed near ETC's pipeline or related Facilities. Post hole excavations for fencing placed upon ETC's pipeline or related Facilities shall not be greater than a depth of eighteen inches (18") below the undisturbed grade level nor closer than five feet (5') horizontally from ETC's pipeline or related Facilities, unless approved in writing by ETC. No other excavations of any kind may be made in the pipeline or related Facilities without the prior written consent of ETC.

16. Statement Regarding Existing Rights

NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO CONVEY, WAIVE, OR SUBORDINATE ANY OF ETC'S EXISTING RIGHTS WHATSOEVER. SHOULD A CONFLICT EXIST WITH THE LANGUAGE CONTAINED IN ANY ETC ENCROACHMENT AGREEMENT, EASEMENT, OR PETITION IN CONDEMNATION AND THESE GUIDELINES, ETC'S ENCROACHMENT AGREEMENT, EASEMENT, OR PETITION IN CONDEMNATION SHALL CONTROL AND BE DECISIVE OF THE ISSUE.

17. Statements Regarding Guidelines for Construction and Maintenance

Certain construction and maintenance activities may be reviewed and approved by ETC at one point in time, but not immediately installed or performed. Therefore, all construction and maintenance activities are subject to the Guidelines in affect at the time the work actually takes place. In addition, the guidelines described in this document represent those industry standards that ETC believes meet the minimum acceptable standards regarding third-party construction and maintenance activities in the vicinity of ETC's Pipeline Facility. Therefore, after review of the final plan and profile drawings, ETC may, in the event that ETC determines the construction and maintenance activities will increase a risk to the public or increase a risk of a break, leak, rupture or other damage to ETC's Pipeline Facility, require fortifications in furtherance of the Texas Health and Safety Code. The party requesting such Crossing agrees to alter, modify or halt any construction activity, which in the sole opinion of ETC's, will increase the risk to the public or increase the risk of a break, leak, rupture or other damage to ETC's Pipeline Facility.

All written correspondences and your final design plans are to be addressed to:

Energy Transfer Company
Encroachments@energytransfer.com
Attention: Encroachment Department

END]

Enterprise

95% DRAFT

From: [Garry McMahan](#)
To: [Kyle Clark](#)
Subject: FW: Gen LONO-Port of Houston Authority-Access Rd-Penn City-BW8 (DB-14828)
Date: Wednesday, June 17, 2020 3:34:38 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image014.png](#)
[image015.png](#)
[image016.png](#)
[image017.png](#)
[image018.png](#)

See enterprise answers below in red

Garry McMahan

Director-Channel Development Operations



Email: gmcghan@porthouston.com • PortHouston.com

Phone: 713-670-2594

111 East Loop North • Houston, Texas 77029



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From: Siddiqui, Yameena <YSIDDIQUI@eprod.com>

Sent: Wednesday, May 6, 2020 2:36 PM

To: Kyle Clark <kclark@porthouston.com>; Garry McMahan <gmcghan@porthouston.com>

Cc: Sanchez, John <JFSANCHEZ@eprod.com>; Chris Gossett <cgossett@porthouston.com>; Ozuna, Kenneth <Kenneth.Ozuna@hdrinc.com>; Lori Brownell <lbrownell@porthouston.com>; Project 11 Mailbox <p11sharedmailbox@porthouston.com>

Subject: RE: Gen LONO-Port of Houston Authority-Access Rd-Penn City-BW8 (DB-14828)

Kyle,

Yes that is correct. As long as the work has commenced prior to the expiration date there will be no need for an extension of the LONO.

Thanks.

Yameena Siddiqui

Enterprise Products Company

9420 West Sam Houston Parkway North
Houston, TX 77064
(281)887-3345
ysiddiqui@eprod.com

From: Kyle Clark <kclark@porthouston.com>

Sent: Wednesday, May 6, 2020 2:15 PM

To: Siddiqui, Yameena <YSIDDIQUI@eprod.com>; Garry McMahan <gmcman@porthouston.com>

Cc: Sanchez, John <JFSANCHEZ@eprod.com>; Chris Gossett <cgossett@porthouston.com>; Ozuna, Kenneth <Kenneth.Ozuna@hdrinc.com>; Lori Brownell <lbrownell@porthouston.com>; Project 11 Mailbox <p11sharedmailbox@porthouston.com>

Subject: [EXTERNAL] RE: Gen LONO-Port of Houston Authority-Access Rd-Penn City-BW8 (DB-14828)

[Use caution with links/attachments]

Yameena,

Thank you for taking time to talk with me this morning. I wanted to send you an e-mail summarizing our discussion to ensure we are on the same page.

Our conversation this morning was in regards to item Number 3 in Garry's e-mail below and your response:

3. You are only allowing for 6 months. The project may not begin, depending on federal approval until later this year. Can we have more time? **The 6 month expiration is mandated by our upper management. If construction has not commenced in 5 months or so please contact me or the Land Encroachments Group and we can re-issue another LONO with a revised date that will be extended another 6 months.**

Based on our conversation this morning, improvements required for our proposed temporary access road has to have begun within 6 months of the Letter of No Objection date. If we have not begun implementing the improvements within 6 months of date of Letter of No Objection, we will need to request an extension; however, if we have began improvements within 6 months of the Letter of No Objection date, we do not have to request an extension and we are authorized to maintain the improvement as long as it is actively being utilized.

If the information above is correct, will you please respond that I accurately captured our conversation this morning?

Thank you,

Kyle

Kyle Clark
Manager, Channel Improvement
PORT HOUSTON

O: +1.713.670.2438 • M: +1.281.536.0575
E: kclark@porthouston.com
www.porthouston.com
111 East Loop North, Houston, Texas 77029 USA

From: Siddiqui, Yameena <YSIDDIQUI@eprod.com>
Sent: Tuesday, May 5, 2020 4:52 PM
To: Garry McMahan <gmcmanahan@porthouston.com>
Cc: Sanchez, John <JFSANCHEZ@eprod.com>; Kyle Clark <kclark@porthouston.com>; Chris Gossett <cgossett@porthouston.com>
Subject: RE: Gen LONO-Port of Houston Authority-Access Rd-Penn City-BW8 (DB-14828)

Garry,

Please see clarification below in red. I hope these answer your questions, if not please let me know.

Thanks.

Yameena Siddiqui

Enterprise Products Company
9420 West Sam Houston Parkway North
Houston, TX 77064
(281)887-3345
ysiddiqui@eprod.com

From: Garry McMahan <gmcmanahan@porthouston.com>
Sent: Tuesday, May 5, 2020 3:04 PM
To: Siddiqui, Yameena <YSIDDIQUI@eprod.com>
Cc: Sanchez, John <JFSANCHEZ@eprod.com>; Kyle Clark <kclark@porthouston.com>; Chris Gossett <cgossett@porthouston.com>
Subject: [EXTERNAL] Gen LONO-Port of Houston Authority-Access Rd-Penn City-BW8 (DB-14828)

[Use caution with links/attachments]

Yameena. We appreciate the LONO and encroachment requirements. I have a couple of questions/clarifications.

1. You require determining the depth of cover over your pipeline before encroaching. I understand Enterprise has already determined the depth of cover prior? **It is typically for underground crossings and excavation over the pipeline. It is to make anyone working over the pipeline aware of its alignment and depth so there are no safety incidents.**
2. Since 5' of cover is required is Enterprise requiring matting? I am unclear as to what protection you are asking us to supply. **The matting requirement is during construction where heavy equipment will be crossing the pipeline. Matting can be in the form of air bridge or timber matting.**
3. You are only allowing for 6 months. The project may not begin, depending on federal

approval until later this year. Can we have more time? The 6 month expiration is mandated by our upper management. If construction has not commenced in 5 months or so please contact me or the Land Encroachments Group and we can re-issue another LONO with a revised date that will be extended another 6 months.

4. Several places you mention the need to contact Enterprise to have a rep present. Do you know who that rep is or have a contact number we can use? The operations contact is listed on Exhibit A. Please contact Bill Newkirk at 281-424-6853 and he will assign one of his representatives to this project.

Thank you Yameena. Let me know if my questions are unclear. Garry

Garry McMahan

Director-Channel Operations



Email: gmcghan@porthouston.com • PortHouston.com

Phone: 713-670-2594

111 East Loop North • Houston, Texas 77029



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April 23, 2020

Chris Gossett
Port of Houston Authority
111 East Loop North
Houston, Texas 77029

**RE: REQUEST FOR ENCROACHMENT ACROSS VARIOUS PIPELINES OPERATED BY
ENTERPRISE PRODUCTS OPERATING LLC & ENTERPRISE CRUDE PIPELINE LLC
LETTER OF NO OBJECTION – HARRIS COUNTY, TEXAS (DB#14828)**

Dear Mr. Gossett:

This letter is to memorialize our understanding regarding your request on behalf of Port of Houston Authority (“ENTITY”) regarding ENTITY’S proposed construction of a temporary access road as per plans received March 23, 2020, (collectively referred to as, and whether one or more, “the ENCROACHMENT”) crossing and paralleling various pipelines as outlined in attached Exhibit A (whether one or more, “COMPANY’S PIPELINE”) of Enterprise Products Operating LLC & Enterprise Crude Pipeline LLC (“COMPANY”) located within the rights-of-way/easements as depicted on the GIS map attached hereto as Exhibit B, (whether one or more, the “EASEMENT”).

COMPANY is committed to protecting the environment and the health and safety of our employees, contractors, customers and the public by conducting its business in a safe and environmentally responsible manner. Activity that may disturb COMPANY’S PIPELINE, its appurtenant assets or its support structure can pose a threat to the environment, persons and public safety. Consequently, we request that ENTITY adhere to this same commitment to the environment and safety when undertaking construction of the ENCROACHMENT in and around the EASEMENT. At this time, COMPANY does not make an objection to the construction of the ENCROACHMENT as proposed, conditioned upon ENTITY’S understanding of the following:

1. A minimum of 48 hours (excluding weekends and holidays) prior to commencing construction activities relating to the ENCROACHMENT, ENTITY will (i) confirm that the local One-Call has been notified of the construction activities (ENTITY or its agents may contact One-Call by dialing 811 and (ii) contact COMPANY’S Operations or Capital Projects (for new proposed pipelines) representative as noted in attached Exhibit A, so that the respective Operations personnel can be present during any approved construction operations.
2. COMPANY’S designated representative in the field (“COMPANY’S REPRESENTATIVE”) will have the right to observe the construction of the ENCROACHMENT. ENTITY understands that COMPANY’S REPRESENTATIVE may suspend any work activities on the ENCROACHMENT if COMPANY’S REPRESENTATIVE, in his sole and absolute discretion, determines that such activities are in violation of any applicable law, ordinance or regulation or pose an imminent risk of bodily injury or death to persons, a threat to the environment or damage to COMPANY’S PIPELINE.
3. The following language must be conspicuously displayed on all drawings depicting COMPANY’S PIPELINE:

WARNING! HIGH PRESSURE PIPELINE

Excavation and/or Construction Prohibited without Prior Written Permission From
Enterprise Products Operating LLC or
Enterprise Crude Pipeline LLC

4. **If the following stipulations do not meet the ENCROACHMENT design as proposed, then ENTITY shall provide COMPANY a minimum of six (6) weeks' notice in an effort to allow COMPANY sufficient time to evaluate the specific proposed ENCROACHMENT design plans. ENTITY must contact COMPANY'S Land-Encroachments Group: Yameena Siddiqui at 281-887-3345 immediately and submit a copy of the design plans and profiles illustrating COMPANY'S PIPELINE.**
5. COMPANY will require physical verification of COMPANY'S PIPELINE depth of cover and alignment, at ENTITY'S expense, prior to work being performed near COMPANY'S PIPELINE. Physical verification may be via hydro-excavation or any other method and shall be coordinated with and approved by COMPANY'S REPRESENTATIVE. If COMPANY'S PIPELINE is not at the anticipated alignment or depth, ENTITY shall adjust the ENCROACHMENT accordingly at no expense to COMPANY or its affiliates.
6. ENTITY will install the ENCROACHMENT across the EASEMENT will be installed in such a way that a minimum vertical separation of five feet (5') is maintained between the top of the PIPELINE and the top of the paved surface(s). Placement of gravel access road shall not impede natural overland storm water sheet flow and shall allow for positive drainage sheet flow across EASEMENT and no ponding of storm water. In addition, ease of access should be considered when the need arises to traverse along the EASEMENT across the gravel roads.
7. ENTITY understands that moving heavy construction equipment across COMPANY'S PIPELINE and/or the EASEMENT can damage COMPANY'S PIPELINE, thereby posing a threat to the environment and the safety of persons in the vicinity and the public. ENTITY will provide COMPANY with a **minimum of 72 business hours' notice** prior to crossing COMPANY'S PIPELINE with any heavy equipment. Wherever ENTITY is intending to cross COMPANY'S PIPELINE and/or the EASEMENT with heavy equipment, ENTITY will use air bridge matting over the COMPANY'S PIPELINE at locations where construction activities will take place and as determined by COMPANY'S REPRESENTATIVE in his sole discretion. **NOTE:** It is the responsibility of ENTITY to confirm that air bridge matting is constructed in a manner that will sustain all proposed heavy equipment. In lieu of using air bridge matting for crossing, ENTITY may provide a minimum of 72 business hours' notice of a proposed alternative method for heavy construction equipment crossing in order to allow COMPANY sufficient time to evaluate and provide its approval or objection, which will be provided by means of email or separate Letter of No Objection or Letter of Objection. ENTITY should be aware that the 72 business hour evaluation time period is contingent upon COMPANY timely receiving the following information: make and model of construction equipment and total load of equipment (including load being transported) including number of load bearing axles. COMPANY'S REPRESENTATIVE may approve the heavy equipment crossing if deemed safe by COMPANY'S REPRESENTATIVE in his sole discretion. ENTITY will maintain a minimum of four-feet (4') of cover over the top of the COMPANY'S PIPELINE at locations where construction or maintenance activities will take place over COMPANY'S PIPELINE while constructing the ENCROACHMENT to achieve the stipulations on Item 6. No vibratory compaction equipment is allowed within the EASEMENT.
8. ENTITY may place excavated material inside the EASEMENT, but may not place such material over COMPANY'S PIPELINE unless approved by COMPANY'S REPRESENTATIVE in his sole discretion. No equipment will be allowed to work over COMPANY'S PIPELINE unless approved by COMPANY'S REPRESENTATIVE in his sole discretion. COMPANY requires hand excavation to be performed within eighteen-inches (18") plus half the diameter of COMPANY'S PIPELINE; however, at no point should mechanical excavation be performed less than two feet (2') from COMPANY'S PIPELINE. All mechanical digging equipment must have the teeth removed or barred with a plate welded across the teeth.

9. ENTITY will not place large landscaping with a mature untrimmed height greater than eighteen inches (18") on the EASEMENT. No trees will be permitted on the EASEMENT and COMPANY reserves the right to trim the canopy of any trees adjacent to the EASEMENT to prevent overhang onto the EASEMENT. No permanent structures will be permitted on the EASEMENT, including, but not limited to, light or utility poles, roads, driveways, fences, buildings, houses, barns, garages, patios, swimming pools, or reinforced concrete slabs.
10. Any and all use of the EASEMENT for temporary workspace and any and all crossings of COMPANY'S PIPELINE must be approved by COMPANY'S REPRESENTATIVE, provided, however, that such approval shall not be unreasonably withheld. ENTITY agrees to clean up and repair all damages to the EASEMENT resulting from ENTITY'S use of, or work on or across, the EASEMENT. Any and all damage repairs and cleanup of the EASEMENT will be subject to COMPANY'S acceptance.
11. ENTITY may place and maintain utility markers on either edge of the EASEMENT, unless said markers interfere with landowner's or tenant's land use.
12. Within 120 days of the completion of the ENCROACHMENT across the EASEMENT, ENTITY will provide to COMPANY (at the address set forth at the bottom of the first page) a reproducible as-built drawing of the ENCROACHMENT, which shall include a distance of twenty-five feet (25') on each side of the ENCROACHMENT along with depiction of elevations.
13. The existence of the ENCROACHMENT does not modify or constitute a waiver of COMPANY'S rights under the EASEMENT or any other rights which may be implied by law or equity; and COMPANY expressly reserves all such rights.
14. ENTITY understands that COMPANY'S issuance of this letter of no objection was based on many factors, including the circumstances of the COMPANY, the EASEMENT, COMPANY'S PIPELINE and COMPANY'S business at the time issued and in the future these factors and circumstances can change. COMPANY'S issue of no objection to the construction of the ENCROACHMENT will **expire six (6) months from the date of this letter**, unless ENTITY has commenced and diligently continued construction of the ENCROACHMENT. If ENTITY is unable to commence construction of the ENCROACHMENT within six (6) months after the date of this letter or, if after timely commencement of construction of the ENCROACHMENT, suspends construction thereof for a period greater than six (6) months, and ENTITY still intends to construct and/or complete construction of the ENCROACHMENT, ENTITY must resubmit the construction plans for the ENCROACHMENT, whether or not such plans have changed, for review by COMPANY and COMPANY, in its sole and absolute discretion, will determine whether it will have no objection at that time to such plans as resubmitted.

If you believe anything set forth in this letter misstates our understanding or if you require more information or clarification of any matters set forth herein, please contact the undersigned at your soonest convenience. The undersigned can be reached at (281) 887-3345 or contacted via e-mail at ysiddiqui@eprod.com

Regards,



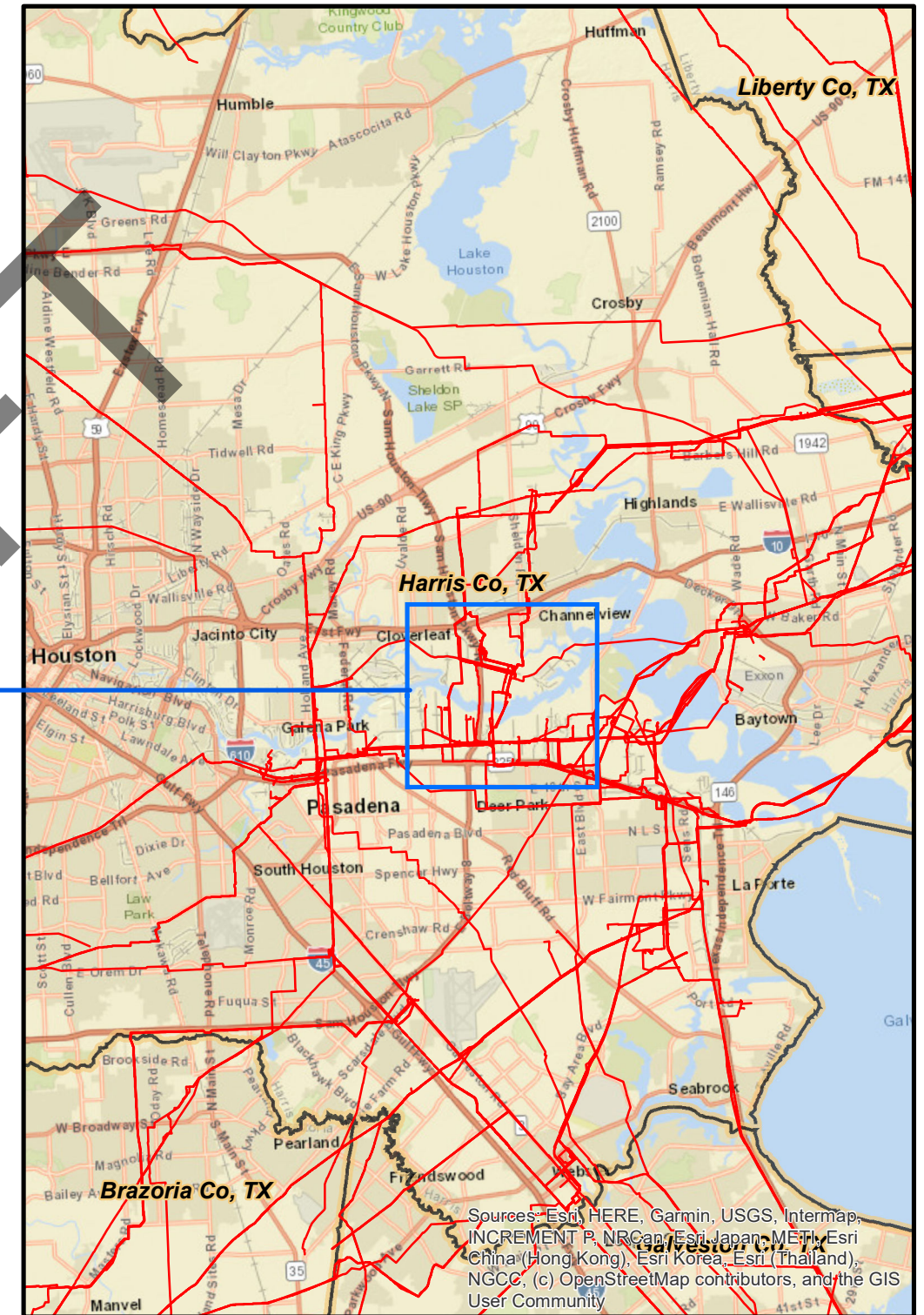
Yameena Siddiqui
Senior Land Representative

cc: John Sanchez John Walston Steven Thompson Ed Sangel Alfredo Saenz
James Talley Bill Newkirk Micheal Honeycutt

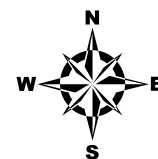
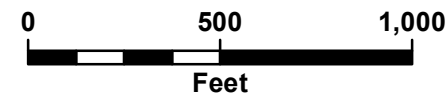
EXHIBIT A

Port of Houston Authority - Temp Access Rd- Penn City BW8
Harris County, Texas
DB-14828

PODS_ID	SystemName	Line #	LineName	OperatingS	ProductCla	Diameter	Operation Contact	Operations Supervisor
502	Isobutane	20698	OTI Import Lateral 16"	Active	Liquids	16.000	Bill Newkirk 281-424-6853	John Walston
514	Pasadena	32808	Pasadena Interconnect 8"	Active	Liquids	8.625	Bill Newkirk 281-424-6853	John Walston
847	Mont Belvieu	95	OTI Interconnect to Glanville	Active	Liquids	16.000	Bill Newkirk 281-424-6853	John Walston
2669	Houston Ship Channel	OTH1	EHSC to Appelt to Moore Rd.(Exxon Mobil/Shell Junction)	Active	Liquids	24.000	Bill Newkirk 281-424-6853	Steven Thompson
2670	Houston Ship Channel	OTH2	EHSC to Appelt to Federal Road to PRSI	Active	Liquids	24.000	Bill Newkirk 281-424-6853	Steven Thompson
2776	Houston Ship Channel	C130	ECHO to EHT	Active	Liquids	30.000	Bill Newkirk 281-424-6853	Steven Thompson



This GIS map has been created from Enterprise Products Operating LLC's proprietary GIS data. Neither Enterprise Products Operating LLC, nor any entity associated therewith, guarantees the accuracy of the data, or assumes any responsibility or liability for any reliance thereon. 04/20/2020 (YS)



COORDINATES SHOWN HEREON MAY NOT REPRESENT PRECISE LOCATIONS. THEY SHOULD BE USED FOR GENERAL LOCATIONAL PURPOSES ONLY.

PHA-ACCESS RD-PENN CITY-BW8
HARRIS COUNTY, TX
ENCROACHMENT DB-14828

PORT OF HOUSTON AUTHORITY
TECHNICAL SPECIFICATION FOR PROJECT 11: BOGGY BAYOU TO SIMS BAYOU:
BELTWAY 8 DMPA SITE PREPARATION

APPENDIX E: Temporary Access Road Agreements

E-7. PTR A Temporary Private Road Crossing Agreement, dated August 10, 2020

95% DRAFT

PORT TERMINAL RAILROAD ASSOCIATION

8934 Manchester Street
Houston, Texas 77012

August 10, 2020

Via Email: rguenther@poha.com

Roger Guenther, Executive Director
Port of Houston Authority
111 East Loop North
Houston, TX 77029

RE: Temporary Private Road Crossing Agreement with PTRA over
Industry Lead Track to Deepwater, South of Jacintoport Blvd.

Dear Roger:

The Port of Houston Authority ("PHA") has signed a temporary private road crossing agreement with Union Pacific Railroad ("UP"), which is attached hereto (the "Agreement").

PTRA operates over the UP track involved and it consents to PHA's temporary use of the private road crossing under the Agreement. All Agreement terms with UP for use and maintenance will also apply to PTRA.

All insurance provided by PHA or its Contractors will also name PTRA as an insured, and all notices to UP will also be given to PTRA. PTRA will charge no fees to PHA.

If PHA agrees to this, please sign below.

Very truly yours,

PORT TERMINAL RAILROAD ASSOCIATION

By: 

Jeff Norwood, General Manager

Agreed:

By: Roger Guenther Digitally signed by Roger Guenther
Date: 2020.09.23 07:56:05 -05'00'

Roger Guenther, Executive Director
PORT OF HOUSTON AUTHORITY

Date: 9/2/20 9/24/20

Bruce C
Mann Digitally signed by
Bruce C Mann
Date: 2020.09.01
12:31:34 -05'00'

Erik
Eriksson Digitally signed by
Erik Eriksson
Date: 2020.09.01
13:30:01 -05'00'

Rich
Byrnes Digitally signed by
Rich Byrnes
Date: 2020.09.21
10:37:12 -05'00'

PORT OF HOUSTON AUTHORITY

**TECHNICAL SPECIFICATION FOR PROJECT 11: BOGGY BAYOU TO SIMS BAYOU:
BELTWAY 8 DMPA SITE PREPARATION**

APPENDIX E: Temporary Access Road Agreements

- E-8. UP Temporary Private Road Crossing Agreement, dated August 17, 2020

95% DRAFT

780611



REMS FileNet Cover Sheet

AUDIT NUMBER	298602
FOLDER NUMBER	0320744
CITY	JACINTO CITY
STATE	TX
PARTY NAME	PORT OF HOUSTON
PRIMARY PURPOSE	Crossing - Private Roadway
EFF. DATE	8/17/2020
MP START	9.86
MP END	10.49
PRIMARY CIRC7	BG011
DESCRIPTION	Crossing - Private Roadway
BOX NUMBER	0
BATCH	00

95% DRAFT

Audit: 298602
Folder: 3207-44

TEMPORARY PRIVATE ROAD CROSSING AGREEMENT

Mile Post 9.86 to 10.49, North Shore (PTRA) Subdivision
At or Near Jacinto City, Harris County, Texas

THIS AGREEMENT ("Agreement") is made and entered into this 17th day of August, 2020 (the "Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690 ("Licensor"), and **PORT OF HOUSTON AUTHORITY** whose address is 111 East Loop North, Houston, TX 77029 ("Licensee").

RECITALS:

The Licensee desires the temporary maintenance and use of a commercial private road crossing ("Road Crossing"), parallel access road, and all appurtenances thereto, including but not limited to and if applicable, any gates, cattle guards, stop signs or identification signs and drainage facilities, on and across the Licensor's right-of-way, DOT 869848S at Mile Post 8.39 on the North Shore (PTRA) Subdivision at or near Jacinto City, Harris County, Texas, in the location shown on Licensor's location print marked **Exhibit A**, attached hereto and hereby made a part hereof.

The Licensor is willing to grant the Licensee the right to cross its right-of-way and tracks at the location shown on **Exhibit A** subject to the terms set forth below.

NOW, THEREFORE, the parties agree as follows:

Article 1. LICENSOR GRANTS RIGHT.

For and in consideration of **Five Thousand Dollars (\$5,000.00)** to be paid by the Licensee to the Licensor upon the execution of this Agreement, and in further consideration of the Licensee's agreement to perform and abide by the terms of this Agreement, the Licensor grants the Licensee the right to temporary access and right to cross its right-of-way and tracks at the location shown on **Exhibit A** subject to the terms set forth herein and in **Exhibit B** and **Exhibit C**, attached hereto and hereby made a part hereof, together with the right of entry to control and remove from the Licensor's right-of-way, on each side of the Road Crossing, weeds and vegetation which may obstruct the view of motorists approaching the crossing area to any trains that may also be approaching the crossing area.

Article 2. PLANS

A. The Licensee, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Road Crossing and submit such plans and specifications to the Licensor's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all layout specifications, cross sections and elevations, associated drainage and other appurtenances associated with the Road Crossing.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Licensor's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Licensor has consented to such changes in writing.

D. The Licensor's review and approval of the Plans will in no way relieve the Licensee or its Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Licensor makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Licensee or its Contractor on the Plans is at the risk of the Licensee and its Contractor.

**Article 3. WORK TO BE PERFORMED BY RAILROAD;
BILLING SENT TO LICENSEE: PAYMENT BY LICENSEE**

The Licensee agrees to reimburse the Licensor within thirty (30) days of its receipt of billing for one hundred percent (100%) of all actual costs incurred by the Licensor in connection with the Road Crossing including, but not limited to, actual costs of preliminary engineering review (including any preliminary engineering review performed by Licensor prior to the execution of this Agreement), construction, inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Licensor's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

Article 4. WORK TO BE PERFORMED BY LICENSEE

The Licensee, at its sole cost and expense, shall construct the approaches for the Road Crossing and all other appurtenances and work associated therewith that will not be provided or performed by Licensor.

Article 5. DEFINITION OF CONTRACTOR

For purposes of this Agreement, the term "Contractor" shall mean the contractor or contractors hired by the Licensee to perform any work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Article 6. IF WORK IS TO BE PERFORMED BY CONTRACTOR

A. If a Contractor is to do any of the work associated with the Road Crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its Contractor to execute the Licensor's Contractor's Right of Entry Agreement. Licensor's current form of Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. Licensee acknowledges that it will inform its Contractor of the need to execute the Agreement. Under no circumstances will Licensee's Contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Licensor the insurance policies, binders, certificates and/or endorsements described therein.

B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Manager-Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179
UP File Folder No. 3207-44

Article 7. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. The Licensee or its Contractor agrees to notify the Licensor's Manager of Track Maintenance described in Article 8D below at least ten (10) working days in advance of commencing its work and at least thirty (30) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of the Licensor's track(s) at any time, for any reason, unless and until a Licensor flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Licensor's representative will determine and inform the Licensee or its Contractor whether a flagman need be present and whether the Licensee or its Contractor needs to implement any special protective or safety measures. If the Licensor performs any flagging, or other special protective or safety measures are performed by the Licensor, the Licensee or its Contractor agrees that they are not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee or its Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to the Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Licensor work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Licensor work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which the Licensor is required to pay the flagman and which could not reasonably be avoided by the Licensor by assignment of such flagman to other work, even though Licensee or its Contractor may not be working during such time. When it becomes necessary for the Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Licensee or its Contractor must provide the Licensor a minimum of five (5) days' notice prior to the cessation of the need for a flagman. If five (5) days' notice of cessation is not given, the Licensee or its contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30)

days' notice must then be given to the Licensor if flagging services are needed again after such five day cessation notice has been given to the Licensor.

D. Arrangements for flagging are to be made with the Licensor's Manager of Track Maintenance ("MTM"). His name and phone number are as shown:

PORT TERMINAL RAILROAD ASSOCIATION

713-393-6500

Article 8. TERM.

This Agreement shall be effective as of the Effective Date herein written, and shall continue in full force and effect for sixty (60) months following the Effective Date of the contract or terminated as provided in **Exhibit B.**

Article 9. INSURANCE.

A. Before commencing of use of Railroad Crossing or entry on any portion of the Licensor's property, the Licensee shall obtain the insurance coverage described in **Exhibit C**, attached hereto and hereby made a part hereof and to provide to the Licensor, the insurance policies, certificates, binders and endorsements described therein.

B. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit C shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, and/or that which may be self-insured.

C. All insurance correspondence shall be directed to:

Manager-Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179
UP File Folder No. 3207-44

Article 10. WARNING DEVICES.

If railroad warning signals are not installed as set forth in this Agreement, the provisions of this Article 11 shall apply to this Agreement. If at any time the governing body having jurisdiction over the Road Crossing or Licensor determines that active warning devices are required for any reason, all cost associated with said installation, design and maintenance shall be at the sole expense of the Licensee. The Licensee shall be responsible to pay, at Licensee's sole expense, all costs associated with necessary improvements and maintenance costs incurred by Licensor, for the entire crossing surface if Licensor determines that the crossing surface is in need of replacement or improvements.

Article 11. GATES.

If applicable, any gates required by Licensor shall be installed by Licensee, at Licensee's expense, on both sides of the Road Crossing and off of Licensor's property. The gates shall be locked at all times except during such time as needed for Licensee's use. The Licensee, at its expense, shall also install fencing and no trespassing signs to the satisfaction of Licensor, and Licensee, at its expense, shall maintain, repair and renew such gates, fencing and signs.

Article 12. SPECIAL PROVISIONS.

Subject to the terms and conditions of this License, Licensee may use and maintain the roadway shown on the attached Exhibit A, provided that:

- i). The roadway is to be strictly private and not intended for, and may not be used for, public purposes.
- ii). The use of the roadway is not exclusive. The roadway is to be used jointly with Licensor and others to whom licensor has given or may give similar rights.
- iii). Licensee, at licensee's sole cost and expense, shall maintain the roadway in a condition satisfactory to Licensor.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: Casey Moore
Print Name: Casey Moore
Title: Manager - Public Projects

PORT OF HOUSTON AUTHORITY

By: Rich Byrnes
Print Name: Rich Byrnes
Title: Chief Infrastructure Officer

Lori S. Brownell
Digitally signed by Lori S. Brownell
Date: 2020.08.17 09:43:51 -05'00'

APPROVED:

By: Bruce C Mann
Bruce Mann, Director – Freight Mobility

APPROVED AS TO FORM:

By: Erik Eriksson
Port Authority Counsel

REVIEWED:

By: Curtis E. Duncan
Controller

FUNDS ARE AVAILABLE TO MEET
THIS OBLIGATION WHEN DUE:

By: David Jochneau
Financial Services

EXHIBIT A
TO
PRIVATE ROAD CROSSING AGREEMENT

Cover Sheet for the Licensor's Prints showing the Road Crossing and Temporary Construction Areas.

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EXHIBIT "A"

RAILROAD LOCATION PRINT PRIVATE ROAD CROSSING AGREEMENT



Mile Post 9.86 to 10.49, North Shore (PTR)
Subdivision
DOT 869848S

UNION PACIFIC RAILROAD COMPANY

Mile Post 8.39, North Shore (PTR) Subdivision DOT
869848S

Jacinto City, Harris County, Texas

Temporary At-Grade Private Road Crossing and Parallel Road Access.

Folder No. 3207-44 Date: 4/16/2020

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

EXHIBIT B

TO

TEMPORARY PRIVATE ROAD CROSSING AGREEMENT

SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The Licensee's rights are also subject to all outstanding superior rights (including those in favor of licensees, lessees of said right of way, and others) and the right of the Licensor to renew and extend the same, and are granted without covenant of title or quiet enjoyment.

(c) It is expressly stipulated that the Road Crossing is to be a strictly private one and is not intended for public use. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of the Road Crossing and prevent its use as a public road.

SECTION 2. MAINTENANCE AND USE.

(a) The Licensor, at the sole expense of the Licensee, shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks, and such other maintenance as the Licensor has agreed to perform on specific request of the Licensee. The Licensee, at its own expense, shall maintain the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions.

(b) The Licensee shall, at its sole expense, maintain, repair, renew and replace any gates, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Licensor or other appurtenances shown on Exhibit A. The Licensee shall, at its own expense, install and thereafter maintain any such appurtenances that may subsequently be required by the Licensor, by law, or by any public authority having jurisdiction. The Licensee shall control vegetation along the right of way on each side of the crossing so that the Licensee's line of sight to approaching trains is not impaired or obstructed by vegetation. All work performed by the Licensee on the right of way shall be done to the satisfaction of the Licensor.

(c) The Licensee shall require all vehicles approaching the crossing to stop a safe distance from the tracks before crossing the tracks. The Licensee shall keep any gate affording access to the Road Crossing closed and locked at all times except during the time of actual passage through it onto or from

the Road Crossing. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property. The Licensee shall adequately supervise and police use of said Road Crossing so that no person, vehicle or livestock stops or stands on the Licensor's tracks or attempts to cross the Licensor's railroad tracks when a railroad train, engine, equipment, or car is approaching or occupying the Road Crossing.

SECTION 3. MODIFICATION OR RELOCATION OF ROAD CROSSING.

Whenever the Licensor deems it necessary or desirable in the furtherance of its railroad operating requirements or for the improvement and use of its property to modify or relocate the Road Crossing:

(1) the Licensor shall, at the sole expense of the Licensee, modify or move the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; and

(2) the Licensee shall, at the Licensee's sole expense, modify or move the remaining portion of the Road Crossing and the appurtenances thereto.

All the terms of this agreement shall govern the continued maintenance and use of the Road Crossing as modified or relocated pursuant to this section.

SECTION 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Licensor's premises.

(b) In addition to the liability terms elsewhere in this Agreement, the Licensee, to the extent allowed by applicable law, shall indemnify and hold the Licensor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Licensee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the Licensee, and/or its contractor, agents and/or employees, on Licensor's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

SECTION 5. INDEMNITY.

To the extent allowed by applicable law, the Licensee assumes the risk of and shall indemnify and hold harmless the Licensor and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever,

(including officers, agents and employees of the Licensors and of the Licensee, as well as other persons); (2) loss of or damage to property whatsoever (including damage to property of or in the custody of the Licensee and damage to the roadbed, tracks, equipment or other property of or in the custody of the Licensors and such other railroad companies, as well as other property); or (3) the Licensee's failure to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

- (a) the construction of the Road Crossing;
- (b) any work done by the Licensee on or in connection with the Road Crossing;
- (c) the use of said Road Crossing by the Licensee, or the officers, agents, employees, patrons or invitees of the Licensee, or by any other person;
- (d) the use of said Road Crossing by the Licensee's successors or assigns or the officers, agents, employees, patrons or invitees of the Licensee's successors or assigns until the Licensee either complies with the provisions of Section 8 or terminates the agreement as provided in Section 6; or

the breach of any covenant or obligation assumed by or imposed on the Licensee pursuant to this agreement, or the failure of the Licensee to promptly and fully do any act or work for which the Licensee is responsible pursuant to this agreement regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Licensors, its officers, agents or employees.

The indemnities of Licensee in this Agreement, including in Section 4(b) and this Section 5 are given solely to the extent as may be allowed by applicable law, and Licensee reserves the right to object to such indemnities if Licensors act to enforce same.

SECTION 6. TERMINATION ON BREACH OR ON NOTICE.

(a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensors, forthwith work a termination of this agreement and all rights of the Licensee hereunder. A waiver by the Licensors of a breach by the Licensee of any covenant or condition of this agreement shall not impair the right of the Licensors to avail itself of any subsequent breach thereof.

(b) This agreement may be terminated by either party on thirty (30) days' written notice to the other party.

SECTION 7. REMOVAL OF ROAD CROSSING.

(a) Upon termination of this agreement howsoever, if required by the Port Terminal Railroad Association, the Licensors shall, at the sole expense of the Licensee, remove said Road Crossing and restore the premises of the Licensors to a condition comparable to that existing immediately prior to the construction of said Road Crossing.

(b) In the event of the removal of the Road Crossing as in this section provided, the Licensors shall not be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damage, or otherwise, which the Licensors may have against the Licensee.

SECTION 8. ASSIGNMENT.

The Licensee shall not assign this agreement, or any interest therein to any purchaser, lessee or other holder of the property served by the crossing or to any other person, without the written consent of the Licensor. If the Licensee fails to secure the Licensor's consent to any assignment, the Licensee will continue to be responsible for obligations and liabilities assumed herein.

SECTION 9. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 8 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

Private Road Crossing (New-Commercial)
Form Approved, AVP-Law 07/15/2013

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EXHIBIT C

TO

TEMPORARY PRIVATE ROAD CROSSING AGREEMENT

Union Pacific Railroad Contract Insurance Requirements

Public/Commercial/Industrial/Licensee's Grade Crossing and/or Encroachment

Port Houston Authority (a/k/a "Port Houston" or "Licensee") is a political subdivision of the State of Texas and is authorized to self-insure its loss exposures, while also being protected by the doctrine of sovereign immunity for governmental entities.

WORKERS' COMPENSATION:

Port Houston is self-insured for Workers' Compensation as provided by *Chapter 504 of the Texas Labor Code*. Benefits are provided in accordance with the provisions of this statute.

AUTO LIABILITY:

Port Houston is exempt from compulsory Texas automobile liability insurance requirements of the State of Texas. This exemption is noted in *Subtitle D of the Motor Vehicle Safety Responsibility; Chapter 601 Motor Vehicle Safety Responsibility Act; Subchapter A General Provisions; Section 007 Applicability of Chapter to Government Vehicle*.

LIABILITY:

The maximum limit of liability (personal injury and property damage loss) is governed under the Texas Tort Claims Act ("TTCA"). The TTCA is dictated contained in *V.T.C.A. Civil Practice and Remedies Code, Chapter 101, Section 101.021*.

- \$100,000 for each person/\$300,000 for each single occurrence for bodily injury or death, and
- \$100,000 for each single occurrence for injury to or destruction of property

Texas law *prohibits* governmental entities from indemnifying any third party, nor can the Licensee add any third party as an "additional insured" to any self-insurance, primary, or excess insurance coverage. However, Licensee recognizes the risk of loss and requires that its Contractors/Subcontractors, at their sole cost and expense, provide and maintain, in full force and effect the insurance coverages listed below with companies lawfully authorized to provide insurance in Texas, in order to meet contractual requirements contained herein.

Licensee's Contractors shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate

of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance: Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. **Umbrella or Excess Insurance.** If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Railroad Protective Liability Insurance. If Licensee is permitted to construct or maintain the crossing(s) Licensee shall procure and maintain during the construction and maintenance period(s) Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) with Licensors as the only named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. A binder of insurance stating the policy is in place must be submitted to the Licensors before work may commence and until the original policy is forwarded to Union Pacific Railroad. Applicable only if construction is on railway; otherwise, RRPL may be waived.

Other Requirements

- D. All policy(ies) required above (except worker's compensation and employers liability and Railroad Protective Liability) must include Licensors as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensors as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26 and CA 20 48 provide coverage for Licensors' negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.
- E. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by the state in which the grade crossing is located.
- F. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against the Licensors and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- G. Prior to entering upon the Licensors' property, Licensee shall furnish Licensors with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- H. All insurance policies must be written by a reputable insurance company acceptable to the Licensors or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business

in the state in which the grade crossing is located.

- I. The fact that insurance is obtained by Licensee, or by Licensor on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.

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EXHIBIT D

TO

TEMPORARY PRIVATE ROAD CROSSING AGREEMENT

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad" or "Licensor"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the Port of Houston Authority to perform work relating to Port of Houston Authority for the construction, maintenance and use of a temporary commercial private road crossing ("Road Crossing") and all appurtenances thereto, including but not limited to and if applicable, any gates, cattle guards, stop signs or identification signs and drainage facilities, on and across the Licensor's right-of-way, and parallel access to temporary crossing on Licensor's North Shore (PTRA) Subdivision or Branch at Licensor Milepost 8.39, DOT No869848S, at or near Jacinto City, Harris County, Texas, as such location is in the general location shown on the print marked Exhibit A, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and Port of Houston Authority ("the Port Authority-Railroad Contract").

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED: PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in Exhibit B, Exhibit C and Exhibit D, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR: RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of Exhibit B. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM: TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue in full force and effect for sixty (60) months following the Effective Date of the Port Authority-Railroad Contract, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in Exhibit C of this Agreement, and (ii) the

insurance endorsements obtained by each subcontractor as required under Section 12 of Exhibit B of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **One Thousand Twenty Five Dollars (\$1,025.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS: COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

(NAME OF CONTRACTOR)

By: _____

Title: _____

95% DRAFT

EXHIBIT A

Exhibit A will be a print showing the general location of the work site.

95% DRAFT

EXHIBIT B

TO

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is

not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1 800 336 9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of Exhibit D to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers' Compensation and Employers' Liability Insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. **Railroad Protective Liability Insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

E. **Umbrella or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. **Pollution Liability Insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.

- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
- (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
- (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
- (v) Before stepping over or crossing tracks, look in both directions first.
- (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.



BUILDING AMERICA®

October 21, 2020

Folder: 3207-44

PORT OF HOUSTON AUTHORITY

ATTN: Garry McMahan

111 East Loop North

Houston, TX 77029

Mr. Garry McMahan,

Attached is your original copy of our Agreement, fully executed on behalf of the Railroad Company. When you or your representative enters the Railroad Company's property, a copy of this fully-executed document must be available at the site to be shown on request to any Railroad employee or official.

In accordance with the terms of the Agreement, you are required to notify the following Railroad Company's Representative and the Telecommunications ("Call Before You Dig") number at least 10 days in advance of the date you plan on entering the right of way for further instructions and approval to commence construction.

Should you have any questions or concerns, please contact me at 402.544.8549 or cjmoore@up.com.

Sincerely,

Casey Moore
Manager – Real Estate