

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS
FOR
TOMPKINS CHANNEL MAINTENANCE DREDGING
FOR



PREPARED BY:



HDR Engineering, Inc.
555 N. Carancahua, Suite 1600
Corpus Christi, Texas 78401

OCTOBER 2023



Invitation to Bid for Tompkins Channel Maintenance Dredging

General Notice

The City of South Padre Island is soliciting an Invitation to Bid (ITB) until **2:00 pm Central Standard Time (local time) on Thursday, November 02, 2023**, from experienced contractors to provide services for the maintenance dredging of the Tompkins Channel in the Lower Laguna Madre, Cameron County, Texas . At that time the Bids received will be publicly opened and read.

The project includes the following work: The project will consist of maintenance dredging activities within Tompkins Channel from select locations along the five-mile-long Tompkins Channel. Maintenance dredging would require mechanical excavation of approximately 21,500 cubic yards of dredged material within the authorized channel. In addition, maintenance dredging activities will be required in the Seahorse Harbor Canal, adjacent to the temporary placement area. The dredged material be transported to and deposited on Sea Horse Harbor, a temporary upland site, located at the west end of Marisol Street on South Padre Island. The temporary upland site will be constructed and deconstructed in this contract, and dredged material hauled offsite.

Bidding Documents

The ITB packet is available on the City's website at <https://www.myspi.org/category/subcategory.php?categoryid=36> starting Thursday, October 12, 2023. All inquiries should be directed to HDR Engineering, Inc. via email at Dan.Garza@HDRinc.com.

Pre-Bid Conference

An optional pre-bid conference for the project will be held (in person) on Tuesday, October 24, 2023 at 10:00am CST local time at the City of South Padre Island City Hall, 4601 Padre Boulevard, SPI, TX 78597.

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instruction to Bidders that are included in the Bidding Documents.

This Invitation to Bid is issued by:

Owner: City of South Padre Island

By: Kristina Boburka

Title: Shoreline Director

Date: 10/12/2023



4601 Padre Blvd
South Padre Island, Texas 78597
www.MySPI.org

Invitation to Bid Construction Services

ITB NO. 2023-SL05 Tompkins Channel Maintenance Dredging

Bids must be received before:
Thursday, November 02, 2023
2:00 p.m. CST local time
City of South Padre Island
ATTN: City Secretary
4601 Padre Blvd.
South Padre Island, TX 78597

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I. INSTRUCTIONS TO BIDDERS

Bids are solicited for **Tompkins Channel Maintenance Dredging** with the following definitions, terms and conditions of bidding. This bid contains the City's standard contract terms, conditions and insurance requirements, attached as Exhibit A, page 19.

A. NOTICE

Sealed bids are due at 2:00 p.m. on Thursday, November 02, 2023 after which time all qualified bids will be opened and publicly read aloud at 4601 Padre Blvd, South Padre Island, Texas 78597. Bids received after the specified deadline will be returned unopened.

Sealed bids shall be clearly marked with the bid number and title and addressed to the City of South Padre Island – City Secretary. Bids shall be delivered using one of the following:

Hand-deliver to:	Mail to:	Ship to (FedEx, UPS, DHL):
4601 Padre Blvd	4601 Padre Blvd.	4601 Padre Blvd.
South Padre Island, TX 78597	South Padre Island, TX 78597	South Padre Island, TX 78597

B. LOCATION AND DESCRIPTION OF PROJECT

The project will consist of maintenance dredging activities within Tompkins Channel from select locations along the five-mile-long Tompkins Channel. In addition, maintenance dredging activities will be required in the Seahorse Harbor Canal, adjacent to the temporary upland placement area. Maintenance dredging would require mechanical excavation of approximately 21,500 cubic yards of dredged material within the authorized channel. The dredged material be transported to and deposited on Sea Horse Harbor, a temporary upland placement area, located at the west end of Marisol Street on South Padre Island. The temporary upland site will be constructed and deconstructed in this contract, and dredged material hauled offsite.

C. PRE-BID CONFERENCE

A Pre-bid Meeting will be held at City of South Padre Island City Hall, 4601 Padre Boulevard, South Padre Island, Texas 78597 at 10:00 a.m. CST local time on Tuesday, October 24, 2023. This meeting is not mandatory, but attendance is highly recommended. A site visit will follow.

D. COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents will be made available on the City's website at <https://www.myspi.org/category/subcategory.php?categoryid=36> starting Thursday, October 12, 2023.

Vendors may receive notice of bids from the City of South Padre Island from a variety of channels. Approved methods of dissemination include: City of South Padre Island website only. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. City of South Padre Island accepts no responsibility for the receipt or notification of solicitations through any other source.

E. BID SECURITY

A Certified Cashier's Check or an acceptable Bid Bond in an amount of not less than five (5) percent of the total amount bid, shall accompany each bid proposal.

F. BONDS

The successful bidder will be required to furnish a Payment Bond and Performance Bond in the amount of the contract. Bidders may not withdraw their Bid Proposal within 60 calendar days of the bid opening date.

G. QUESTIONS and INQUIRIES

The deadline for written questions is **Friday, October 27, 2023 at @ 2:00 p.m.** Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

HDR Engineering, Inc.

Dan.Garza@HDRinc.com

Email subject line: SPI Tompkins Channel – Bid Question

H. SCHEDULE OF IMPORTANT DATES

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	10/12/2023
Advertisement Dates	10/12/2023, 10/19/2023
Pre-Bid Meeting	10/24/2023
Deadline for Questions and Inquiries	10/27/2023
Deadline for Addendum Posting on City’s Website (2:00pm CST)	10/30/2023
ITB Due Date	11/02/2023
Earliest Award by City	November 2023

II. BID TERMS and CONDITIONS

A. DEFINITION OF TERMS

In order to simplify the language throughout this bid, the following definitions and those defined in the Contract Documents shall apply:

BIDDER - A contractor who submits a Bid directly to the City.

BIDDING DOCUMENTS - the Advertisement, Instructions to Bidders, Bid Terms and Conditions, the Proposal, Special Provisions, Technical Specifications and the proposed Contract Documents (including all Addenda issued prior to the receipt of Bids).

CITY OF SOUTH PADRE ISLAND – Same as City.

CITY COUNCIL – The elected officials of the City of South Padre Island, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the State Constitution and Laws.

CONTRACT – An agreement between the City and a Supplier to furnish supplies and/or services over a designated period of time during which repeated purchases are made of the commodity specified.

CONTRACTOR – The successful Bidder(s) of this bid request.

CITY – The government of the City of South Padre Island, Texas.

OWNER – City of South Padre Island.

SUB-CONTRACTOR – Any contractor hired by the Contractor or Supplier to furnish materials and services specified in this bid request.

SUCCESSFUL BIDDER - the lowest, qualified, responsible and responsive Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.

SUPPLIER – Same as Contractor.

B. PREBID CONFERENCE

A Pre-bid Meeting will be held at City of South Padre Island City Hall, 4601 Padre Boulevard, South Padre Island, Texas 78597 at 10:00 a.m. CST local time on Tuesday, October 24, 2023. This meeting is not mandatory, but attendance is highly recommended. A site visit will follow.

Representatives of the Owner will be present to discuss the project. Bidders are highly encouraged to attend and participate in the conference. Owner's Representative will transmit to all prospective bidders of record such Addenda as he considers necessary in response to questions arising at the conference.

C. GENERAL BID PROVISIONS

1. The Invitation to Bid as advertised will be considered an inclusion of the specifications and conditions.
2. The term "Owner" as used throughout these documents will mean The City of South Padre Island, Texas.
3. Bid proposals will be submitted on the forms provided by Owner. All figures must be written in ink or typewritten. However, mistakes may be crossed out, corrections inserted adjacent thereto and initialed in ink by the person signing the proposal. Do not use a whiteout or other cover products on mistakes.
4. Formal advertised bids indicate date and time by which the bids must be received at the designated location. Bids received after that time will be returned unopened to the bidder.

5. The bidder will note any exceptions to the conditions of this bid. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.
6. Bidders may request withdrawal of a posted sealed proposal prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City of South Padre Island in writing. Owner reserves the right to reject any and all bids by reason of this request.
7. In the event there are inconsistencies between the general provisions and other bid terms or conditions contained herein, the former will take precedence.
8. If it becomes necessary to revise any part of this bid, a written addendum will be provided to all bidders. Owner is not bound by any oral representations, clarifications, or changes made in the written specifications by Owner's employees, unless such clarification of change is provided to bidders in written addendum form from the City of South Padre Island.
9. All bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.
10. Owner may give an environmental preference to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
11. Bidders may be disqualified and rejection of proposals may be recommended to the Owner for any (but not limited to) of the following causes: 1) Failure to use the proposal form furnished by the Owner; 2) Lack of signature by an authorized representative on the proposal form; 3) Failure to properly complete the proposal; 4) Evidence of collusion among proposers; 5) Omission of a certified Cashiers Check or Bid Bond (if required) proposal guarantee; 6) Unauthorized alteration of bid form; 7) Lack of appropriate qualifications and experience relative to the size and scope of the work proposed; 8) Unsatisfactory performance; 9) Failure to complete projects or 10) Loaded or unbalanced bids. Owner reserved the right to waive any minor informality or irregularity.
12. Whenever in this invitation, any particular materials, process and/or equipment are indicated or specified by patent, proprietary or brand name, or by name of manufacture, such wording will be deemed to be used for the purpose of facilitating description of the material, process and/or equipment desired and will be deemed to be followed by the words "or equal." Contractor shall provide exactly such items in his bid as described, unless approved pursuant to other provisions provided herein.
13. Samples of items shall be furnished, if requested by the Owner, without charge, and if not destroyed, shall be returned upon request at the bidder's expense.
14. It is agreed that the successful bidder will not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same, or any part thereof, without previous written consent of Owner and any sureties.
15. Contractor must provide audited financial statements, if requested, to the City.
16. Prices in the Bid Proposal shall be presented in the format requested (Unit Price, Lump Sum, etc.)
17. No freight or delivery charges will be accepted unless shown on bid.
18. Owner is exempt from State Retail Tax and Federal Excise Tax. The price bid must be net, exclusive of taxes.

19. All bidders will comply with all Federal, State, and local laws relative to conducting business in the City of South Padre Island. The laws of the State of Texas will govern as to the interpretation, validity, and effect of this bid, its award and any contract entered into.
20. The successful bidder agrees by entering into this contract, to defend, indemnify and hold Owner harmless from any and all causes of action or claims of damages arising out of or related to bidder's performance under this contract.
21. Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will operate to void all proposals of that particular bid solicitation or request.
22. Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

D. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of City's request, written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below. Each Bid must contain evidence of the Bidder's qualifications to do business in the State of Texas or covenant to obtain such qualification prior to award of the contract.

In determining a bidder's qualifications, the following factors will be considered:

1. Work previously completed by the bidder and whether the bidder:
 - a. maintains a permanent place of business,
 - b. has adequate plant and equipment to do the work properly and expeditiously,
 - c. has paid or settled all claims for payment promptly,
 - d. has appropriate technical experience,
 - e. has job references for work of similar size and scope to the project bid herein; and
 - f. satisfactory performance and completion of public, or comparable, projects.
2. The safety record of the Bidder, of the corporation, partnership, or institution represented by the Bidder, or of anyone acting for such firm, corporation, or partnership.

Each Bidder may be required to show that he has properly completed similar type work and that no claims are now pending against such work. No bid will be accepted from any bidder who is engaged in any work that would impair his ability to fully execute, perform or finance this work.

The General/Sub-Contractors Experience Data Sheet following the proposal must be filled out and submitted with the bid for consideration. Failure to include a completed Data Sheet may result in the rejection of the bid.

E. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

1. It is the responsibility of each Bidder before submitting a Bid, to:
 - a. examine the Contract Documents thoroughly,
 - b. visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work,
 - c. consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work,
 - d. study and carefully correlate Bidder's observations with the Contract Documents, and

- e. notify Owner's Representative of all conflicts, errors or discrepancies in the Contract Documents.
 - f. visit with local utilities, including cable companies, and other entities that may have underground or above-ground infrastructure in the work area for infrastructure location.
2. Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site is based upon information and data from the Owner's files for its underground facilities and information and data furnished by owners of other underground facilities. Owner does not assume responsibility for the accuracy or completeness thereof.
 3. Before submitting a Bid each Bidder will be responsible to make or obtain such explorations, at bidders expense and not to be added into cost of bid if accepted (tests and data concerning physical conditions - surface, subsurface and underground facilities - at or contiguous to the site, or otherwise) which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
 4. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment or disposal of spoil are to be provided by Contractor. Contractor is responsible for obtaining all permits required for any of the before mentioned purposes prior to beginning work in accordance with the Standard Form Of Agreement, Paragraph 35 Permits and Licenses.
 5. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this section, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. No pleas of ignorance of conditions that may be encountered in their execution of the Work under this contract, that is a result of failure to make the necessary examinations and investigations herein above indicated, will be accepted as an excuse for the failure or omission on the part of the Contractor to fulfill in every detail all the requirements of the Contract Documents. In no event shall a claim for extra compensation or for an extension of time be allowed for failure to thoroughly examine all requirements of Contract Documents.

F. INTERPRETATIONS and ADDENDA

All questions about the meaning or intent of the Contract Documents are to be directed to the Owner. Interpretations or clarification considered necessary by Owner's Representative in response to such questions will be issued by Addenda and mailed or otherwise delivered to all parties recorded by Owner's Representative as having received the Bidding Documents. Questions received less than 48 hours prior to opening of Bids will not be answered. Only questions answered by a formal written Addenda will be binding. No oral and other interpretations or clarification will be considered official or binding.

If it becomes necessary to revise any part of this proposal, prior to the due date and time, a written addendum will be provided to all know interested Respondents. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City's employees,

unless such clarification of change is provided to Respondents in written addendum form from the City.

Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City.

Addenda will be transmitted to all that are known to have received a copy of the request for proposal and specifications, and posted on the City's website not later than 2:00 PM CST on Monday, October 30, 2023. However, it shall be sole responsibility of the Respondent to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Respondent shall provide written acknowledgment of all addenda.

To properly qualify his bid, each Bidder shall, prior to filing his Bid, check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the Proposal Form or on a separate attachment to the bid. Bids without such acknowledgment of all issued Addenda and letters of clarification may cause your bid to be considered non-responsive. Such Addenda and letters of clarification shall become a part of the executed contract and modify the contract documents accordingly.

G. BID SECURITY

Bidders must submit with their Bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of Bid payable without recourse to the City of South Padre Island, Texas, or a bid bond in the same amount from a surety company holding permit from the State of Texas to act as a surety, as a guarantee that Bidder will enter into a contract and execute bond and guarantee forms within fifteen (15) days after notice of award of contract. Bids without checks, as stated above, or acceptable bid bond may not be considered.

Bid Security shall be in effect from the opening of the Bid and will be retained until a Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. A Bidder may withdraw its Bid at any time until the Agreement is signed. However, it will forfeit its Bid Security in doing so if no material mistake was made in the Bid.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until 5 days after the Agreement is executed whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after the Bid opening.

H. CONTRACT TIME

The times for Substantial Completion and Final Completion are set forth in the Special Provisions and will be included in the Standard Form of Agreement. It will be necessary for the Successful Bidder to satisfy the City of the Bidder's ability to achieve Substantial Completion and Final Completion within the times designated in the Special Provisions.

I. LIQUIDATED DAMAGES

TIME IS OF THE ESSENCE IN THIS CONTRACT. Failure to meet Substantial or Final Completion dates will result in damages to the city in an amount specified in City's Standard Form of Agreement. In

addition, a financial penalty of \$1,335.00 per calendar month will be assessed by the Landowner until all equipment and material is removed from the Landowner's property.

J. SUBSTITUTE OR "OR EQUAL" ITEMS

The materials and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. No substitution will be considered unless written request for approval has been submitted by the Bidder and has been received by Owner's Representative at least five (5) working days prior to the date for receipt of Bids or until after the contract for the work has been signed. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the Bidder. The Owner's Representative's decision of approval or disapproval of a proposed substitution shall be final. If Owner's Representative approves any proposed substitution before the date for receipt of bids, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

K. BID FORM

All blanks on the Bid Form must be completed in ink or by typewriter. Unfilled blanks may result in the bid being disqualified.

Any financial amounts written in words will supersede amounts written by numbers in the Bid Form.

Bids by corporations must be executed in the corporate name by the corporate officer authorized to sign for the corporation, accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and accompanied by evidence of authority to sign. The fiscal address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda. The numbers and dates of which must be filled in on the Bid Form or on a separate attachment to the Bid.

The address and telephone number(s) for communication regarding the Bid must be shown.

All of the data on the GENERAL/SUB-CONTRACTORS EXPERIENCE AND DATA INFORMATION sheet must be completely filled in.

L. SUBMISSION OF BIDS

A Bid shall be submitted at the time and place indicated in the Advertisement. It shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the Bidder. The Bid shall be accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

Each Bidder should, prior to filing his Bid check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the outside of the envelope containing his Bid proposal.

M. MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed, in the described manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

If prior to the award of the contract by the City Council, any Bidder files a duly signed, written notice with Owner's Representative and promptly thereafter demonstrates to the reasonable satisfaction of Owner's Representative that there was a material mistake in the preparation of his Bid, that Bidder may withdraw his Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

N. OPENING OF BIDS

Properly prepared Bids will be opened publicly and read aloud. A summary of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids. A tabulation of the Bids which are read will be available upon request as soon as it has been assembled and verified.

Bids received after the specified time of the opening will be returned unopened.

O. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance, for 60 days after the date of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

P. AWARD OF CONTRACT

Owner reserves the right to reject any and all Bids, to waive any and all informalities and irregularities not involving price, time, or changes in the Work and to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, time of construction, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided. Owner may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

If the contract is to be awarded, it will be awarded to the lowest responsible Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 60 days after the day of the Bid opening.

Bid prices may be compared after adjusting for differences in the time designated in the Bid for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Standard Form of Agreement for liquidated damages indicated for Substantial Completion for each day after the desired date appearing in City's Standard Form of Agreement.

Q. CONTRACT SECURITY

BOND PROVISIONS of the Standard Form of Agreement set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds.

R. SIGNING OF AGREEMENT

The Successful Bidder shall execute the Contract and provide proof of insurance as detailed in the Standard Form of Agreement based on Staff recommendation prior to Council action. No later than 15 days of Award, all required Bonds shall be delivered to Owner. A fully executed contract will be presented to Successful Bidder.

S. PERSONAL INTEREST

No employee or City Council Member of the City may have any financial interest, directly or indirectly, in any proposed or existing agreement, purchase, work, sale or service to, for, with or by the City.

T. DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

For purposes of this section, the following definitions apply:

"Interested party" means a person who has a controlling interest in a business entity with whom the City contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker intermediary, advisor, or attorney for the business entity.

"Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

"Intermediary," means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

1. Receives compensation from the business entity for the person's participation;
2. Communicates directly with the City on behalf of the business entity regarding the contract; and
3. Is not an employee of the business entity.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

III. CONTRACTOR'S PROPOSAL

BASE BID					
ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QTY.	BID UNIT PRICE	BID PRICE
1	Fees for use of Landowner's Temporary Placement Area	LS	1	\$ 8,005.19	\$ 8,005.19
2	Mobilization and Demobilization	LS	1	\$ -	\$ -
3	Pre-Dredge Hazard Survey	LS	1	\$ -	\$ -
4	Construction General Permit and Stormwater Pollution Prevention Plan	LS	1	\$ -	\$ -
5	Dredging - Remove material from existing surface to -6.3' MLLW; Transport and mechanically place material in constructed Placement Areas	CY	21,500	\$ -	\$ -
6	Placement Areas - Construct, accept dredged material, maintain, and Deconstruct	LS	1	\$ -	\$ -
7	Stand-by Time	HR	24	\$ -	\$ -
TOTAL OF UNIT PRICE BID ITEMS FOR BASE BID (ITEMS 1 THRU 7)					\$ -
		\$ _____			Dollars
		(words)			

A. Time for Completion:

TOTAL number of calendar days from NTP to Substantial Completion:

_____ (words) (____). (number)

B. Dredging Method:

1. This dredging method consists of dredging the Tompkins Channel and Seahorse Harbor Canal by mechanical means to the limits set forth on the plans with the dredged material transported to the Placement Areas by barge and mechanically off-loaded.

C. Bidder Acknowledges that:

1. Each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item.
2. Estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.
3. The Bidder hereby acknowledges that the Owner may elect to award any, all, or none of the Bid listed in this Proposal. Any irregular (or weighted) Bid Items will be considered as just cause for not accepting the Bid.

D. Price Plus Time Contract Award (Stipulated Price Contract) - The Bidder to which an award of the Contract will be made will be determined in part on the basis of the Total Bid Price and the total number of calendar days to substantially complete the Work, in accordance with the following:

	Description		Amount
A	#1. Total of Unit Price Bid Items for Base Bid (Items #1 thru #7)		\$ _____
	#2. Total number of calendar days to substantially complete the Work	_____ days	
	#3. Liquidated Damages Rate (from Agreement)	\$500.00/day	
B	#4. Adjustment Amount (Number of calendar days above 180 calendar days x #3)		\$ _____
	#5. Landowner's Calendar Month Penalty (from MOU)	\$1,335.00/month	
C	#6. Adjustment Amount (Number of months above 6 months x #5)		\$ _____
A+B+C	#7. Amount for Comparison of Bids		\$ _____

BY: _____
Signature *Date*

Printed Name *Title*

COMPANY: _____

Address: _____

Phone: _____

IV. CONTRACTOR'S EXPERIENCE and QUALIFICATIONS

Name of Company: _____

Company Years in Business: _____

**List Municipal Projects
(Similar Projects in Size and Scope Completed in Last Five Years)**

Project	Municipality	\$ Amount	Type	Date

Superintendent & Project Manager Information

Include Superintendent proposed for the project, years of experience as superintendent, project manager proposed for the project, and years' experience as project manager

Superintendent	Years' Experience	Projects

Project Manager	Years' Experience	Projects

References

Name 5 projects of similar work, giving owner's name, representative's name, project engineers name, and telephone numbers for each

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V. CERTIFICATION and ACKNOWLEDGMENT

The undersigned affirms that they are duly authorized to submit this bid, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Bidder certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No: _____ Fax No: _____

Email: _____

Bid Address: _____

P.O. Box or Street City State Zip

Remit Address: _____

P.O. Box or Street City State Zip

Federal Tax ID No: _____

DUNS No: _____

Date: _____

VI. GENERAL and SPECIAL CONDITIONS OF AGREEMENT

A. GENERAL CONDITIONS OF AGREEMENT

The Standard Form of Agreement between Owner and Contractor shall be governing conditions of this contract.

1. STANDARD SPECIFICATIONS FOR CONSTRUCTION--CITY OF SOUTH PADRE ISLAND

- a. **FACILITIES:** All building construction and related installations shall conform to the City's latest adopted editions of the 2015 International Building Code, 2015 International Residential Code without Section R313 (deleted), 2015 International Fire Code without Appendices L and M (deleted), 2015 International Mechanical Code, 2015 International Plumbing Code, 2015 International Fuel Gas Code, 2014 National Electrical Code, 2015 International Energy Conservation Code, 1997 Standard Housing Code, and the 1985 Unsafe Building Abatement Code and all other amendments thereto except as modified by the Code of Ordinances. All other City of South Padre codes and ordinances shall also apply.
- b. **CIVIL CONSTRUCTION:** These specifications shall be used in conjunction with the City of South Padre Island's Standard Specifications of Water and Sewer Construction and Street Construction and is hereby incorporated by reference and those specifically provided for in Chapter 23 of the Code of Ordinances, City of South Padre Island. All City of South Padre codes and ordinances shall apply.

Any discrepancies between the City standards and these specifications shall be clarified per the instructions in Paragraph F, "INTERPRETATIONS AND ADDENDA" in the instructions to Bidders.

B. SPECIAL CONDITIONS OF AGREEMENT

1. **MEASUREMENTS:** All work not specifically set forth as a pay item in the Proposal shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the various unit prices listed in the Proposal.
2. **QUANTITIES:** Where unit quantities are shown on each bid item of the Proposal, they shall be construed to represent approximate quantities of Work to be completed. Final quantities will be determined by measurement on the site of the completed Work. Work performed outside of specified limits will not be included in final measurement. Bidders are hereby notified that no incidental items of the Work will be paid for unless it is listed in the Proposal form as a pay item.
3. **EXPLOSION, COLLAPSE AND UNDERGROUND HAZARDS (XCU):** Contracts where trenching depths exceed twelve (12) feet shall require additional coverage for the following General Liability hazards:

<u>Explosion</u>	Applies to blasting operations
<u>Collapse</u>	Applies to excavation and grading work adjacent to structure
<u>Underground</u>	Applies to excavation, burrowing, trenching, tunneling, etc. For example, severing an electrical line during excavation operations.

An additional premium may be assessed by contractors insurance provider. Successful contractor is responsible for assessing depth based on plans and specifications contained herein.

4. **TRAFFIC CONTROL.** When work is performed in or immediately adjacent to a public street right-of-way, the Contractor shall submit to the City Engineer a traffic control plan for each public right-of-way he enters prior to the pre-construction meeting. This plan shall be in conformance to the Texas Manual on Uniform Traffic Control Devices. Once reviewed, the plans will be returned to the Contractor with comments.

Approved Traffic Control Plans shall be in the possession of the contractor on site during all work within the designated right of way.

5. **MATERIAL STAGING.** Contractor is responsible for identifying and securing a suitable site for the storage of materials and other construction related items unless such a site is specifically identified in the plans.
6. **PERMITS.** Contractor will be required to get permits pursuant to contract documents; however, city will waive the fees.
7. **STORMWATER PERMIT.** For construction areas disturbing more than one (1) acre of land, Contractor shall provide a Storm Water Pollution Prevention Plan and all related inspections, rain gages, signage, subsidiary to the contract.
8. **SURVEY.** The Owner will provide a one-time survey staking of key construction points, bench marks, horizontal controls, building corners, or utility appurtenances as deemed necessary by the City Engineer. Additional construction staking, or replacement staking, will be at the contractor's expense.
9. **CONTRACTOR PARKING and BATHROOMS.** Unless noted otherwise in the bid documents and plans, the installation of temporary bathroom facilities on the site will not be allowed. Parking for construction related vehicles, worker vehicles, and other equipment may be limited at the construction site. The Contractor should anticipate the need to provide for off-site parking subsidiary to the bid price in the contract.
10. **FIELD OFFICES.** The Contractor will not be required to maintain a field office at the construction site. In the event that the Contractor wishes to have a temporary project office, approval will be required by the Owner. The cost for the installation of all utilities will be paid by the Contractor.
11. **DRAINAGE AND EROSION CONTROLS.** The contractor will be responsible for designing, installing and maintaining interim drainage and erosion controls for the construction site. Surface drainage channels, culverts, or other features will be maintained by the contractor in such a way to minimize the impacts from storm water to offsite properties.
12. **CONTRACT FORMS, BONDS AND CERTIFICATES.** The Standard Form of Agreement bond forms listed below will be made a part of the executed contract documents and are made a part of these specifications:
 - a. PERFORMANCE BOND
 - b. PAYMENT BOND

These forms are not to be filled in by the bidder at the time of submitting his proposal.

13. **MEMORANDUM OF UNDERSTANDING.** The City of South Padre Island and Del Mar SPI, LLC has entered into an MOU regarding the use of private property for placement of dredged material at Seahorse Harbor Canal (Lot 3). Provisions outlined in the MOU have been incorporated into these contract documents. These provisions include, but are not limited to: 1) requirements for a one-

time payment to the Landowner for the use of the site, with monthly financial penalties if the project is delayed; 2) additional liability insurance requirements; and 3) entering into an agreement with the Landowner and obtaining a temporary construction easement. Other provisions, not specifically outlined here, are in full effect with this contract. The full MOU can be found in Exhibit A, on the following pages (pp.1-4).

Exhibit A
Memorandum of Understanding between the City of South Padre
Island and Del Mar SPI, LLC

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SOUTH
PADRE ISLAND AND DEL MAR SPI, LLC FOR PLACEMENT OF DREDGED
MATERIAL

On this the 30th day of Aug., 2023 the City of South Padre Island, herein after referred to as the City and Del Mar SPI, LLC hereinafter referred to as the Landowner, hereby reach an understanding and agreement to allow the City and it's designated Contractors, who will perform the work involved in the dredging of the Tompkins Channel, to place for a temporary period, the dredged material on the Landowner's land, more specifically described below, with the removal of the dredged material when dried and ready to be moved off the Landowners property.

WHEREAS the City of South Padre Island will award a contract to an entity for the dredging of the Tompkins Channel; and

WHEREAS, the Contractor will need the property of the Landowner, described below, to place the dredged material for a temporary period of time until dried and ready to be moved off the property, and the contractor shall obtain a temporary construction easement from the Landowner, Del Mar SPI, LLC, to place the dredged material on the Landowner's property, and when dried and ready to be removed from the land, the contractor shall remove all of the dredged material and leave the owners land in the same condition as it was before the placement of the dredged material; and

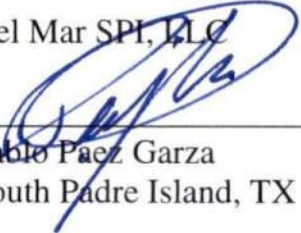
WHEREAS, after the execution of this Memorandum of Understanding, and after the awarding and the execution of a contract by the City and the selected contractor, the selected contractor will enter into an agreement with the Landowner and compensate the Landowner for the obtaining of a temporary construction easement to accomplish the goal of this Memorandum of Understanding, which is to place the dredged material on the Landowner's property on a temporary basis, until dried and ready to be removed.

THEREFORE, the City and the Landowner agree and reach an understanding as follows:

1. This Memorandum of Understanding is contingent upon selection of a contractor by the City and their schedule to execute a contract.
2. Once a contractor is selected by the City, and a timeframe for the project is established, a final signed letter will be executed as an amendment to this Memorandum of Understanding. No work shall begin on the Landowner's property until this letter and a final, detailed project timeline are provided.
3. The Landowner acknowledges to the City that the Landowner will allow the selected contractor to place the dredged material from the Tompkins Channel on the Landowner's property for a period of time not to exceed 180 days.
4. That the dredged material placed on the Landowner's property shall be placed and removed in a safe and efficient manner.
5. That the dredged material shall be removed from the Landowner's property, by the selected contractor, in a safe and orderly fashion, and no later than 180 days after the placement of the dredged material, excluding delays because of weather.
6. That the selected contractor shall pay the Landowner the amount of \$8,005.19 to place and remove the dredged materials for the 180-time period. If work is delayed, an additional \$1,335 per month will be added until all equipment and material is removed from the Landowner's property.
7. That the selected contractor will be responsible for dredging the Seahorse Harbor Canal to a depth of -6 feet in between the placement areas so that they may also reach each upland placement property (Lots 2 and 3).
8. That the selected contractor shall be obligated and agrees to leave the Landowner's property in the same condition that it was before the placement of the dredged material and shall be solely responsible for any damage to the Landowner's property.

- 9. That the contractor shall agree, pursuant to the construction contract to hold harmless the Landowner and the City and release the Landowner and the City from any liability and claims of any nature and in any way related to the placement, storage, and removal of the dredged material.
- 10. That the selected contractor must present evidence of liability insurance in the amount of two million dollars to cover any claims in any way related to the placement, storage and removal of the dredged material.
- 11. That the City shall not be responsible, and or liable for the placement and removal of the dredge material, or for any claim in any way related to the placement, storage, and removal of the dredged material.
- 12. The Landowner's property in which the dredged material will be placed is more specifically described as Lot 3 in the attached drawing/map.

Signed and agreed this 31 day of July 2023.

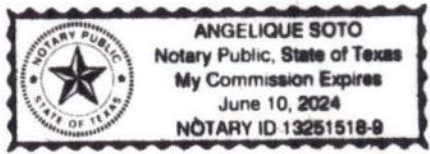
Del Mar SPI, LLC


 Pablo Paez Garza
 South Padre Island, TX 78597

BEFORE ME, the undersigned Notary Public, on this day personally appeared Pablo Paez Garza, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the Land Owner, Del Mar SPI LLC, a Texas limited liability company and on behalf of and as the act of each of said entities and for the purposes and consideration therein expressed.

Notary Public, State of Texas is

Printed Name of Notary: Angelique Soto
 My commission expires: June 10, 2024



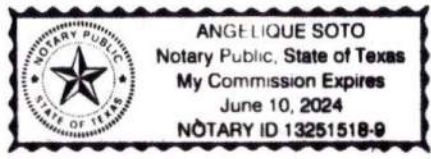

The City of South Padre Island

Randy Smith, City Manager
P.O. Box 40195
4601 Padre Blvd
South Padre Island, TX 78597

BEFORE ME, the undersigned Notary Public, on this day personally appeared Randy Smith, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as City Manager of the City of South Padre Island, a Texas municipal corporation, on behalf of and as the act of said City and for the purposes and consideration therein expressed.
Notary Public, State of Texas is

Printed Name of Notary: Angelique Soto

My commission expires: June 10, 2024



VII. STANDARD FORM OF AGREEMENT – CONSTRUCTION SERVICES

STANDARD FORM OF AGREEMENT CONSTRUCTION SERVICES OVER \$50,000 (with bond forms)

This Agreement is entered into by and between the **City of South Padre Island**, a Texas home-rule municipal corporation (the "City") and _____, a corporation (the "Contractor"), for the construction and/or installation of Tompkins Channel Maintenance Dredging.

1. DEFINITIONS

1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.

1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of South Padre Island, Texas.

1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.

1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.

1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.

1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.

1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing **prior** to the work being done by the Contractor.

1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

1.10. Nonconforming work. The term "nonconforming work" shall mean work or any part thereof that is rejected by City 's Representative as not conforming with the Contract Documents.

1.11. Parties. The "parties" are the City and the Contractor.

1.12. Project. The term "Project" shall mean and include all that is required to obtain a final product that is acceptable to the City. The term "work" shall have like meaning.

1.13. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.14. Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.15. Work. The term "work" as used in this Agreement shall mean and include all that is required herein to obtain a final product that is acceptable to the City. The term "Project" shall have like meaning. This Project includes the following:

The project will consist of maintenance dredging activities within Tompkins Channel from select locations along the five-mile-long Tompkins Channel. Maintenance dredging would require mechanical excavation of approximately 21,500 cubic yards of dredged material within the authorized channel. The dredged material be transported to and deposited on Sea Horse Harbor, a temporary upland site, located at the west end of Marisol Street on South Padre Island. The temporary upland site will be constructed and deconstructed in this contract, and dredged material hauled offsite.

1.16. Working Day. A "working day" means any day not including legal holidays.

2. CONTRACT DOCUMENTS

2.01. The Contract Documents and their priority shall be as follows:

- 2.01.01. This signed Agreement
- 2.01.02. Addendum to this Agreement
- 2.01.03. General Conditions
- 2.01.04. Special Conditions
- 2.01.05. Technical specifications

- 2.01.06. Drawings
- 2.01.07. Instructions to Bidders and any other notices to Bidders or Contractor
- 2.01.08. Performance bond, Payment bonds, Bid bonds and Special bonds
- 2.01.09. Contractor's Proposal

2.02. Where applicable, the Contractor will be furnished three (3) sets of plans, drawings, specifications, and related Contract Documents for its use during construction. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

2.04. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Contract Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City's interpretation. The terms and conditions of this Clause 2.04, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 8.01. and 8.02.

3. AWARD OF CONTRACT

3.01. Upon the award of the contract by the City Council, the parties shall execute this Agreement, and the Contractor shall deliver to City's Representative all documents, bonds, and certificates of insurance required herein.

3.02. **Time is of the essence of this Agreement.** Accordingly, the Contractor shall be prepared to perform the work in the most expedient and efficient possible manner in order to complete the work by the times specified in this Agreement for Substantial Completion and Final Completion. In addition, the Contractor's work on the Project shall be commenced on the date to be specified in the notice to proceed. The notice to proceed may be given by oral notification or set by City's Representative at the post-contract award conference. **The notice to proceed may not be given, nor may any work be commenced, until this Agreement is fully executed and complete, including all required exhibits and other attachments, particularly those required under Paragraphs 27 and 28 (Insurance & Bonds).**

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor's final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed _____/100 Dollars (\$_____).

4. CITY'S REPRESENTATIVE

4.01. The Contractor shall forward all communications, written or oral, to the City through the City's Representative.

4.02. The City's Representative may periodically review and inspect the work of the Contractor.

4.03. The City's Representative shall appoint, from time to time, such subordinate supervisors or inspectors as City's Representative may deem proper to inspect the work performed under this Agreement and ensure that said work is performed in accordance with the plans and specifications.

4.04. The Contractor shall regard and obey the directions and instructions of City's Representative, any subordinate supervisors or inspectors appointed by the City provided such directions and instructions are consistent with the obligations of this Agreement.

4.05. Should the Contractor object to any orders by any subordinate supervisor or inspector, the Contractor may, within two (2) days from receipt of such order, make written appeal to City's Representative for his decision.

5. **INDEPENDENT CONTRACTOR**

5.01. In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the work on the Project. The Contractor shall have ultimate control over the execution of the work under this Agreement. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Agreement.

5.02. The Contractor shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the work and fulfillment of this Agreement. The subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its obligations to the City under this Agreement. The Contractor shall appoint and keep on the Project during the progress of the work a competent Project Manager and any necessary assistants, all satisfactory to City's Representative, to act as the Contractor's representative and to supervise its employees and subcontractors. All directions given to the Project Manager shall be binding as if given to the Contractor. Adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the Contractor and is a breach of this Agreement.

5.03. Unless otherwise stipulated, the Contractor shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the work by the Contractor. It shall be the responsibility of the Contractor to furnish a completed work product that meets the requirements of the City. Any additional work, material, or equipment needed to meet the intent of this specification shall be supplied by the Contractor **without** claim for additional payment, even though not specifically mentioned herein.

5.04. Any injury or damage to the Contractor or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Contractor.

6. DISORDERLY EMPLOYEES

The Contractor agrees to employ only orderly and competent employees skillful in the performance of the type of work required, and agrees that whenever City's Representative shall inform the Contractor in writing that any person or persons on the work are, in his opinion, incompetent, unfaithful, or disorderly, such person or person shall be discharged from the work and shall not again be re-employed on the site or the Project without City's Representative's written permission.

7. HOURS OF WORK

The Contractor may work Monday through Sunday from 6 a.m. to 6 p.m., exclusive of legal holidays. The Contractor may work beyond stated hours and holidays only when approved in advance by the City's Representative. The time for Substantial Completion shall not be affected in any way by inclusion of this section or by the City's consent or lack of consent to work outside of the times specified in this Agreement.

8. NATURE OF THE WORK

8.01. It is understood and agreed that the Contractor has, by careful examination, studied and compared the various Drawings and other Contract Documents, satisfied itself as to the nature and location of the work, the conditions of the ground and soil, the nature of any structures, the character, quality, and quantity of the material to be utilized, the character of equipment and facilities needed for and during the prosecution of the work, the time needed to complete the work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, including but not limited to weather, and all other matters that in any way affect the work under this Agreement. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered, or which reasonably should have been discovered by the Contractor shall be reported promptly to the City as a request for information in such form as the City may require. However, the Contractor shall not perform any act or do any work on the Project that places the safety of persons at risk or potentially damages materials or equipment used in the Project, and the Contractor shall do nothing that would render any test or tests erroneous.

8.02. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the City, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or which reasonably should have been discovered or made known to the Contractor shall be reported promptly to the City.

8.03. If the Contractor fails to perform the obligations of Paragraphs 8.01. and 8.02., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the City for damages resulting from errors, inconsistencies or omissions in the Contract

Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the City.

9. POST-AGREEMENT AWARD MEETINGS

9.01. Prior to the commencement of the work, the parties shall meet and attend a post-agreement award meeting at the time and place determined by City's Representative. At the post-agreement award meeting, the parties shall meet, discuss, and finalize all schedules, including commencement date, and/or specifications submitted for review. No later than ten (10) days prior to the post-agreement award meeting, the Contractor shall submit to City's Representative the following documents:

- (a) Schedules of work contemplated, including the starting and ending date, as well as an indication of the completion of stages of work hereunder.
- (b) The names and addresses of all proposed subcontractors in writing.
- (c) Schedules of the starting and ending dates of subcontractors and the scope of work contemplated for subcontractors.
- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.
- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

9.02. The City's Representative, within five (5) working days after the initial post-agreement award conference or any other meetings, may submit minutes of the meeting to the Contractor. The Contractor shall thereafter have five (5) working days to review the minutes and make its objections, changes, or reductions thereto in writing. The Contractor shall thereafter sign the minutes and promptly return them to City's Representative. Where there is disagreement, City's Representative will make the final determination.

10. PROGRESS OF WORK

10.01. Unless otherwise specifically provided, the Contractor shall prosecute its work at such time and sessions, in such order of precedence, and in such manner as shall be most conducive to the economy of the Project; provided, however, that the order and time of prosecution shall be such that the Project shall be Substantially Completed in accordance with this Agreement, the plans and specifications, and within the time of completion designated in the schedules agreed upon by the parties.

10.02. Further, the parties shall be subject to the following:

- (a) The Contractor shall submit a progress schedule and payment schedule of the work contemplated by this Agreement at the initial post-agreement award meeting and subsequent meetings.

(b) City's Representative shall be entitled to make objections to the Contractor's schedule submitted herein. The Contractor shall promptly resubmit a revised schedule to City's Representative.

(c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.

(d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.

(e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.

(f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.

(g) In the event that it is determined by the City that the progress of the work is not in accordance with the approved progress and payment schedule, the City may so inform the Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

10.03. The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a contractor's schedules does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than the City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs beyond its control to a minimum. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

10.04. **Work Stoppage.** If in the judgment of either the City or City's Representative any of the work or materials furnished is not in strict accordance with this Agreement or any portion of the work is being performed so as to create a hazardous condition, they may, in their sole discretion, order the work of the Contractor or any sub contractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and

deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT

11.01. Where the Contractor is working around or in existing structures, it shall verify conditions at the site, including but not limited to, door openings and passages. Any items constructed or manufactured off-site or outside of buildings shall be done so that they are not too bulky for existing facilities. The Contractor shall provide special apparatus as required to handle any such items. All special handling equipment charges shall be at the Contractor's expense. Further, Contractor shall include in its price for the Work, all labor, materials, equipment and/or engineering services required to protect the adjacent properties and/or structures from damage due to performance of the Work.

11.02. The Contractor shall be responsible for all power, light, and water required to perform the work.

11.03. Throughout the progress of the work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the completion of the work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

11.04. **Layout of Work.** Except as specifically provided herein, the Contractor shall lay out all work in a manner acceptable to City's Representative in accordance with applicable City of South Padre Island codes and ordinances. City's Representative will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review does not relieve the Contractor of the responsibility of accurately locating all work in accordance with the plans and specifications.

11.05. **Lines and Grades.** All lines and grades shall be furnished by the Contractor. Benchmarks and control stakes have been provided by the City's Representative. All benchmarks and control stakes shall be carefully preserved by the Contractor. In case of destruction or removal of the same by the Contractor, its subcontractors, or employees, such stakes, marks, etc. shall be replaced by the Contractor at the Contractor's expense. If the Contractor fails to do so, the City may do so and charge back the Contractor. Additional construction staking as needed for the work, including lines and grades, shall be the sole responsibility of the Contractor, and the Contractor shall receive no extra time or compensation therefor.

11.06. **Contractor's Structures.** The building or locating of structures for housing men or the erection of tents or other forms of protection will be permitted only at such places as City's Representative shall permit. The Contractor shall not damage the property where such structures are allowed and shall at all times maintain sanitary conditions in and about such structures in a manner satisfactory to the City. The City may charge the Contractor for any damage or injury to the City, its property, or third persons as a result of the location or use of such structures.

11.07. The Contractor and any entity over whom the Contractor has control shall not erect any sign on the Project site without the prior written consent of the City.

11.08. City may have other work related to the Project performed at the Project site during the time the Work is performed. Contractor should schedule its Work to coordinate with the work of other contractors and utilities with the understanding that some of that work may be performed at times other than as set out in the Contract Documents or as otherwise anticipated. City will endeavor to have such other work performed so as not to unduly interfere with Contractor's performance when Contractor notifies City of specific reasonable needs well in advance of those needs and where it is possible to do so. Although Contractor should anticipate some delays and interference to its sequence of Work because of work by other contractors and utilities, and will not be entitled to either an extension of time or additional compensation because of them, in the event of substantial delay caused by another contractor or a utility, after advance notice of its needs by Contractor, Contractor will be entitled to make a claim for an extension of time as provided herein.

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

12.01. Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents.

References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

12.02. All materials shall be approved by the City prior to purchase by the Contractor. Unless otherwise specified herein, the Contractor shall purchase all materials and equipment outright and shall not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other agreement reserving unto seller any right, title, or interest therein. Title to all materials, but not risk of loss, shall pass to the City upon delivery to the Project.

12.03. Where the City deems it necessary to supply materials, it may furnish to the Contractor the list of materials set forth in the attached "List of City Furnished Materials". Upon receipt of said materials, the Contractor shall immediately furnish to the City a written receipt. Moreover, the Contractor shall, on behalf of the City, accept delivery of the materials set forth in the attached "List of Materials Ordered by the City". Under such circumstances, the Contractor shall promptly forward to the City for payment the supplier's invoice together with the Contractor's receipt in writing for such materials.

(a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.

(b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

(c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

(d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.

(e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

12.04. **Materials and supplies shall be new and of good quality.** Upon request, the Contractor shall supply proof of quality and manufacturer. No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of City's Representative. The Contractor may utilize substitutes of equal quality and function only upon the prior written authorization of the City's Representative. The City's Representative may require documentation as to quality and function, including manufacturer's specifications, to insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole

discretion over the use of substitute materials and supplies. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

12.05. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

13. ENTRY, OBSERVATION, TESTING & POSSESSION

13.01. The City reserves the right to enter the Project site or sites by such employee(s) or agent(s) as it may elect for the purpose of inspecting the work. The City further reserves the right to enter the Project site or sites for the purpose of performing such collateral work as the City may desire.

13.02. The City's Representative shall have the right, at all reasonable times, to observe and test the work. The Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location where the work or any part thereof is in preparation or progress. The Contractor shall ascertain the scope of any observation that may be contemplated by City's Representative and shall give ample notice as to the time each part of the work will be ready for observation.

13.03. The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If the work is not in accordance with the plans, specifications, or other Contract Documents, the Contractor shall pay the costs of repair and restoration of the work required to be removed, dismantled, or uncovered. Unless Contractor is obligated to provide advance notice of inspection, prior to covering up the work, and fails to do so, if the work is in accordance with the plans, specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04. City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

14. REJECTED WORK

14.01. All work deemed not in conformity with this Agreement as determined by the City in its sole discretion, may be rejected by the City. City's Representative may reject any work found to be defective or not in accordance with the Contract Documents, regardless of the stage of the work's completion or the time or place of discovery of such defects or inconsistencies and regardless of whether City's Representative has previously accepted the work through oversight or otherwise. Neither observations nor inspections, tests, or approvals made by City's Representative, or other persons authorized under this Agreement to make such observations, inspections, tests, or approvals, shall relieve the Contractor from the obligation to perform the work in accordance with the requirements of this Agreement and the other Contract Documents.

14.02. If the work or any part thereof is rejected by the City, it shall be deemed by City's Representative as not in conformity with this Agreement. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

(a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.

(b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

15. SUBCONTRACTING & SUBCONTRACTORS

15.01. The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this Agreement. The Contractor further agrees that subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligation to the City as provided by this Agreement.

15.02. Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

16. PAYMENT

16.01. The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Contractor shall issue exemption certificates to its suppliers and Subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

16.02. **Progress Payment Applications.** The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the ____ day of each month, the Contractor shall submit to City's Representative, for approval or modification, a statement showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to and including the last day of the *preceding* month. The statement shall also include the value of all materials not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the work.

16.03. **Progress Payments.** On or before the **30th** calendar day following the City's receipt of a progress payment application made in conformity with Paragraph 16.02, the City shall pay to the Contractor the approved amount of the progress payment based on the Contractor's applications for payment, and the recommendation and approval of City's Representative. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of work completed by the Contractor and approved by the City, but in each case less the aggregate of payments previously made, less retainage, and less amounts as City's Representative shall determine and the City may withhold in accordance with this Agreement. Upon Final Completion, including the delivery of all close out documents, such as "as built" drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, and acceptance of the work in accordance with this Agreement, the City shall pay the remainder of the balance due under this Agreement, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of thirty (30) calendar days from the date of Final Completion. Acceptance of retainage by Contractor shall constitute a Waiver and Release of all claims by Contractor.

16.04. **Retainage.** From each approved statement, the City shall retain until final payment, ten percent (10%), where the full contract amount is less than \$400,000.00, and five percent (5%), where the full contract amount is \$400,000.00 or more. The City may also retain from each approved statement any other sums authorized under the terms of this Agreement.

16.05. If the actual amount of work to be done and the materials to be furnished differ from estimates and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the Project.

16.06. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.07. The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the work hereunder. The Contractor shall not and shall have no authority whatsoever to obligate the City to make any payments to another party nor make any promises or representation of any nature on behalf of the City, without the specific written approval of the City.

16.08. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

16.09. Unless otherwise provided in the Contract Documents:

- (a) allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances;

- (c) whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 16.9(a) and (2) changes in the Contractor's costs under Paragraph 16.9(b).

16.10. Suspension of Payments. The City, at any time, may suspend monthly progress payments on the work if it determines that the projected liquidated damages may exceed retainage. The City, at any time, may suspend monthly progress payments if it believes that the Contractor will not complete the work due to actual default or that the Contractor has represented or done some act that indicates that it will not complete the work in accordance with this Agreement or within the time period submitted in its bid. Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

16.11. Withhold Funds. Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Paragraph 16.04, withhold funds or nullify all or part of any acceptance or certificate to such extent as may be necessary to protect itself from loss on account of any of the following, or as otherwise provided in this Agreement:

- (a) Defective work.
- (b) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (d) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (f) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (g) City's determination of an amount of liquidated damages.
- (h) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (i) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.

Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

17. EXTRA WORK CHARGES

17.01. No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

17.02. For "Extra Work", as defined in Paragraph 1.07 and authorized through written change orders, and pursuant to Section 252.048(d) of the Texas Local Government Code, the original contract price may not be increased by more than **twenty-five percent (25%)**. Written change orders that do not exceed **twenty-five percent (25%)** of the original contract amount may be made or approved by the City Manager or his delegate if the change order is less than **Fifty Thousand Dollars (\$50,000.00)**. Changes in excess of **Fifty Thousand Dollars (\$50,000.00)** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non included cost.

17.03. The Contractor shall complete all work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the work shall not excuse the Contractor from performing all the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the work and the Contractor shall assume and pay the costs of the performance of the work as contracted.

(a) It is agreed that the Contractor shall perform all Extra Work under the direction of City's Representative when presented with a written work order signed by City.

(b) **No claim for Extra Work of any kind will be allowed unless ordered in writing by the City.** In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work.

(c) Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the City insists upon its performance, then the Contractor shall proceed with the work after making written requests for written orders in a change order and shall keep adequate and accurate account of the actual field costs therefor, as provided under Method C.

(d) It is also agreed that the compensation to be paid to the Contractor for performing Extra Work shall be determined by one or more of the following methods:

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or
Method C - If neither Method A nor Method B is agreed upon before the
Extra Work is commenced, then the Contractor shall be paid
the actual field cost of the work.

(e) **Method A - Unit Prices.** The Contractor agrees to perform Extra Work for the unit prices in the Contractor's Proposal. The Contractor also agrees and warrants that when it is necessary to construct units not shown in the Contract Documents, it shall construct such units for a price arrived at as follows:

(1) The cost of materials shall be determined by the invoices;

(2) The cost of labor shall be the reasonable cost thereof, as determined by the City, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio. Provided, however, that the ratio shall be calculated for only those units that are similar to the new unit for which a price is to be determined.

(f) **Method B - Lump Sum.** The lump sum shall be reasonably close to the amount for similar work previously done or combinations of similar units. Invoices for materials used shall be provided in support of the agreed lump sum.

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, worker's compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

(1) No indirect or consequential damages will be allowed.

(2) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

18.01. The date of beginning, the time for Substantial Completion and Final Completion of work as specified in this Agreement are of the essence of this Agreement.

18.02. The work embraced by this Agreement shall be commenced on the date specified in the notice to proceed. Said notice to proceed may be given orally or set by the City's Representative at the post-award conference.

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor bid _____ calendar days for the time within which it shall reach Substantial Completion of the Project.

18.04. The work shall reach Final Completion and be ready for final payment within **thirty (30) calendar days** from the date of Substantial Completion.

19. SUBSTANTIAL COMPLETION

19.01. The Contractor shall notify City's Representative when, in the Contractor's opinion, the contract is Substantially Completed. Within ten (10) calendar days after the Contractor has given City's Representative written notice that the work has been Substantially Completed, City's Representative shall inspect the work for the preparation of a final punch list.

(a) If City's Representative and the City find that the work is not Substantially Completed, then they shall so notify the Contractor who shall then complete the work. City's Representative shall not be required to provide a list of unfinished work.

(b) If the City Representative and City find that the work is Substantially Completed, the City shall issue to the Contractor its certificate of Substantial Completion.

19.02. The Substantial Completion of the work shall not excuse the Contractor from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents.

20. FINAL COMPLETION

20.01. Contractor shall notify the City's Representative when it believes that the work has reached Final Completion as defined in Paragraph 1.08. If the City's Representative and the City accept and deems such work Finally Complete, then Contractor shall be so

notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within thirty (30) calendar days.

20.02. The Contractor shall procure all required certificates of acceptance or completions issued by state, municipal, or other authorities and submit the same to the City. The City may withhold any payments due under this Agreement until the necessary certificates are procured and delivered.

20.03. Neither the final payment nor any acceptance nor certificate nor any provision of this Agreement shall relieve the Contractor of any responsibility for faulty workmanship or materials. At the option of the City, the Contractor shall remedy any defects and pay for any damage to other work which may appear after final acceptance of the work.

21. DELAYS

21.01. The Contractor, in undertaking to complete the work within the times herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material or workmen or delays arising from inclement weather or otherwise.

21.02. The City may, in its sole discretion, delay the work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. In such event and upon a written request from the Contractor, the City may grant an extension of time pursuant to Paragraph 22 to offset for such stoppage of the work.

21.03. In the event of delays resulting from changes ordered in the work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental damages resulting from increased storage costs or other costs necessary to protect the value of the work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

22. EXTENSIONS OF TIME

The Contractor has submitted its proposal in full recognition of the time required for the completion of this Project, taking into consideration all factors including, but not limited to the average climatic range and industrial conditions. The Contractor has considered the liquidated damage provision of this Agreement and understands and agrees that it shall not be entitled to, nor will it request, an extension of time for either Substantial Completion or Final Completion, except when the work has been delayed by one or more of the following:

- (1) an act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (2) by changes ordered in the work, or reductions thereto approved in writing;
- (3) by "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the Texas A&M University weather service; or
- (4) by other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to

estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's proposal or decision to bid.

If one or more of the foregoing conditions is present, the Contractor may apply in writing for an extension of time, within thirty (30) days of the occurrence of the event causing the delay, submitting therewith all written justification as may be required by the City's Representative. Within ten (10) calendar days after receipt of a written request for an extension of time, which is supported by all requested documentation, the City shall, in writing and in its sole discretion, grant or deny the request. Under no circumstances shall any extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

23. LIQUIDATED DAMAGES

23.01. The time for the Substantial and Final Completion of the work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **Five-Hundred (\$500) DOLLARS** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

23.03. In addition, a financial penalty of \$1,335.00 per calendar month will be assessed by the Landowner until all equipment and material is removed from the Landowner's property.

24. CHARGES FOR INJURY OR REPAIR

24.01. The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

24.02. The Contractor shall take the necessary precautions to protect any areas adjacent to its work.

24.03. The work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

25. WARRANTY

25.01. Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative and that all work will be of good quality, free from faults and defects, and in conformance with this Agreement, the other Contract Documents, and recognized industry standards.

25.02. All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

25.03. This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

25.04. Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

25.05. This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

25.06. **Defective Work Discovered During Warranty Period.** If any of the work is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly correct the defective work at no cost to the City.

25.07. After receipt of written notice from the City to begin corrective work, the Contractor shall promptly begin the corrective work. The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

25.08. If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

25.09. The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

25.10. The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

26.01. **Wage Rates.** Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as Exhibit A.

26.02. **Statutory Penalty.** Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of Paragraph 26.01, the Contractor or subcontractor as the case may be shall pay the City **Sixty Dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

26.03. The Contractor and each subcontractors shall pay all of their employees engaged in work on the Project in full (less mandatory legal deductions) in cash or by check readily cashable, without discount, no less than once each week.

26.04. No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

26.05. **Payment of Subcontractors.** The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

26.06. **Affidavit of Bills Paid.** Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

27. INSURANCE

27.01. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth in Exhibit B.

28. BOND PROVISIONS

28.01. Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City *may* require payment and/or performance bonds. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, all other applicable law, and the following:

- (a) The Contractor shall execute performance and payment bonds for the full Contract Amount.
- (b) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.
- (c) The Contractor shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit C, together with valid original powers of attorney, **at the time of execution of this Agreement and prior** to the commencement of work. Copies of the executed bonds shall be attached hereto as **Exhibit C**.
- (d) The performance and payment bonds shall remain in effect for a period of one (1) year after Final Completion of the work and shall be extended for any warranty work to cover the warranty period.
- (e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

28.02. The Contractor may make such changes and alterations as the City may require in the work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, in accordance with the provisions of Article 17.

29. SURETY

29.01. If the Contractor has abandoned the Project or the City has terminated the contract for cause and the Contractor's Surety, after notice demanding completion is sent, fails to commence the completion of the work in compliance with this Agreement, then the City at its option may provide for completion of the work in either of the following manners:

29.01.01. The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

29.01.02. The City may, after notice published as required by law, accept sealed bids and let this Agreement for the completion of the work under substantially the same terms and conditions that are provided in this Agreement. In case of any increase in cost to the City under the new agreement as compared to what would have been the cost under this Agreement, such increase together with all of the City's damages due to Contractor's abandonment and/or default, including liquidated damages, as provided pursuant to Paragraph 38, entitled "TERMINATION FOR CAUSE" shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

29.02. Should the cost to complete the work exceed the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City's Representative may elect. City's Representative shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

29.03. In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

30. COMPLIANCE WITH LAW

30.01. The Contractor's work and materials shall comply with all state and federal laws, municipal ordinances, regulations, codes, and directions of inspectors appointed by proper authorities having jurisdiction.

30.02. The Contractor shall perform and require all subcontractors to perform the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

30.03. The Contractor shall follow all applicable state and federal laws, municipal ordinances, and guidelines concerning soil erosion and sediment control throughout the Project and warranty term.

31. SAFETY PRECAUTIONS

31.01. All safety measures, policies and precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the South Padre Island Fire Department marked "Attn.: Assistant Chief".

31.02. The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

31.03. The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 31.07). **In the event Contractor engages in any of the activities prohibited in this Paragraph 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 31.04.**

31.05. In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds**

City and all of its officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.

31.06. City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

31.07. For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 31.07 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

32. TRENCH SAFETY

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth and in accordance with the following items:

32.01 The Contractor must comply with the requirements of Tex. Health & Safety Code Ann. §756.022-023 (Vernon 1992), as amended, and the requirements of 29 C.F.R., Sections 1926.650 through 1926.653 inclusive, "Excavation, Trenching and Shoring," of the Occupational Safety and Health Administration Standards, as amended.

32.02 The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems, as measured along the centerline of trench including manholes and other line structures.

32.03 Before beginning work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

32.04 The Contractor must provide the City the name of the "competent person" required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

32.05 If evidence of possible cave-ins or slides is apparent, the Contractor must cease all work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

33. INDEMNITY

33.01. CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS CONTRACT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.

33.02. The indemnifications contained in paragraphs 33.01 shall include but not be limited to the following specific instances:

(a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.

(b) The Contractor shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material

suppliers, mechanics, laborers, or other subcontractors.

(c) The Contractor shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.

(d) The Contractor shall be responsible for any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.

(e) The Contractor shall also be responsible for the removal of all related debris.

(f) The Contractor shall also be responsible for subcontractors hired by it.

(g) The Contractor shall indemnify, hold harmless, and defend the City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

33.03. The indemnification obligations of the Contractor under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

33.04. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

34. RELEASE

The Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall

apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

35. PERMITS AND LICENSES

The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

36. ROYALTIES AND LICENSING FEES

The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the Project. It shall defend all suits or claims for infringement of any patent rights. Further, if the Contractor has reason to believe that the design, service, process, or product specified is an infringement of a patent, it shall promptly give such information to City's Representative.

37. BREACH OF CONTRACT & DAMAGES

37.01. The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate, or terminate the Contractor's obligations under this Agreement.

37.02. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (a) If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b) If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

38. TERMINATION FOR CAUSE

Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to terminate this Agreement in its entirety at any time for any of the following:

38.01. If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding

commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or

38.02. If a receiver, trustee, or liquidator of any of the property or income of the Contractor shall be appointed; or

38.03. If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

38.04. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

38.05. If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or

38.06. If the Contractor abandons the Work.

38.07. If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

39.01. The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

39.02. In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

If this Agreement is terminated for cause, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment, without rental obligation therefor, and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

41. CLOSE OUT

41.01. After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City's Representative, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City's Representative, do the following:

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
- (f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred; and/or

42. TERMINATION CONVERSION

Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 39.

43. HIRING

During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

44. ASSIGNMENT

This Agreement and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

45. EFFECTIVE DATE

The effective date of this contract shall be the date of award of the contract.

46. OTHER TERMS

46.01. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

46.02. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

46.03. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

46.04. **Amendment.** No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

46.05. **Mediation.** After receipt of a Notice of Claim, the Owner may elect to refer the matter to the Architect, Owner's Representative or another party for review. Contractor will attend meetings called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The Owner may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the Owner at the completion of the Work. At any stage, the Owner, at its sole discretion, is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under Owner's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in South Padre Island, Texas.

46.06. **Arbitration.** In the event of a dispute and upon the mutual written consent of both parties, the parties may agree to arbitration without waiving any of their other rights hereunder.

46.07. **Choice of Law and Place of Performance.** This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Cameron County, Texas, United States of America.

46.08. **Authority to do business.** The Contractor represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this contract.

46.09 **Authority to Contract.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

46.10. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

46.11. **Headings, Gender, Number.** The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

46.12. **Agreement Read.** The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.13. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

46.14. **Notice of Indemnification.** City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

[INSERT NAME OF CONTRACTOR]

CITY OF SOUTH PADRE ISLAND

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
City Manager
Date: _____

EXHIBIT A – DAVIS BACON WAGE RATES

Notes for the DB wage rates for Heavy/Highway Construction. Rates follow this page (5 pages).

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.

"General Decision Number: TX20230003 01/06/2023

Superseded General Decision Number: TX20220003

State: Texas

Construction Types: Heavy and Highway

Counties: Cameron, Hidalgo and Webb Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/06/2023

SUTX2011-003 08/02/2011

Rates Fringes

CEMENT MASON/CONCRETE
FINISHER (Paving & Structures)...\$ 12.46 **

FORM BUILDER/FORM SETTER
(Structures).....\$ 12.30 **

FORM SETTER (Paving & Curb).....\$ 12.16 **

LABORER

Asphalt Raker.....\$ 10.61 **

Flagger.....\$ 9.10 **

Laborer, Common.....\$ 9.86 **

Laborer, Utility.....\$ 11.53 **

Pipelayer.....\$ 11.87 **

Work Zone Barricade
Servicer.....\$ 12.88 **

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 13.48 **

Asphalt Paving Machine.....\$ 12.25 **

Broom or Sweeper.....\$ 10.33 **

Crane, Lattice Boom 80
Tons or Less.....\$ 14.39 **

Crawler Tractor.....\$ 16.63

Excavator, 50,000 lbs or
less.....\$ 12.56 **

Excavator, over 50,000 lbs..\$ 15.23 **

Foundation Drill, Truck
Mounted.....\$ 16.86

Front End Loader Operator,
Over 3 CY.....\$ 13.69 **

Front End Loader, 3 CY or
less.....\$ 13.49 **

Loader/Backhoe.....\$ 12.77 **

Mechanic.....\$ 15.47 **

Milling Machine.....\$ 14.64 **

Motor Grader Operator,
Rough.....\$ 14.62 **

Motor Grader, Fine Grade...\$ 16.52

Scraper.....\$ 11.07 **

Servicer.....\$ 12.34 **

Steel Worker (Reinforcing).....\$ 14.07 **

TRUCK DRIVER

Lowboy-Float.....\$ 13.63 **

Single Axle.....\$ 10.82 **

Single or Tandem Axle Dump..\$ 14.53 **

Tandem Axle Tractor with
Semi Trailer.....\$ 12.12 **

WELDER.....\$ 14.02 **

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====
** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$16.20) or 13658

(\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average

rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an

interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

EXHIBIT B

INSURANCE REQUIREMENTS

During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

- I. Standard Insurance Policies Required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Umbrella / Excess Liability – required for contract amounts exceeding \$1,000,000
 - D. Workers' Compensation
 - E. Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage. builder's risk policy shall be written on "all risks" form.
 - F. Maritime Employers Liability Insurance – Any employee who may fall under the Death on High Seas Act, Jones Act, or any other federal or state acts relating to maritime employment must be covered by Maritime Employers Liability Insurance of not less than \$2,000,000. Such coverage will include, but not be limited to, transportation, wages, maintenance and cure, as well as any other liabilities arising under such maritime employment.
 - G. Contractor's Pollution Liability Coverage – Contractor will supply a Claims Made Pollution Liability Policy in the amount of \$5,000,000. Coverage will include bodily injury, property damage, cleanup, and contingent off-site disposal.
 - H. Vessel Collision Liability & Removal of Wreck – All vessels and barges involved in the project shall be covered by hull insurance under the latest American Institute Hull Clauses up to the value of the vessel, and broad form P&I insurance covering injury to crew, full collision liability and removal of wreck with a minimum limit of \$5,000,000. The vessels shall also be covered for pollution with a minimum limit of \$5,000,000.
- II. General Requirements Applicable to All Policies:
 - A. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
 - B. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
 - C. "Claims Made" policies are not accepted.
 - D. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of South Padre Island.
 - E. Upon request, certified copies of all insurance policies shall be furnished to the City of South Padre Island.
 - F. HDR Engineering, Inc., Del Mar SPI, LLC, and The City of South Padre Island, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded

to HDR, Del Mar SPI, or the City, its officials, employees or volunteers.

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
- C. Coverage shall be at least as broad as ISO form GC 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$2,000,000.00 per occurrence for bodily injury and property damage.
- C. Coverage shall be at least as broad as Insurance Service's Office Number CA 00 01.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- E. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- F. Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$2,000,000.00.

V. Excess Liability

Umbrella form excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the contract, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

- VI. Those policies set forth in Paragraphs III, IV, and V shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this

Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City before work commences.

VII. Workers Compensation Insurance

A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

B. Workers compensation insurance shall include the following terms:

1. Employer's Liability minimum limits of \$2,000,000.00 for each accident/each disease/each employee are required.
2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

C. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

A. *Definitions:*

Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the

Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.**
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the**

statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

- (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;**
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
- (7) Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."

VIII. Certificates of Insurance shall be prepared and executed by the insurance company or its

authorized agent, and shall contain the following provisions and warranties:

- A. The company is licensed and admitted to do business in the State of Texas.
- B. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- C. All endorsements and insurance coverages according to requirements and instructions contained herein.
- D. The form of the notice of cancellation, termination, or change in coverage provisions to the City of South Padre Island.
- E. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.
- F. Additional insureds: In addition to Owner and Engineer, include as additional insureds the following:
 - a. Property Owner #1: Del Mar SPI, LLC

EXHIBIT C

PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS §
 §
THE COUNTY OF CAMERON §

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of South Padre Island, a municipal corporation, in the sum of _____ (\$_____) for the payment of which sum, well and truly to be made to the City of South Padre Island and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of South Padre Island for

_____ all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of South Padre Island or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of South Padre Island shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the

Work is intended for the City's benefit, and the City of South Padre Island shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of South Padre Island or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of South Padre Island from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of South Padre Island shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in Cameron County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST and SEAL: (if a corporation)

(Name of Contractor)

WITNESS: (if not a corporation)

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date:

ATTEST/WITNESS

(SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name: _____
Title: _____
Date: _____

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF SOUTH PADRE ISLAND,
TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS §

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF CAMERON §

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of South Padre Island, a municipal corporation, in the sum of _____ (\$_____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of South Padre Island, dated the _____ day of _____, 200__, for

_____, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST and SEAL: (if a corporation)

(Name of Contractor)

WITNESS: (if not a corporation)

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name: _____
Title: _____
Date: _____

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF SOUTH PADRE ISLAND,
TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

EXHIBIT D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Contract No. _____

TECHNICAL SPECIFICATIONS
FOR
TOMPKINS CHANNEL MAINTENANCE DREDGING
FOR



PREPARED BY:



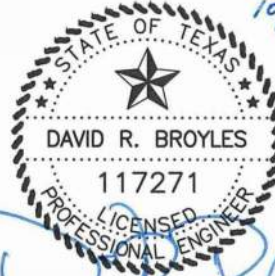
HDR Engineering, Inc.
555 N. Carancahua, Suite 1600
Corpus Christi, Texas 78401

OCTOBER 2023



Daniel E. Garza 10/09/2023.

DIVISION 1 &
DIVISION 35



10/9/2023
DRB

DIVISION 35

TECHNICAL SPECIFICATIONS – TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

01 11 00	SUMMARY OF WORK Exhibit A – Final Plat, November 2022 Exhibit B – Magnetometer Survey, December 2020
01 12 00	PERMITS Exhibit A – USACE Permit SWG-1996-00026, LOP Exhibit B – Texas General Land Office Lease No. L20110002 Exhibit C – USACE Permit 22969
01 13 00	SUPPLEMENTARY CONDITIONS
01 20 00	PRICE AND PAYMENT PROCEDURES
01 33 00	SUBMITTAL PROCEDURES Exhibit A – Submittal Register
01 57 19	TEMPORARY ENVIRONMENTAL CONTROLS Exhibit A – Dredging Sampling Report: Cover Letter, August 2022
01 57 19.01 20	SUPPLEMENTAL TEMPORARY ENVIRONMENTAL CONROLS

DIVISION 35 - WATERWAY AND MARINE CONSTRUCTION

35 20 23	DREDGING Exhibit A – Grain Sieve Analysis, December 2020
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-- End of Technical Specifications --

SECTION 01 11 00

SUMMARY OF WORK
08/15, CHG 2: 08/21

PART 1 GENERAL

1.1 SUBMITTALS

Submittals required for this project are outlined in the Submittal Register (01 33 00, Exhibit A) and more fully described in the individual Specifications. Provide all Submittals in accordance with Section 01 33 00 SUBMITTAL PROCEDURES.

1.2 WORK COVERED BY CONTRACT DOCUMENTS

1.2.1 Project Description

The work includes this and incidental related work:

The project will consist of maintenance dredging activities within Tompkins Channel from select locations along the five-mile-long Tompkins Channel and Seahorse Harbor Canal, a 60 foot wide x 460 foot long basin, adjacent to the temporary placement area. Maintenance dredging would require mechanical excavation of approximately 21,500 cubic yards of dredged material within the authorized channel limits. The dredged material be transported to and deposited on Sea Horse Harbor, an upland site for use as a temporary placement area, located at the west end of Marisol Street on South Padre Island. In this contract, the temporary placement area will be constructed and deconstructed and dredged material hauled offsite.

1.2.2 Location

The work is located at the Tompkins Channel in the Lower Laguna Madre, Cameron County, Texas, in the City of South Padre Island. The exact location is as indicated on the Contract Drawings.

1.3 CONTRACT DRAWINGS

The following drawings accompany this specification and are a part thereof.

- 01 COVER SHEET
- 02 GENERAL NOTES
- 03 PROJECT LAYOUT
- 04 ENLARGED LAYOUT (1 OF 13)
- 05 ENLARGED LAYOUT (2 OF 13)
- 06 ENLARGED LAYOUT (3 OF 13)
- 07 ENLARGED LAYOUT (4 OF 13)
- 08 ENLARGED LAYOUT (5 OF 13)
- 09 ENLARGED LAYOUT (6 OF 13)
- 10 ENLARGED LAYOUT (7 OF 13)
- 11 ENLARGED LAYOUT (8 OF 13)
- 12 ENLARGED LAYOUT (9 OF 13)
- 13 ENLARGED LAYOUT (10 OF 13)
- 14 ENLARGED LAYOUT (11 OF 13)
- 15 ENLARGED LAYOUT (12 OF 13)
- 16 ENLARGED LAYOUT (13 OF 13)
- 17 CROSS SECTIONS (1 OF 11)

- 18 CROSS SECTIONS (2 OF 11)
- 19 CROSS SECTIONS (3 OF 11)
- 20 CROSS SECTIONS (4 OF 11)
- 21 CROSS SECTIONS (5 OF 11)
- 22 CROSS SECTIONS (6 OF 11)
- 23 CROSS SECTIONS (7 OF 11)
- 24 CROSS SECTIONS (8 OF 11)
- 25 CROSS SECTIONS (9 OF 11)
- 26 CROSS SECTIONS (10 OF 11)
- 27 CROSS SECTIONS (11 OF 11)
- 28 TEMPORARY PLACEMENT AREAS - PLAN AND DETAILS
- 29 TEMPORARY PLACEMENT AREAS - EXISTING CONDITIONS PLAN
- 30 TEMPORARY PLACEMENT AREAS - PLAN AND SECTIONS

1.4 EXISTING WORK

In regard to protection of existing vegetation, structures, equipment, utilities, and improvements:

- a. Remove or alter existing work in such a manner as to prevent injury or damage to any portions of the existing work which remain.
- b. Repair or replace portions of existing work which have been altered during construction operations to match existing or adjoining work, as approved by the Owner. At the completion of operations, existing work must be in a condition equal to or better than that which existed before new work started.
- c. Refer to Exhibit A - Final Plat, November 2022, at the end of this specification section for location of property lines, easements, and underground and aboveground utilities at the site of the proposed temporary placement areas.

1.5 LOCATION OF UNDERGROUND UTILITIES

In December 2020 a magnetometer survey was performed over the length of the channel along three profile lines that included the apparent channel centerline and channel toes. Refer to Exhibit B - Magnetometer Survey at the end of this specification section for a set of the survey drawings.

Identify all pipelines and other utilities not managed and located by the local utility companies. Scan the construction site with electromagnetic or sonic equipment, and prepare a confirmation survey surface of the ground, piers, shorelines, or paved surfaces where existing underground pipelines or utilities are discovered.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

METES AND BOUNDS DESCRIPTION

BEING A 2.945 ACRE TRACT, MORE OR LESS, CONSISTING OF ALL OF LOTS 1 THROUGH 3, SEAHORSE HARBOR SUBDIVISION, IN THE CITY OF SOUTH PADRE ISLAND, CAMERON COUNTY, TEXAS, ACCORDING TO MAP RECORDED IN CABINET 1, SLOT 4147, MAP RECORDS OF CAMERON COUNTY, TEXAS, SAID 2.945 ACRE TRACT BEING MORE PARTICULARLY LOCATED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A ONE-HALF INCH IRON PIN FOUND WITH A YELLOW PLASTIC CAP STAMPED "M&R INC" AT THE SOUTHWEST CORNER OF SAID SEAHORSE HARBOR SUBDIVISION AND THE COMMON CORNER OF LOTS 9, 29 AND 30 OF SUNNY ISLES SUBDIVISION (RECORDED IN VOLUME 14, PAGE 8 OF THE MAP RECORDS OF CAMERON COUNTY, TEXAS), FOR THE THE SOUTHEAST CORNER OF THIS TRACT;

THENCE, ALONG THE COMMON BOUNDARY LINE OF SAID SEAHORSE HARBOR SUBDIVISION AND THE NORTH BOUNDARY LINE OF LOTS 20 THROUGH 29 OF SAID SUNNY ISLES SUBDIVISION, SOUTH 82 DEG. 58 MIN. WEST, AT 500.00 FEET A ONE-HALF INCH IRON PIN WITH A YELLOW PLASTIC CAP STAMPED "M&R INC" FOUND, A TOTAL DISTANCE OF 515.19 FEET TO THE SOUTHWEST CORNER OF SAID SEAHORSE HARBOR SUBDIVISION, FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE, ALONG THE EAST BOUNDARY LINE OF SAID SEAHORSE HARBOR SUBDIVISION, NORTH 06 DEG. 07 MIN. WEST, A DISTANCE OF 250.03 FEET TO THE NORTHWEST CORNER OF SAID SEAHORSE HARBOR SUBDIVISION, FOR THE NORTHWEST CORNER OF THIS TRACT;

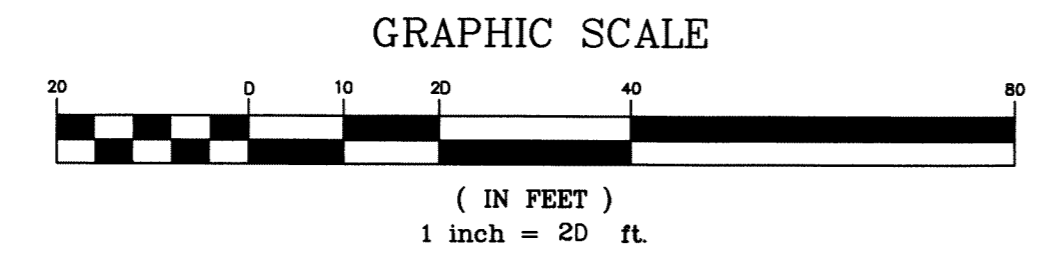
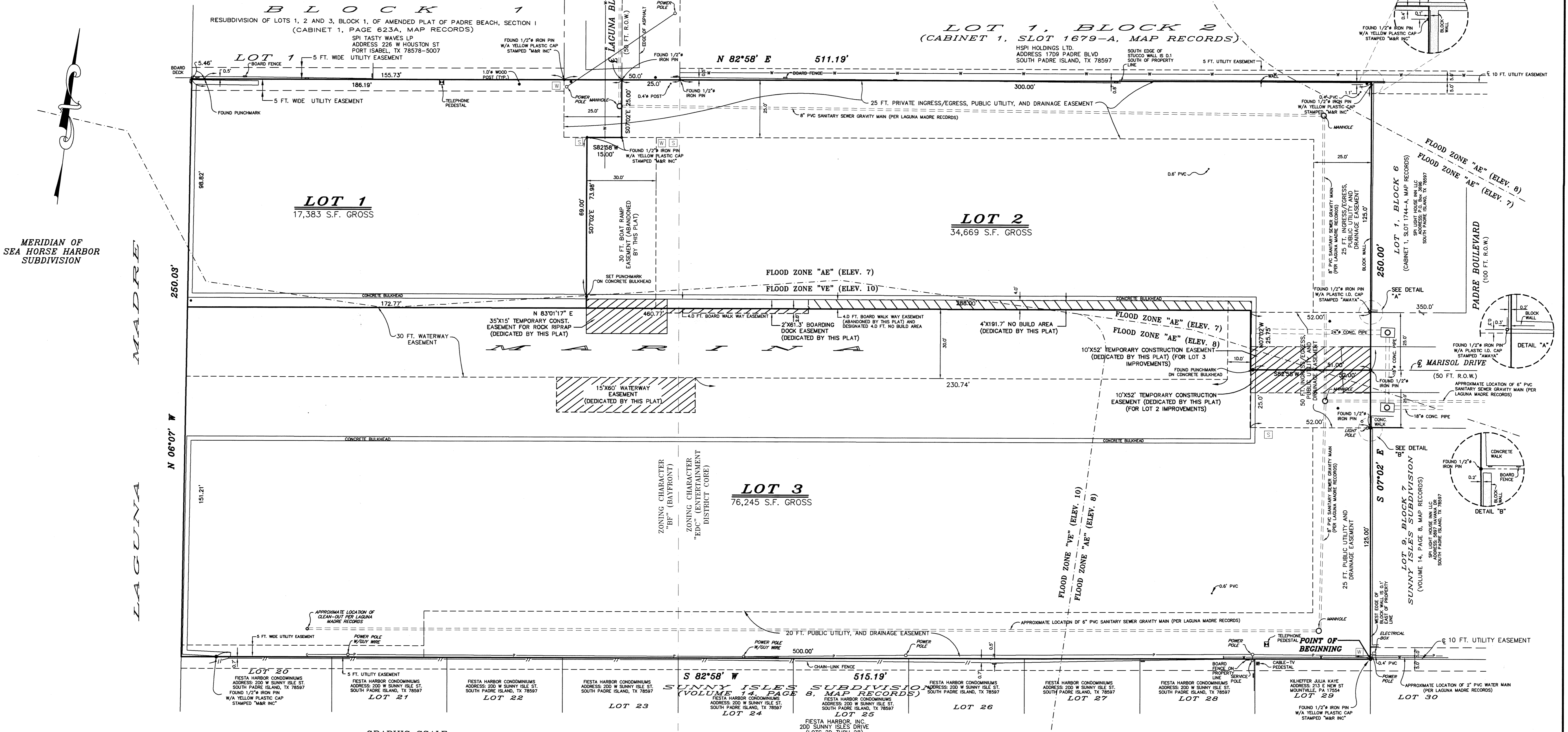
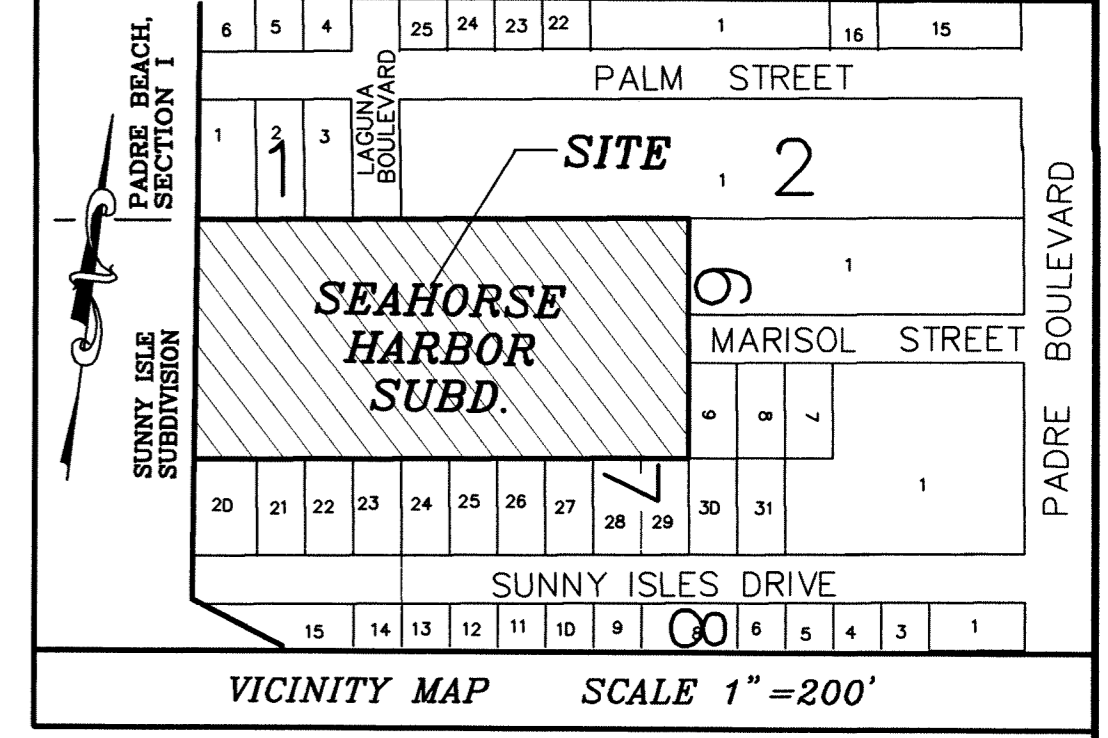
THENCE, ALONG THE NORTH BOUNDARY LINE OF SAID SEAHORSE HARBOR SUBDIVISION, NORTH 82 DEG. 58 MIN. EAST, AT A DISTANCE AT 5.46 FEET TO A PUNCHMARK FOUND FOR REFERENCE, A TOTAL DISTANCE OF 511.19 FEET TO THE NORTHEAST OF SAID SEAHORSE HARBOR SUBDIVISION, FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE, ALONG THE EAST BOUNDARY LINE SAID SEAHORSE HARBOR SUBDIVISION, SOUTH 07 DEG. 02 MIN. EAST, AT A DISTANCE OF 1.1 FEET A ONE-HALF INCH IRON PIN WITH A YELLOW PLASTIC CAP STAMPED "M&R INC" FOUND, A TOTAL DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.945 ACRES OF LAND, MORE OR LESS.

NOTES:

1. MONUMENTATION FOUND ALONG THE WEST RIGHT-OF-WAY LINE OF PADRE BOULEVARD WAS HELD FOR BASIS OF BEARING.
2. THIS TRACT LIES IN FLOOD ZONES SHOWN AS PER THE F.I.A. FLOOD INSURANCE RATE MAP OF COMMUNITY NO. 48D115, PANEL NO. D51D-F, EFFECTIVE FEBRUARY 16, 2018.
3. THIS TRACT LIES IN ZONES "EDC" (ENTERTAINMENT DISTRICT CORE) AND ZONE "BF" (BAYFRONT CHARACTER) AS PER THE CITY OF SOUTH PADRE ISLAND ZONING ORDINANCES.
4. SETBACKS ARE PER SECTION 20-8.1 APPENDIX "Z".
5. PROPOSED WATER AND SEWER TAPS SHOWN MAY CHANGE WHEN THE SITE DESIGN BEGINS.
6. PRIVATE INGRESS/EGRESS EASEMENT IS FOR THE USE OF LOT 1, 2 AND 3.



PRELIMINARY PLAT OF "LOTS 1, 2 AND 3, SEAHORSE HARBOR. REPLAT NO. 3, SUBDIVISION" BEING A REPLAT OF

LOTS NUMBERED ONE (1), TWO (2), AND THREE (3), SEAHORSE HARBOR REPLAT NO. 2 SUBDIVISION, IN THE CITY OF SOUTH PADRE ISLAND, CAMERON COUNTY, TEXAS, ACCORDING TO MAP RECORDED IN CABINET 1, SLOT 4147, MAP RECORDS OF CAMERON COUNTY, TEXAS.
 PREPARED FOR:
DEL MAR SPI, LLC
 AND
CITY OF SOUTH PADRE ISLAND

OWNER: LOTS 1 & 3
 DEL MAR SPI, LLC
 P.O. BOX 40195
 SOUTH PADRE ISLAND, TEXAS 78597

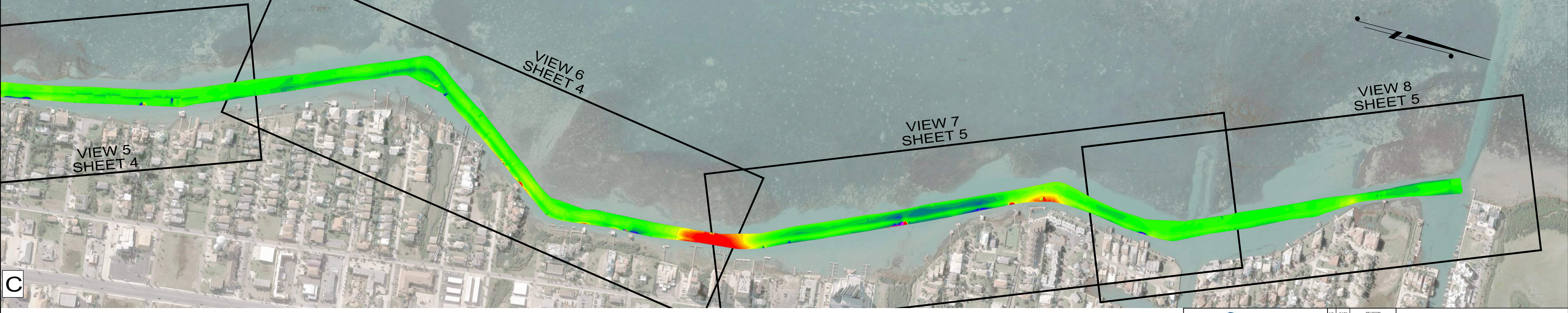
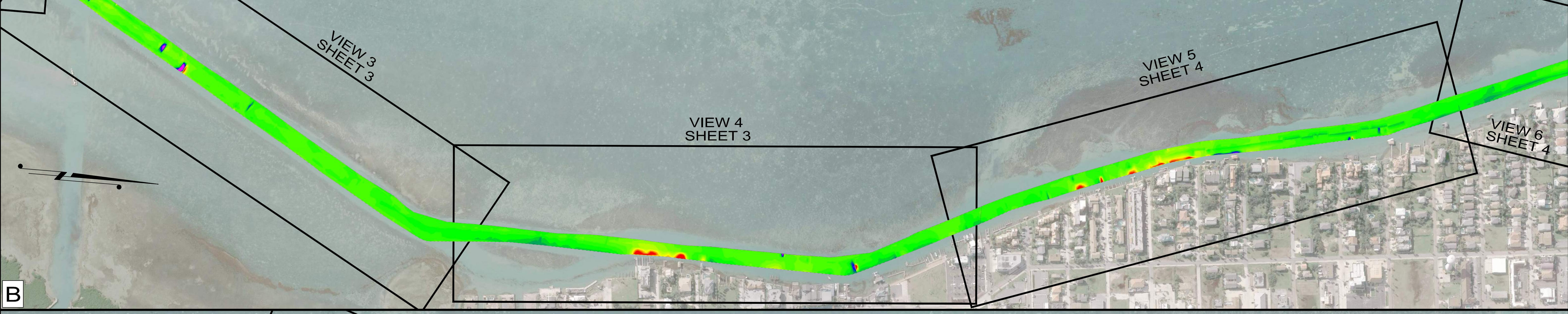
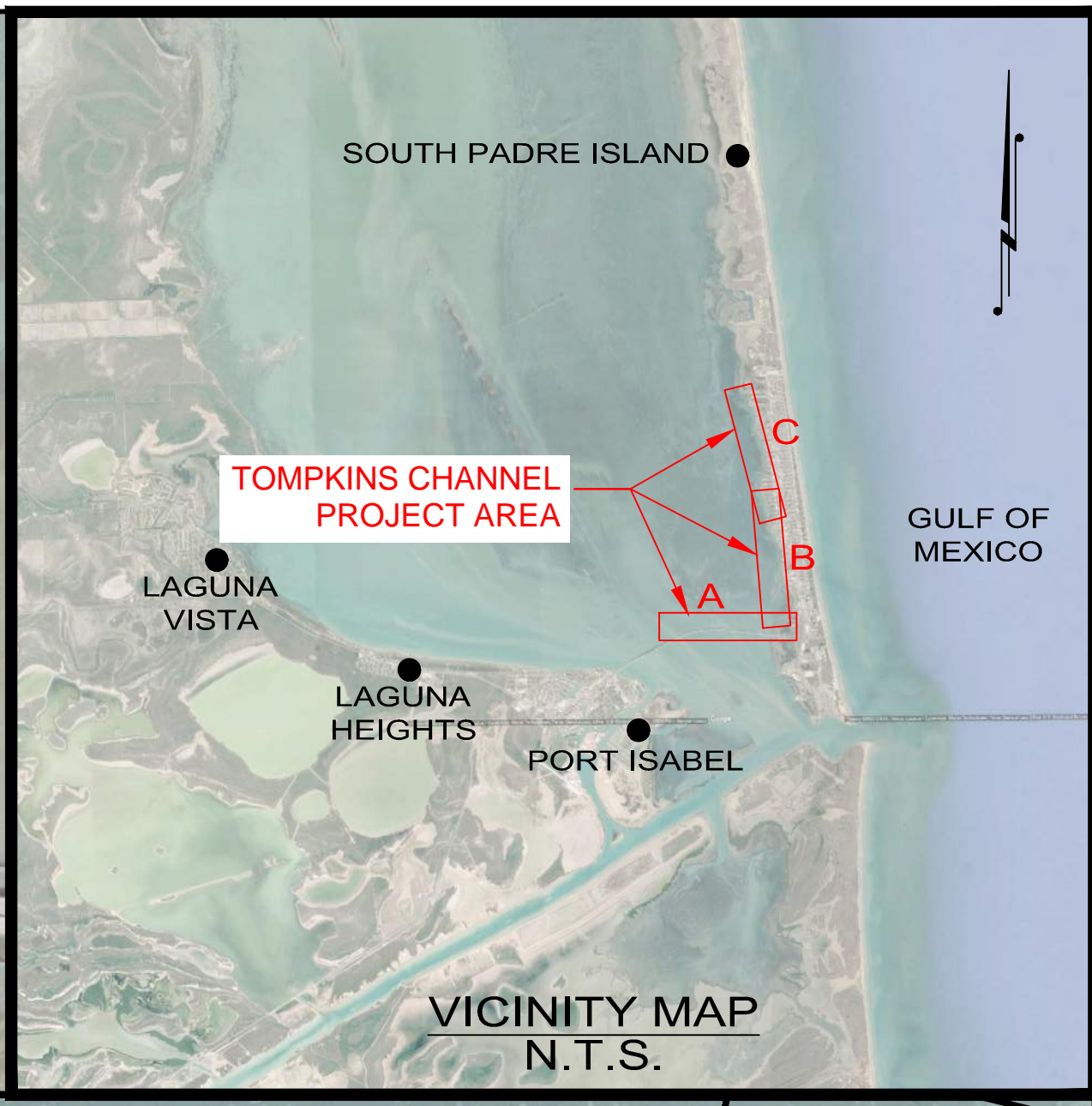
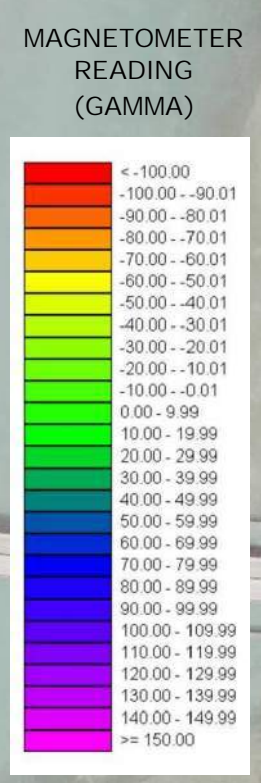
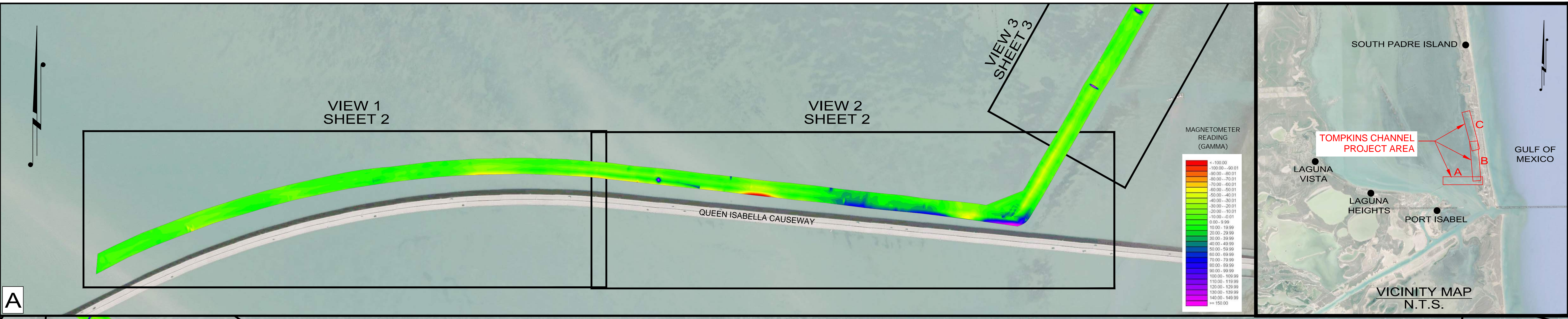
OWNER: LOT 2
 CITY OF SOUTH PADRE ISLAND
 P.O. BOX 40195
 SOUTH PADRE ISLAND, TEXAS 78597 G.F. NO. N/A
 2184D.WG

Mejia & Rose, Incorporated
 Engineering Surveying
 T.B.P.E. Reg. No. F-002670
 T.B.P.L.S Reg. No. 10023900
 1643 West Price Road (956) 544-3022
 P.O. Box 3761 Brownsville, Texas 78520
 Fax (956) 544-3068
 email: mandrinc@cngmail.com
 JOB NO. 2194D
 Gene G. Orive Jr.

The undersigned hereby certifies that the survey described hereon was made on the ground on SEPTEMBER 02, 2022, that the only improvements on the ground are as shown; that there are no visible encroachments, visible overlappings, apparent conflicts, or visible easements, except as shown hereon. THIS CERTIFICATION IS ONLY VALID WITH AN ORIGINAL SIGNATURE AND IF THE DRAWING CONTAINS NO ERASURES OR ADDITIONS.

E.H. Mejia
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3900





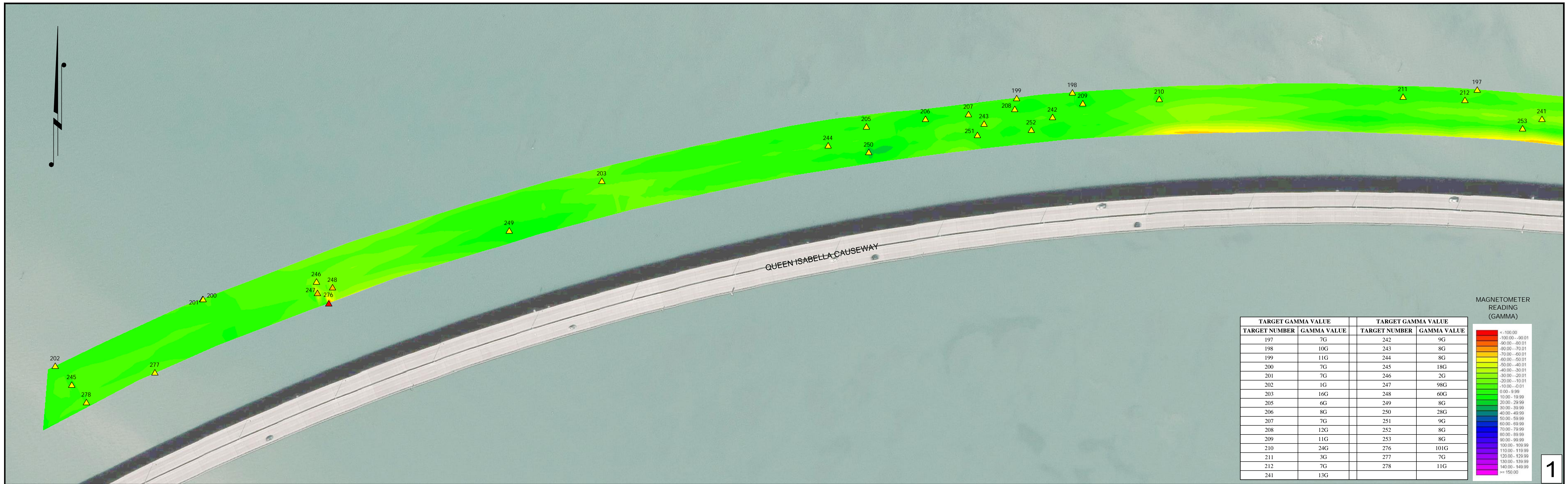
NOTES:
 1) MAGNETOMETER SURVEY WAS CONDUCTED BY NAIMSMITH MARINE SERVICES ON 15-18 DECEMBER, 2020. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
 2) HORIZONTAL DATUM: NAD83, TEXAS SOUTH ZONE, US FEET.

DUE TO GENERAL MAGNETIC INTERFERENCE IN THE SURVEY AREA PIPELINES AND OTHER SUBMERGED UTILITIES MAY NOT BE DETECTED BY THE MAGNETOMETER SURVEY

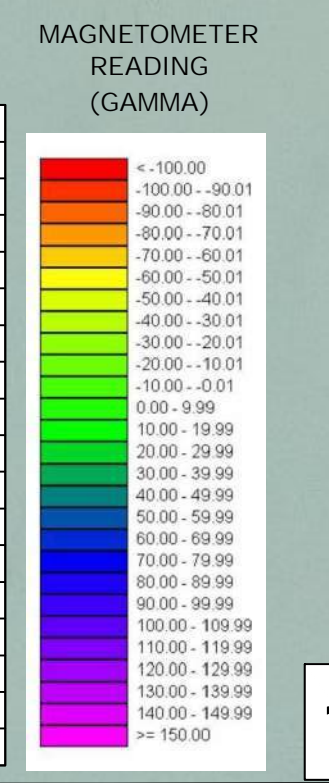
LEGEND:
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 ▲ MAG TARGET - 50 TO 100 GAMMA
 ▲ MAG TARGET - GREATER THAN 100 GAMMA

NO.	DATE	REVISION

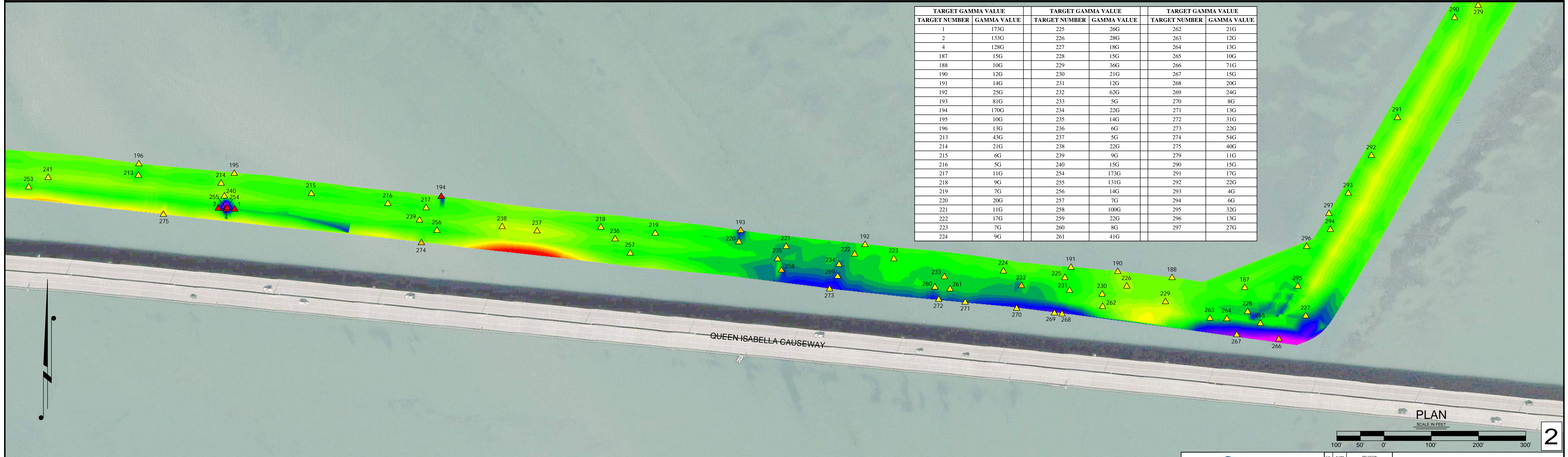
HDR, INC.
 TOMPKINS CHANNEL MAGNETOMETER SURVEY
 CAMERON COUNTY, TEXAS
 SCALE: 1" = 300'
 DRAWN BY: CDW
 SHEET 1 OF 5
 DATE: DEC. 2020



TARGET GAMMA VALUE		TARGET GAMMA VALUE	
TARGET NUMBER	GAMMA VALUE	TARGET NUMBER	GAMMA VALUE
197	7G	242	9G
198	10G	243	8G
199	11G	244	8G
200	7G	245	18G
201	7G	246	2G
202	1G	247	98G
203	16G	248	60G
205	6G	249	8G
206	8G	250	28G
207	7G	251	9G
208	12G	252	8G
209	11G	253	8G
210	24G	276	101G
211	3G	277	7G
212	7G	278	11G
241	13G		

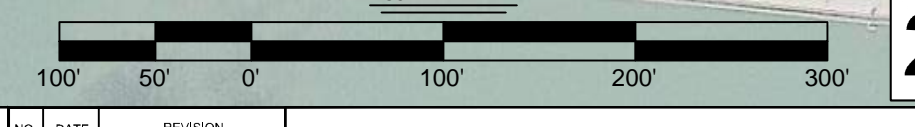


1



TARGET GAMMA VALUE		TARGET GAMMA VALUE		TARGET GAMMA VALUE	
TARGET NUMBER	GAMMA VALUE	TARGET NUMBER	GAMMA VALUE	TARGET NUMBER	GAMMA VALUE
1	173G	225	26G	262	21G
2	133G	226	28G	263	12G
4	128G	227	18G	264	13G
187	15G	228	15G	265	10G
188	10G	229	36G	266	71G
190	12G	230	21G	267	15G
191	14G	231	12G	268	20G
192	25G	232	62G	269	24G
193	81G	233	5G	270	8G
194	170G	234	22G	271	13G
195	10G	235	14G	272	31G
196	13G	236	6G	273	22G
213	43G	237	5G	274	54G
214	21G	238	22G	275	40G
215	6G	239	9G	279	11G
216	5G	240	15G	290	15G
217	11G	254	173G	291	17G
218	9G	255	131G	292	22G
219	7G	256	14G	293	4G
220	20G	257	7G	294	6G
221	11G	258	100G	295	32G
222	17G	259	22G	296	13G
223	7G	260	8G	297	27G
224	9G	261	41G		

PLAN



2

NOTES:
 1) MAGNETOMETER SURVEY WAS CONDUCTED BY NAISMITH MARINE SERVICES ON 15-18 DECEMBER, 2020. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
 2) HORIZONTAL DATUM: NAD83, TEXAS SOUTH ZONE, US FEET.

DUE TO GENERAL MAGNETIC INTERFERENCE IN THE SURVEY AREA PIPELINES AND OTHER SUBMERGED UTILITIES MAY NOT BE DETECTED BY THE MAGNETOMETER SURVEY

LEGEND:
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 ▲ MAG TARGET - 50 TO 100 GAMMA
 ▲ MAG TARGET - GREATER THAN 100 GAMMA



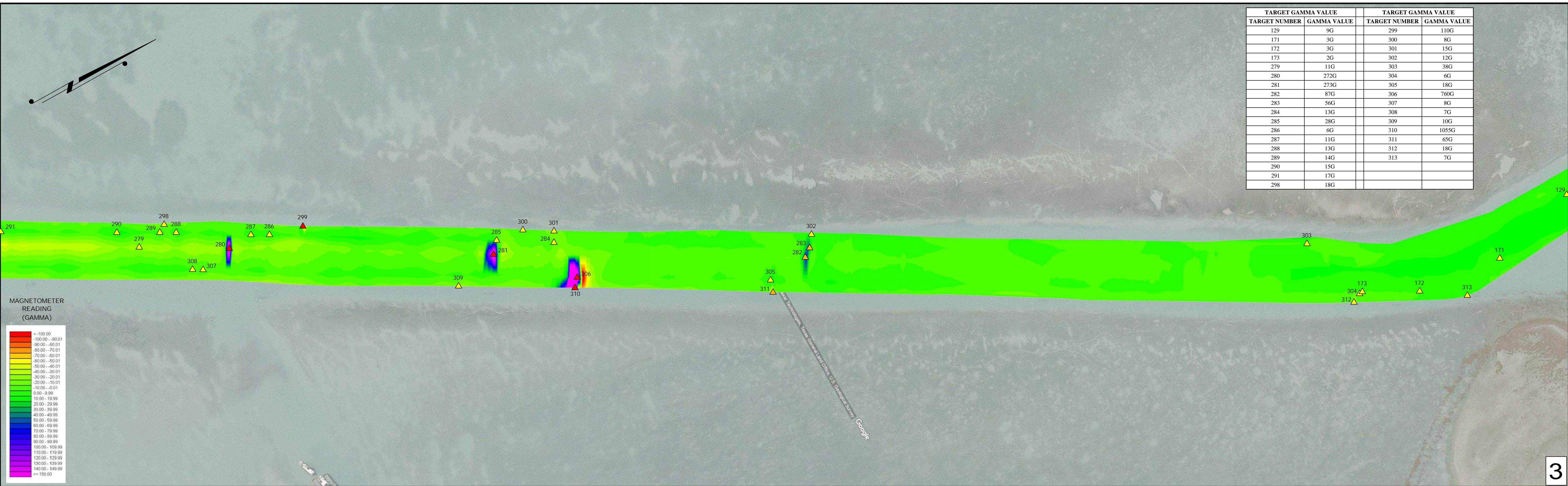
NO.	DATE	REVISION

TOMPKINS CHANNEL MAGNETOMETER SURVEY
CAMERON COUNTY, TEXAS

SCALE: 1" = 100'
DRAWN BY: CDW

SHEET 2 OF 5
DEC. 2020

TARGET GAMMA VALUE		TARGET GAMMA VALUE	
TARGET NUMBER	GAMMA VALUE	TARGET NUMBER	GAMMA VALUE
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171	3G	300	8G
172	3G	301	15G
173	2G	302	12G
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280	272G	304	6G
281	273G	305	18G
282	87G	306	760G
283	56G	307	8G
284	13G	308	7G
285	28G	309	10G
286	6G	310	1055G
287	11G	311	65G
288	13G	312	18G
289	14G	313	7G
290	15G		
291	17G		
298	18G		

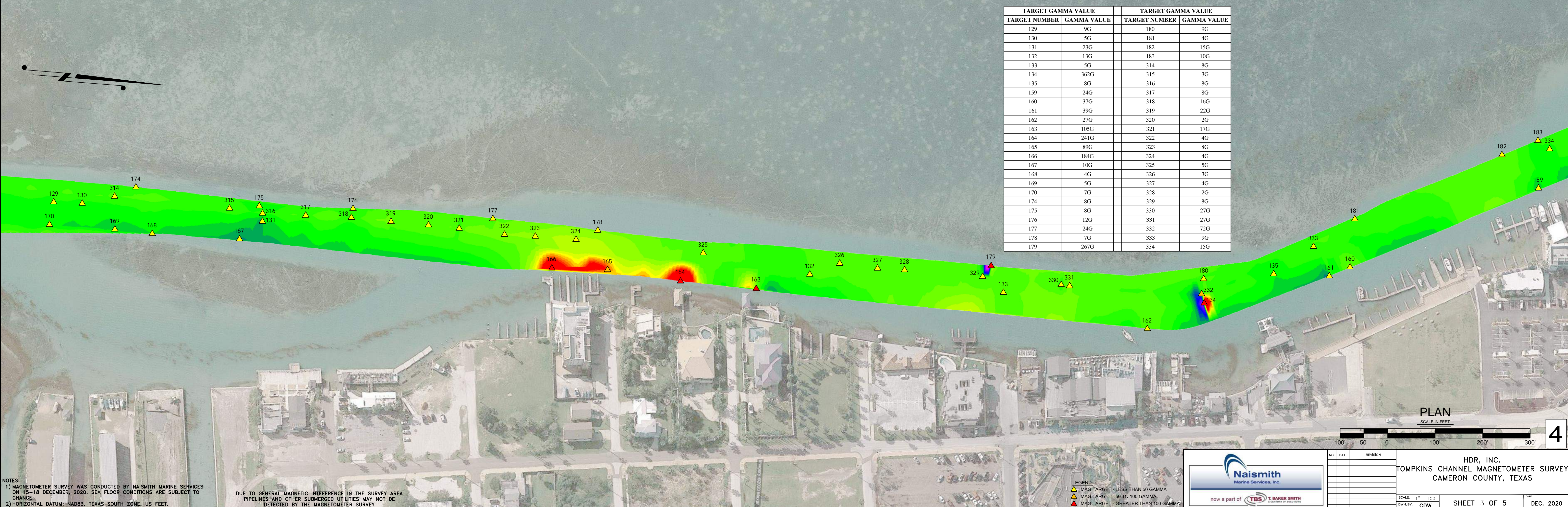


MAGNETOMETER READING (GAMMA)

100.00 - 100.01
90.00 - 100.01
80.00 - 70.01
70.00 - 60.01
60.00 - 50.01
50.00 - 40.01
40.00 - 30.01
30.00 - 20.01
20.00 - 10.01
10.00 - 0.01
0.00 - 9.99
10.00 - 19.99
20.00 - 29.99
30.00 - 39.99
40.00 - 49.99
50.00 - 59.99
60.00 - 69.99
70.00 - 79.99
80.00 - 89.99
90.00 - 99.99
100.00 - 109.99
110.00 - 119.99
120.00 - 129.99
130.00 - 139.99
140.00 - 149.99
150.00

3

TARGET GAMMA VALUE		TARGET GAMMA VALUE	
TARGET NUMBER	GAMMA VALUE	TARGET NUMBER	GAMMA VALUE
129	9G	180	9G
130	5G	181	4G
131	23G	182	15G
132	13G	183	10G
133	5G	314	8G
134	362G	315	3G
135	8G	316	8G
159	24G	317	8G
160	37G	318	16G
161	39G	319	22G
162	27G	320	2G
163	105G	321	17G
164	241G	322	4G
165	89G	323	8G
166	184G	324	4G
167	10G	325	5G
168	4G	326	3G
169	5G	327	4G
170	7G	328	2G
174	8G	329	8G
175	8G	330	27G
176	12G	331	27G
177	24G	332	72G
178	7G	333	9G
179	267G	334	15G



NOTES:
 1) MAGNETOMETER SURVEY WAS CONDUCTED BY NAISMITH MARINE SERVICES ON 11-18 DECEMBER, 2020. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
 2) HORIZONTAL DATUM: NAD83, TEXAS SOUTH ZONE, US FEET.

DUE TO GENERAL MAGNETIC INTERFERENCE IN THE SURVEY AREA PIPELINES AND OTHER SUBMERGED UTILITIES MAY NOT BE DETECTED BY THE MAGNETOMETER SURVEY

LEGEND:
 ▲ MAG TARGET - LESS THAN 50 GAMMA
 ▲ MAG TARGET - 50 TO 100 GAMMA
 ▲ MAG TARGET - GREATER THAN 100 GAMMA

Naismith Marine Services, Inc.
 now a part of TBS T. BAKER SMITH

PLAN
 SCALE IN FEET
 100' 50' 0' 100' 200' 300'

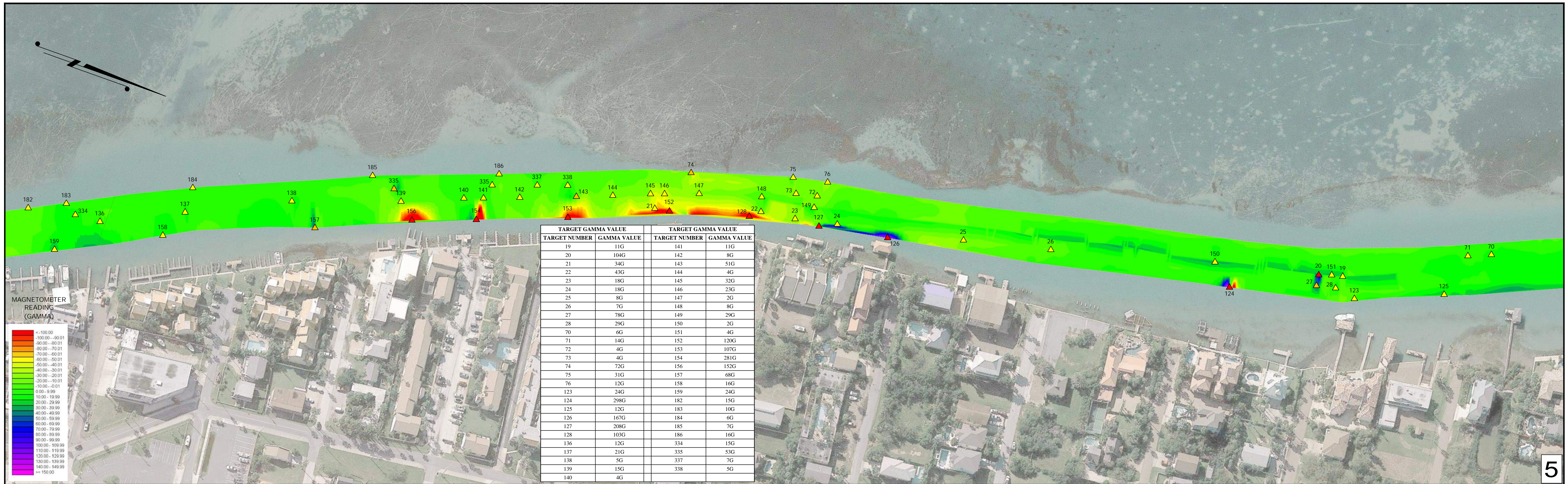
NO.	DATE	REVISION

HDR, INC.
 TOMPKINS CHANNEL MAGNETOMETER SURVEY
 CAMERON COUNTY, TEXAS

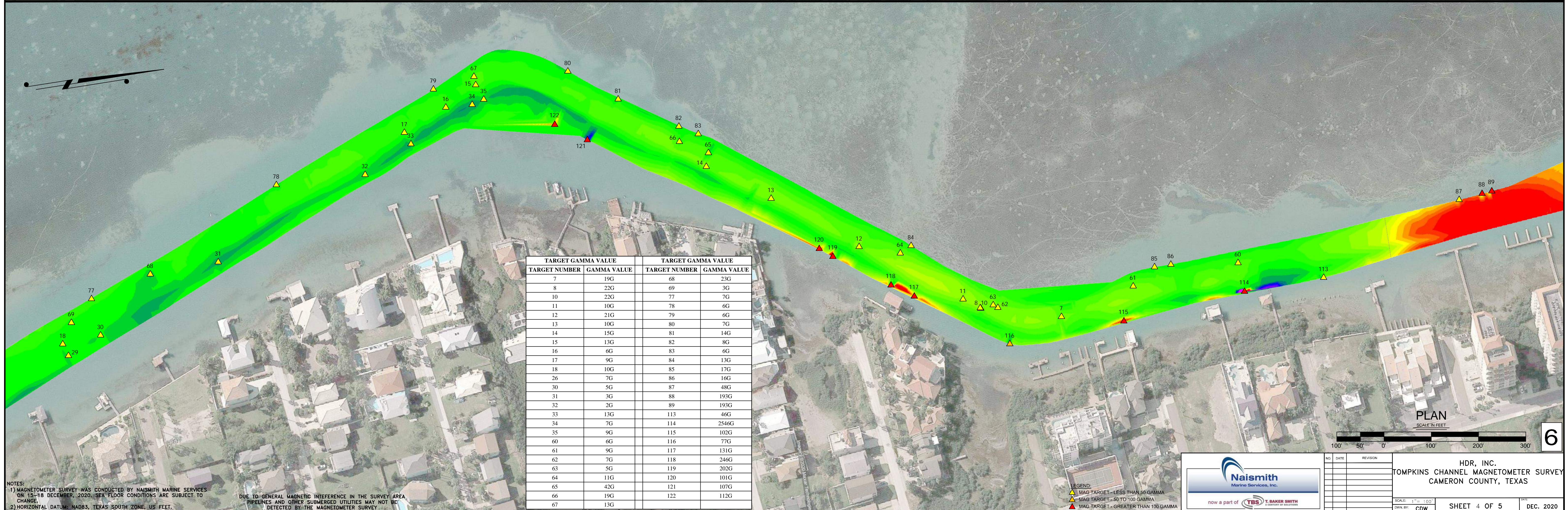
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 DRAWN BY: CDW

SHEET 3 OF 5
 DEC. 2020

4



5



6

NOTES:
 1) MAGNETOMETER SURVEY WAS CONDUCTED BY NAISMITH MARINE SERVICES ON 15-18 DECEMBER, 2020. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
 2) HORIZONTAL DATUM: NAD83, TEXAS SOUTH ZONE, US FEET.

DUE TO GENERAL MAGNETIC INTERFERENCE IN THE SURVEY AREA, PIPELINES AND OTHER SUBMERGED UTILITIES MAY NOT BE DETECTED BY THE MAGNETOMETER SURVEY.

PLAN
SCALE IN FEET

Naismith
Marine Services, Inc.

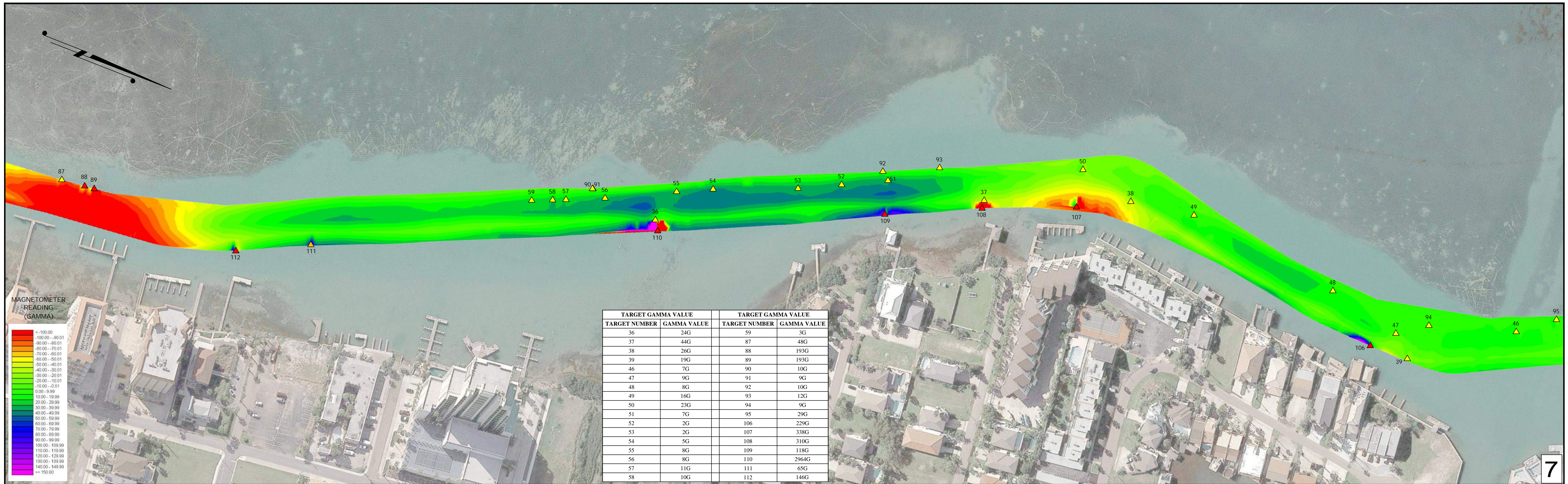
now a part of **TBS** T. BAKER SMITH
a division of BAKER

NO.	DATE	REVISION

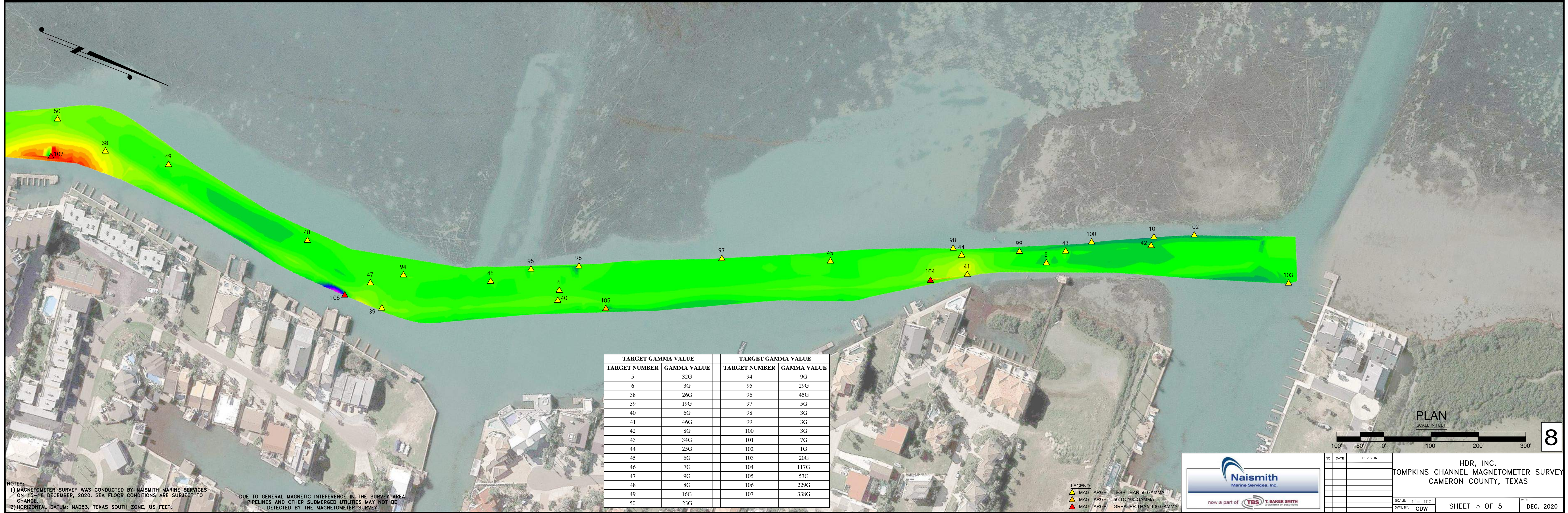
TOMPKINS CHANNEL MAGNETOMETER SURVEY
CAMERON COUNTY, TEXAS

SCALE: 1" = 100'
DRAWN BY: CDW

HDR, INC.
SHEET 4 OF 5
DEC. 2020



7



8

NOTES:
 1) MAGNETOMETER SURVEY WAS CONDUCTED BY NAISMITH MARINE SERVICES ON 12-16 DECEMBER, 2020. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
 2) HORIZONTAL DATUM: NAD83, TEXAS SOUTH ZONE, US FEET.
 DUE TO GENERAL MAGNETIC INTERFERENCE IN THE SURVEY AREA PIPELINES AND OTHER SUBMERGED UTILITIES MAY NOT BE DETECTED BY THE MAGNETOMETER SURVEY.

PLAN
 SCALE IN FEET
 100' 50' 0' 100' 200' 300'

NO.	DATE	REVISION

HDR, INC.
 TOMPKINS CHANNEL MAGNETOMETER SURVEY
 CAMERON COUNTY, TEXAS
 SCALE: 1" = 100'
 DRAWN BY: CDW
 SHEET 5 OF 5
 DEC. 2020

SECTION 01 12 00

PERMITS

PART 1 GENERAL

1.1 OWNER-OBTAINED PERMITS

- a. The Owner has three permits in-hand that are associated with this project: 1) Exhibit A - U.S. Army Corps of Engineers (USACE) Permit SWG-1996-00026, LOP; 2) Exhibit B - Texas General Land Office Coastal Lease No. CL20110002; and 3) Exhibit C - USACE Permit 22969.
- b. A copy of each permit is attached at the end of this section. The Contractor shall comply with all provisions contained in the permits. Where dimensions or configurations conflict between the construction drawings and the permit drawings, the dimensions or configurations shown on the construction drawings shall govern.
- c. Contractor shall file all required notifications to regulatory agencies.

1.2 CONTRACTOR-OBTAINED PERMITS

- a. Any other necessary permits not mentioned in Paragraph 1.1 shall be the responsibility of Contractor.
- b. All Contractor-obtained permits, Contractor shall make application for and pay for any necessary permit fees, temporary or permanent utility interruption fees, and/or re-location fees.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411

April 20, 2022

Corpus Christi Regulatory Field Office

SUBJECT: Permit SWG-1996-00026; Letter of Permission

City of South Padre Island
Attention: Ms. Kristina Boburka
321 Padre Boulevard
South Padre Island, Texas 78597

Dear Ms. Boburka:

This is in reference to your request, dated February 27, 2022, submitted on your behalf by HDR Inc, to extend the previously authorized maintenance dredging of the South Padre Island Tompkins Channel to a depth of -6.3 feet mean lower low water (previously authorized as -6 feet Mean Low Tide) and placement of dredged material at the previously authorized upland Dredge Material Placement Area (DMPA) at Sea Horse Harbor for ten years. The project site is located in Lower Laguna Madre at Tompkins Channel, in South Padre Island, Cameron County, Texas.

Your request is approved by this Letter of Permission (LOP) pursuant to Section 10 of the Rivers and Harbors Act of 1899. All work is to be performed in accordance with the enclosed plans in 27 sheets and the permit conditions. The time limit for completing the work authorized ends on December 31, 2032. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

The following special condition(s) have been added to your authorization:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. When structures or work authorized by this permit are determined by the District Engineer to have become abandoned, obstructive to navigation or cease to be used for the purpose for which they were permitted, such structures or other work must be removed, the area cleared of all obstructions, and written notice given to the Corpus Christi Regulatory Field Office within 30 days of completion.
3. The permittee must install and maintain, at the permittee's expense, any safety lights, signs and signals required by U.S. Coast Guard, through regulations or otherwise, on the permittee's fixed structures. To receive a U.S. Coast Guard Private Aids to Navigation marking determination, at no later than 30 days prior to installation of any fixed structures in navigable waters and/or prior to installation of any floating private aids to navigation, you are required to contact the Eighth Coast Guard District (dpw), 500 Poydras St., Suite 1230, New Orleans, LA 70130, (504) 671-2328 or via email to: D8oanPATON@uscg.mil. For general information related to Private Aids to Navigation please visit the Eighth Coast Guard District web site at: <https://www.atlanticarea.uscg.mil/District-8/District-Divisions/Waterways/PATON/>

This LOP does not address nor include any consideration for geographic jurisdiction on aquatic resources and shall not be interpreted as such. If you have any questions regarding this LOP, please contact Mr. Michael R. Gala at the letterhead address or by telephone at 361-814-5847 ext. 1009. Please notify the Corpus Christi Regulatory Field Office in writing at the letterhead address, upon completion of the authorized project.

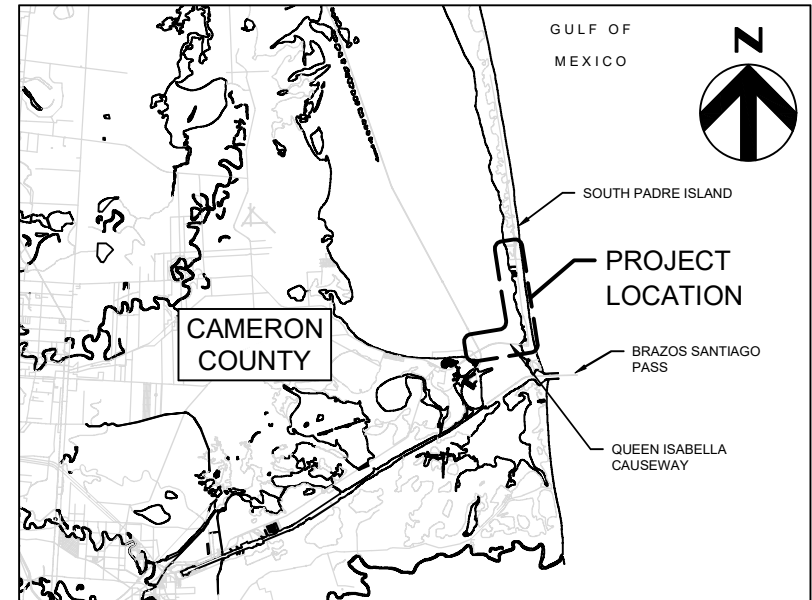
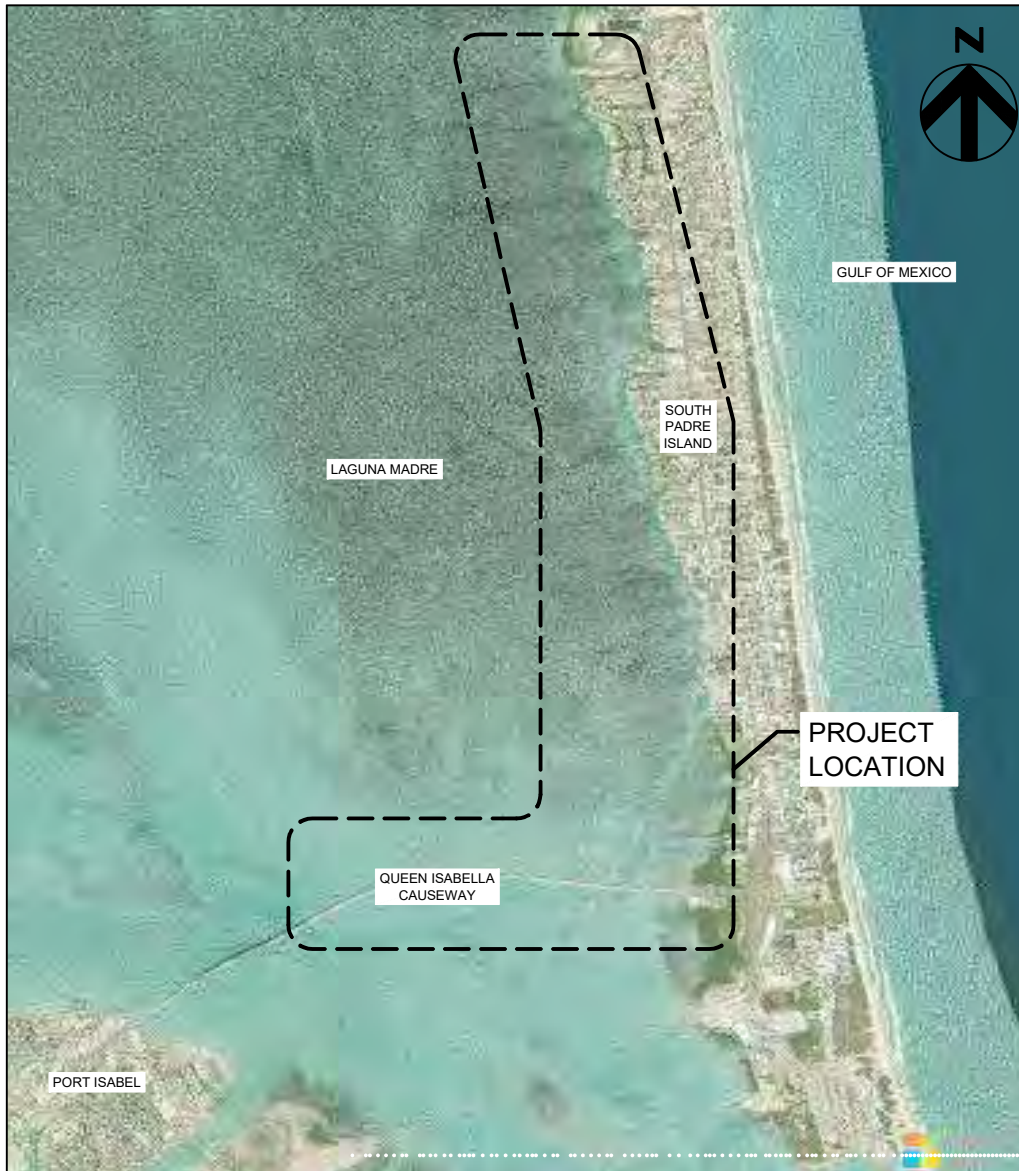
FOR THE DISTRICT COMMANDER:



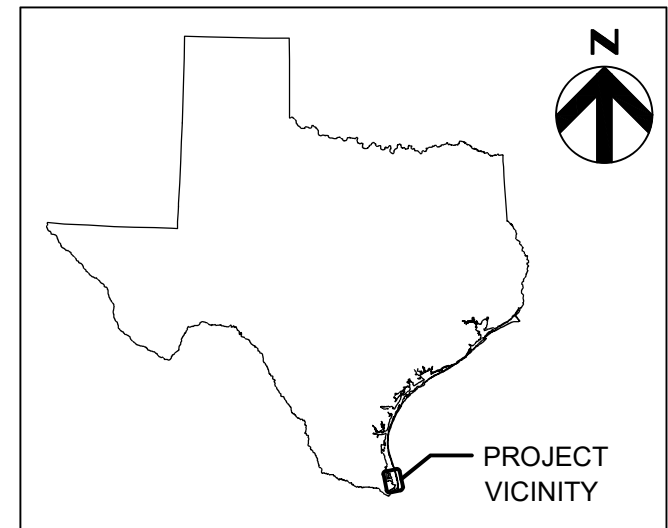
Kristie A. Wood
Supervisor
Corpus Christi Regulatory Field Office

cc w/Encls.

HDR Engineering, Inc. - Nicole.morgan@hdrinc.com
Eighth Coast Guard District, New Orleans, LA
National Oceanic and Atmospheric Administration (NOAA), National Ocean Service
(NOS), Coast & Geodetic Survey, Silver Spring, MD
Texas General Land Office



LOCATION MAP



VICINITY MAP



ACTIVITY: TOMPKINS CHANNEL
 MAINTENANCE DREDGING
 APPLICANT: CITY OF SOUTH PADRE ISLAND
 DATE: 10-18-2021

HDR PROJECT NO: 10310755
 DATUM: MLLW
 REV. DATE:
 SHEET 01 OF 27

FOR COE USE ONLY
 PERMIT APPLICATION NO.: _____
 APPLICANT NAME: _____
 SHEET _____ OF _____

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF PERMITTING ONLY UNDER THE AUTHORITY OF DANIEL E. GARZA, P.E. TX-104628 ON 10/01/2021. IT IS NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.



ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING

APPLICANT: CITY OF SOUTH PADRE ISLAND

DATE: 10-18-2021

HDR PROJECT NO: 10310755

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SHEET 02 OF 27

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1
01 ENLARGED LAYOUT
1" = 300'



ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING

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HDR PROJECT NO: 10310755

DATUM: MLLW

REV. DATE:

SHEET 03 OF 27

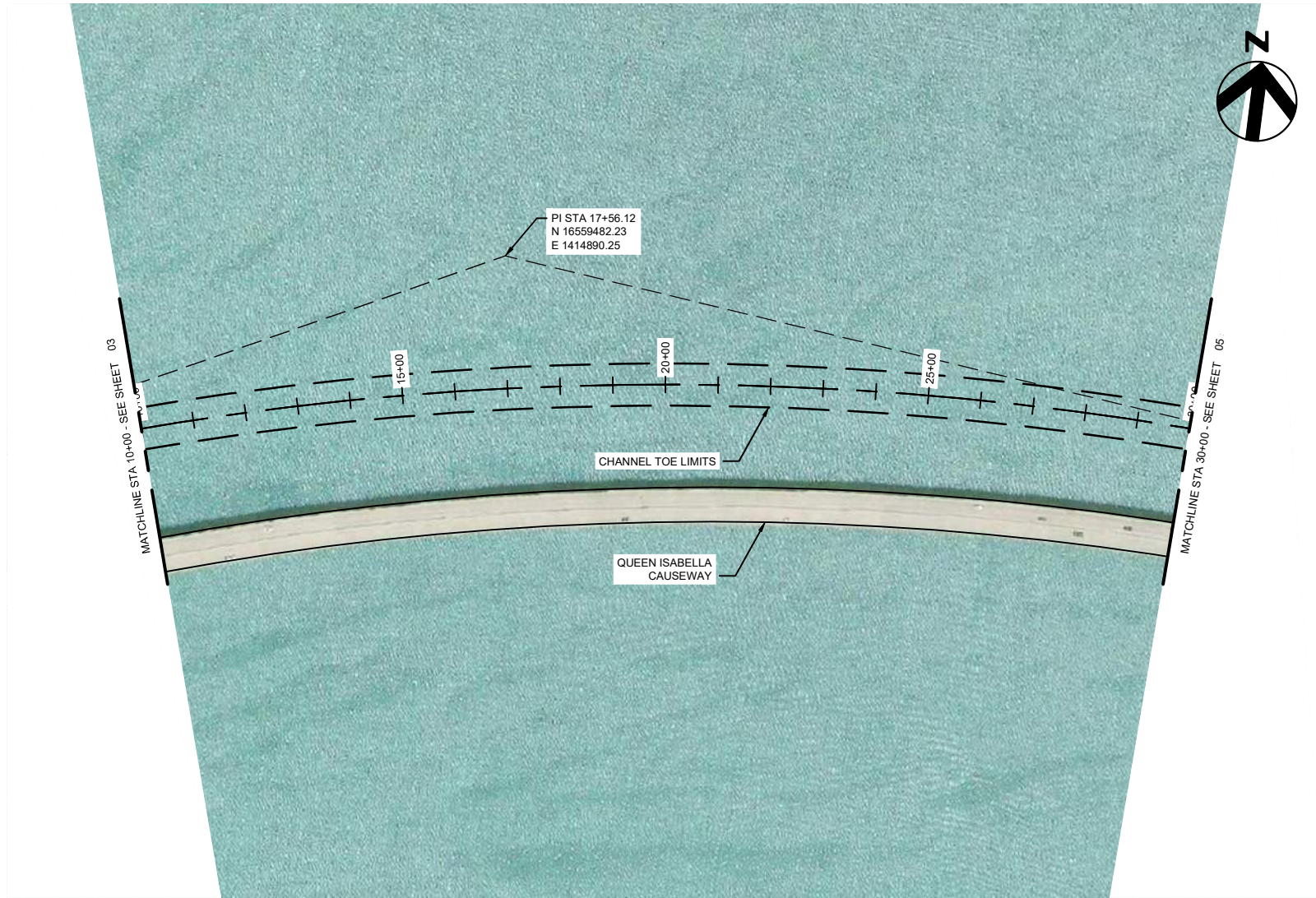
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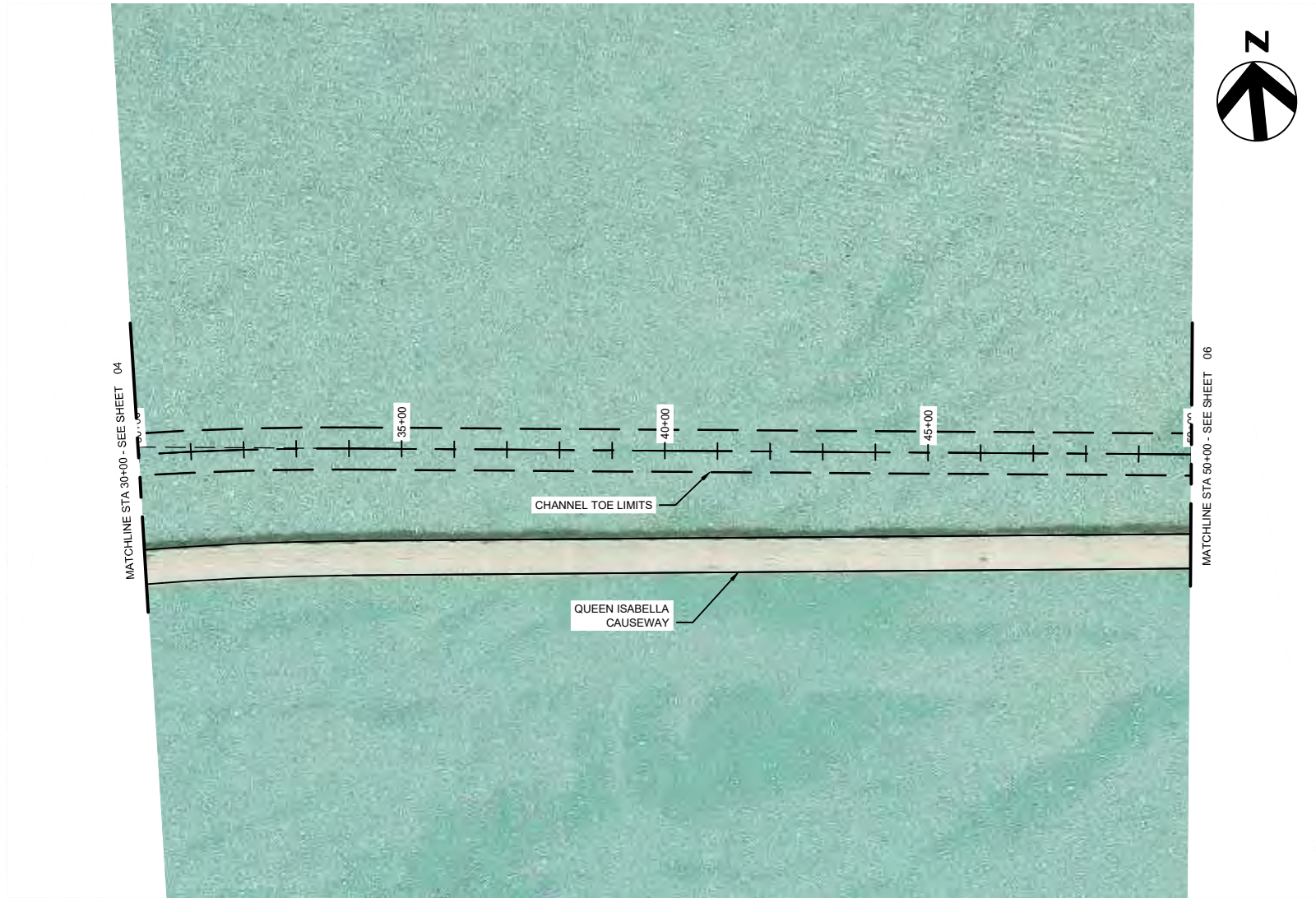
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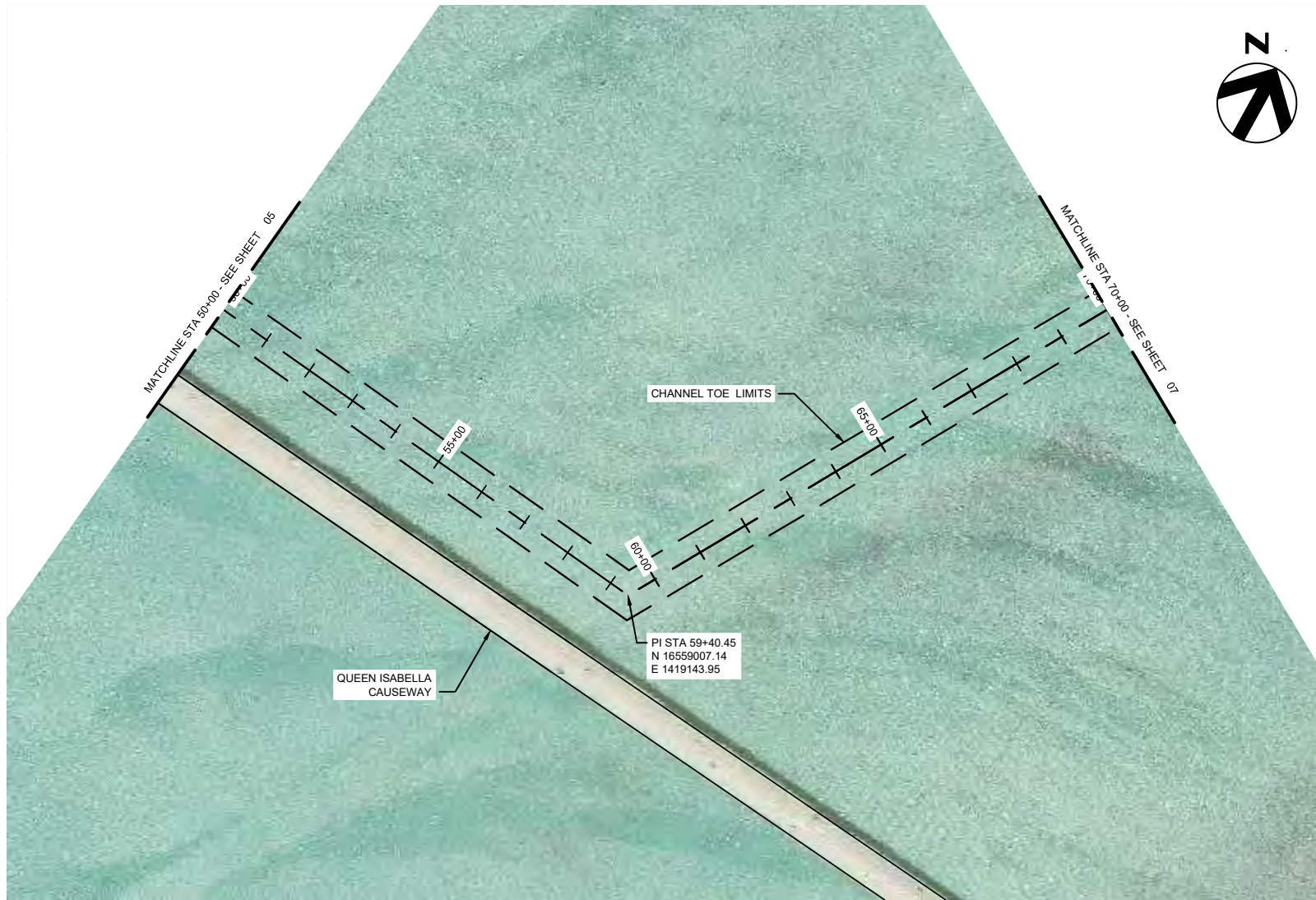


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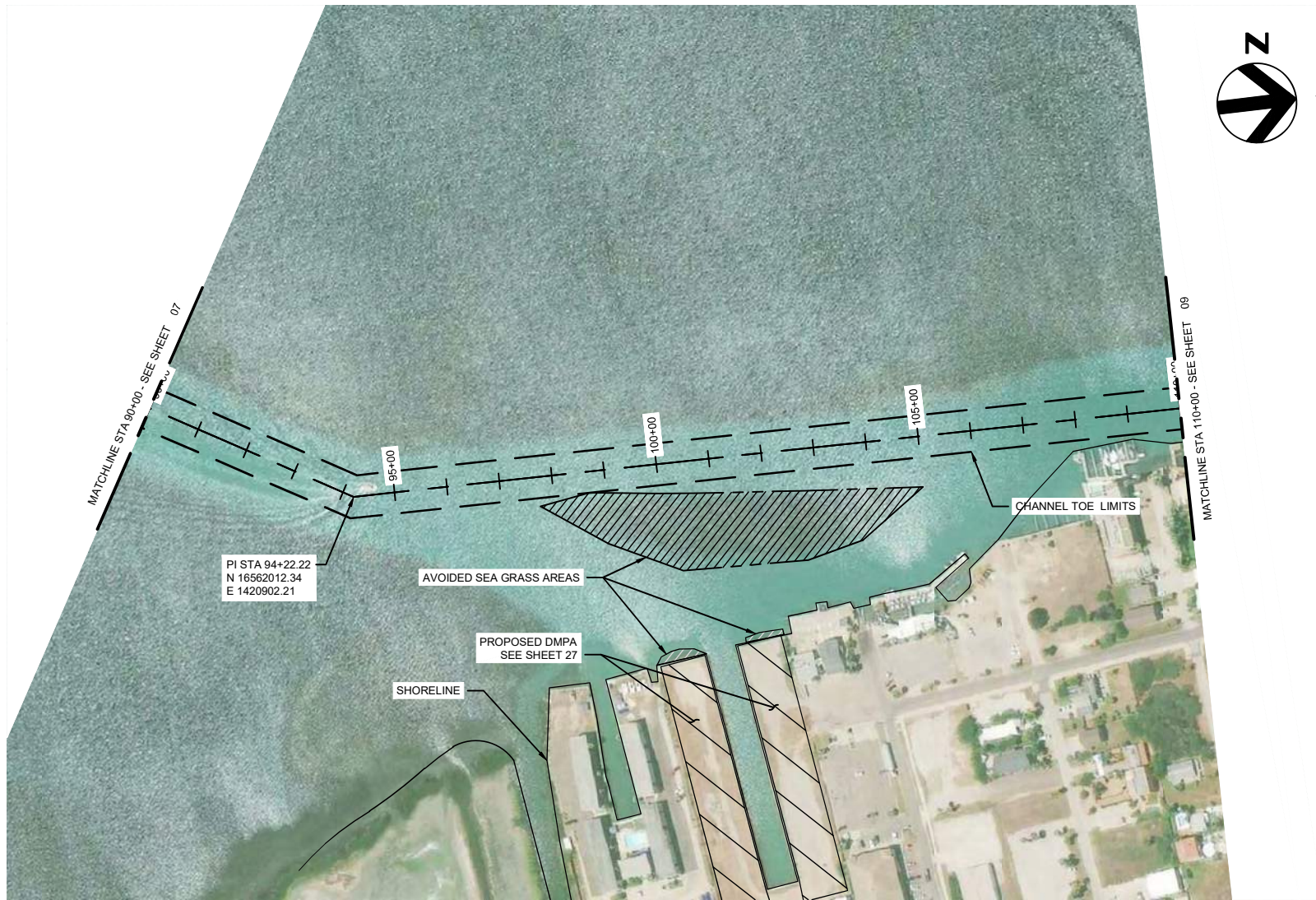
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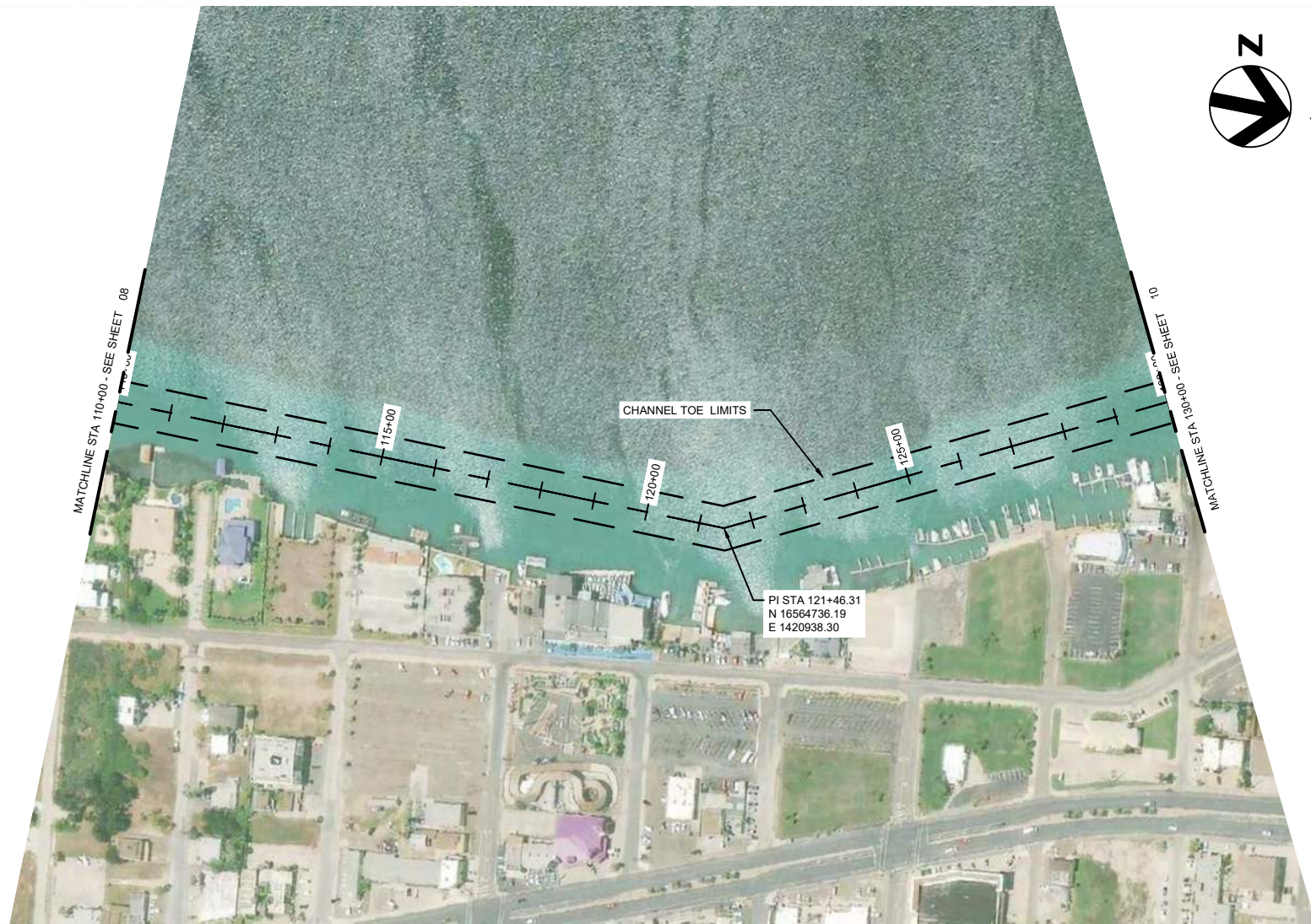


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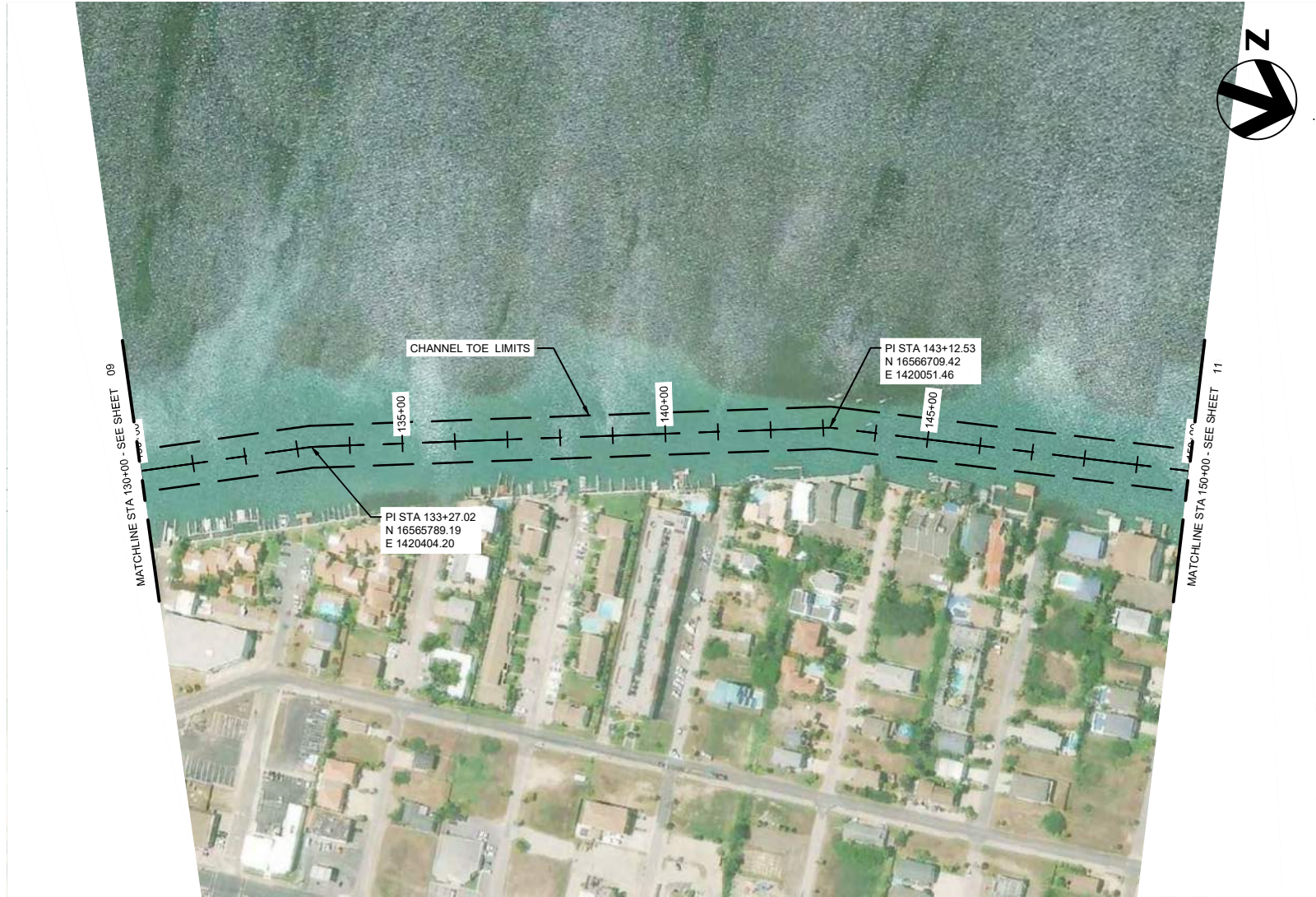


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SHEET 12 OF 27

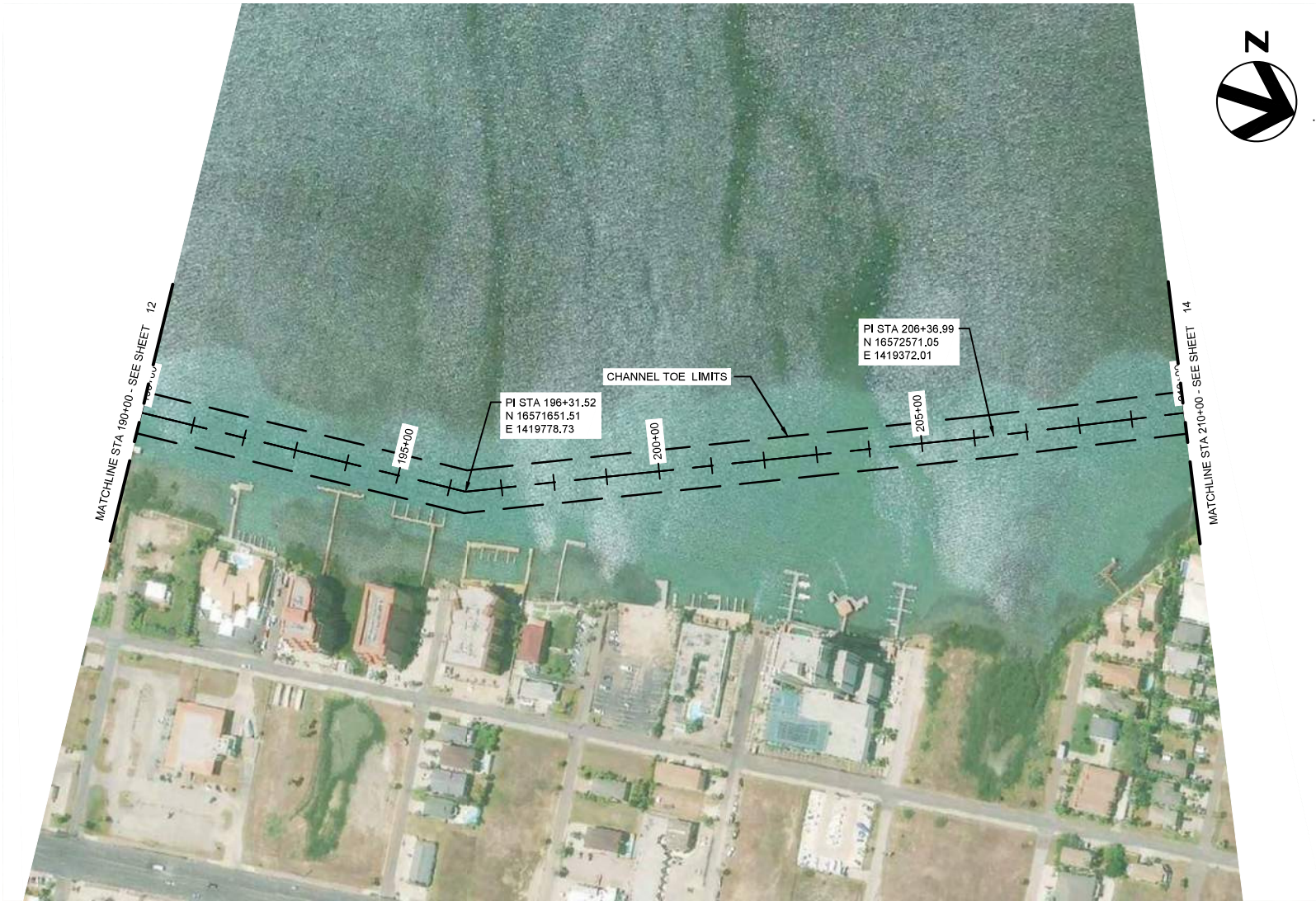
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SHEET 15 OF 27

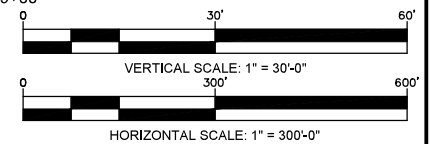
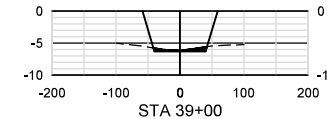
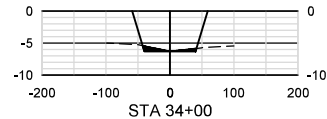
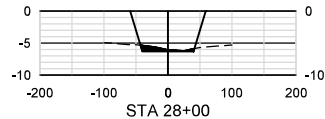
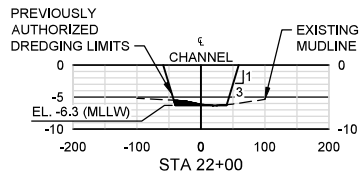
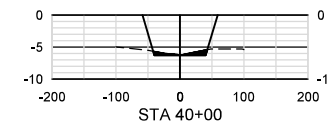
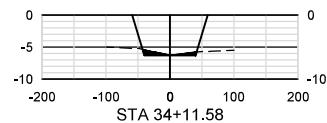
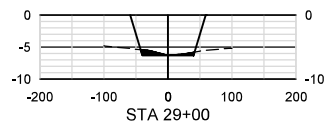
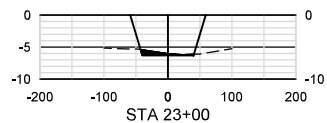
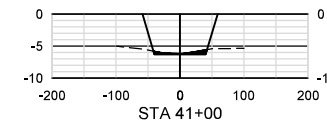
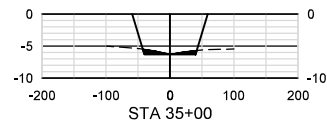
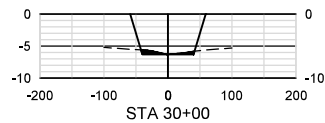
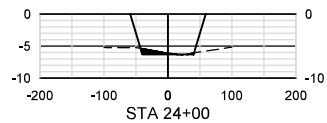
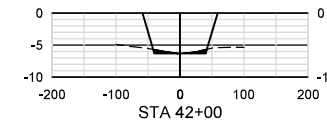
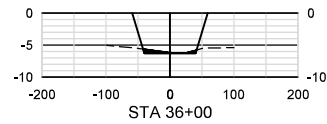
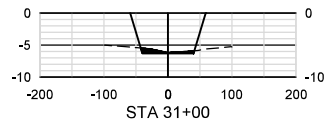
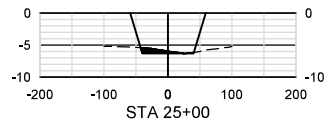
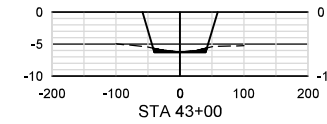
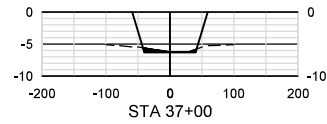
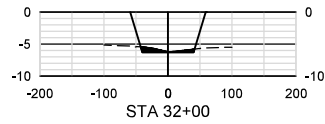
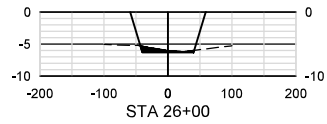
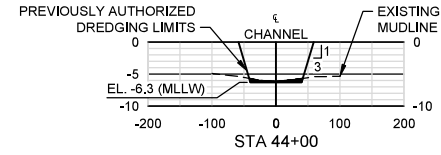
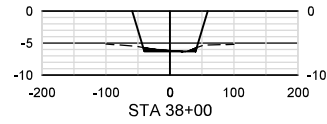
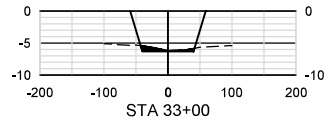
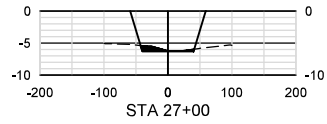
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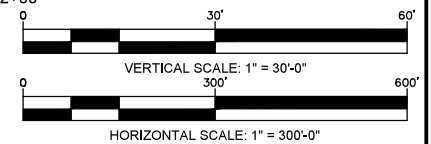
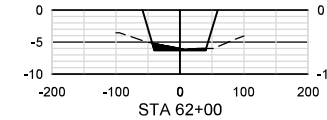
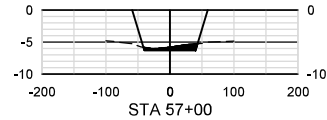
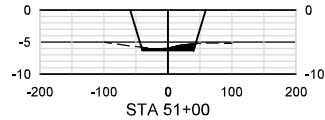
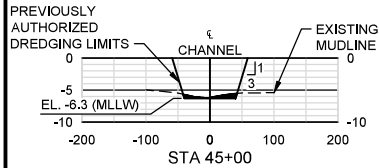
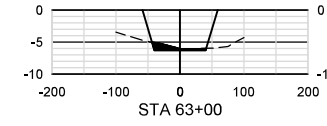
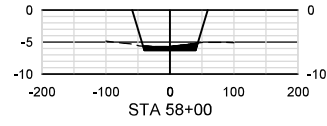
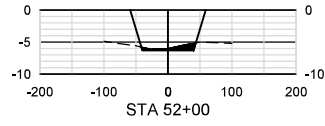
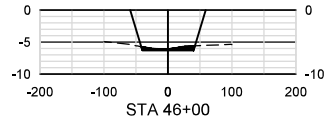
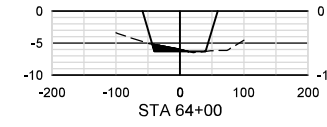
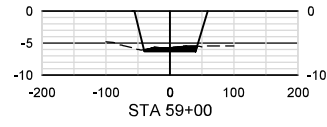
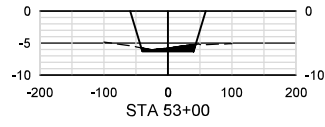
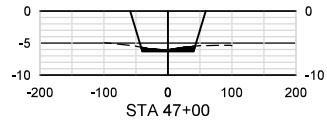
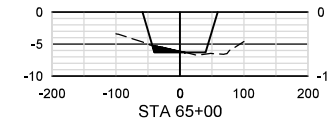
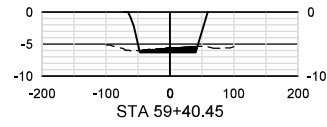
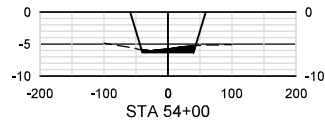
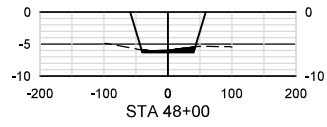
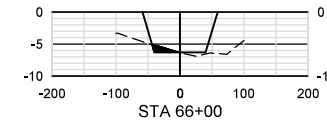
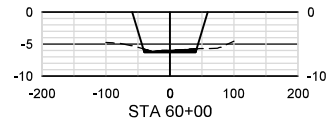
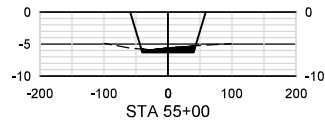
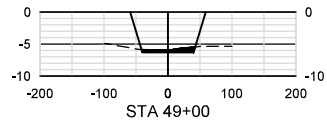
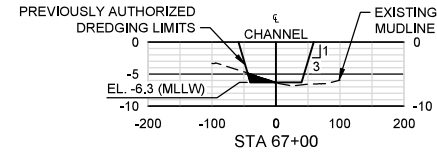
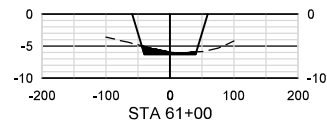
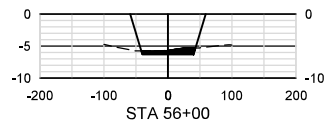
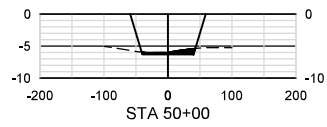
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APPLICANT: CITY OF SOUTH PADRE ISLAND
DATE: 10-18-2021

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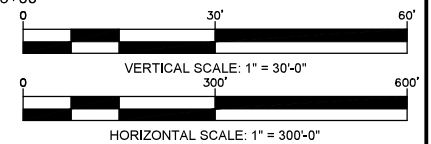
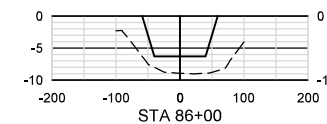
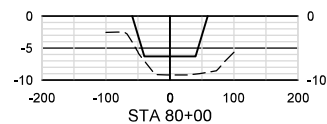
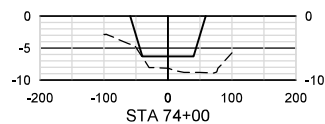
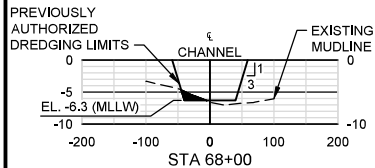
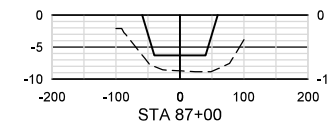
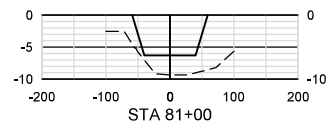
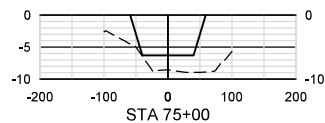
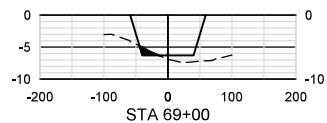
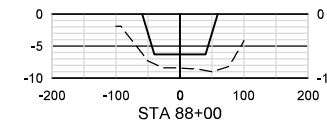
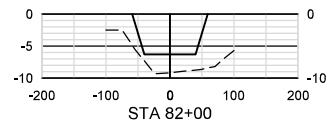
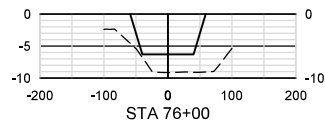
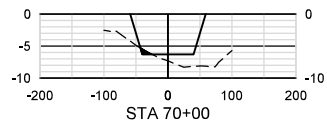
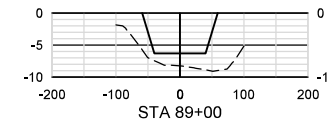
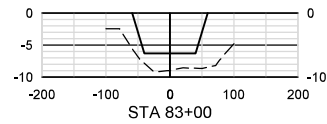
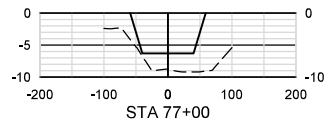
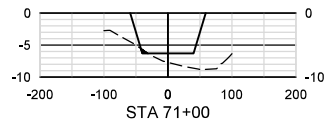
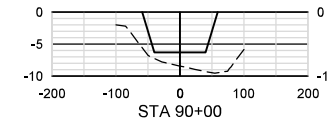
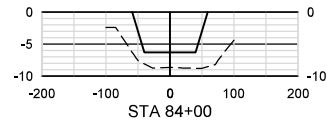
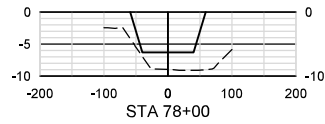
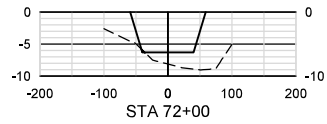
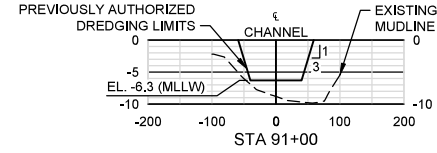
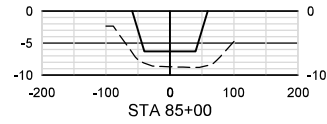
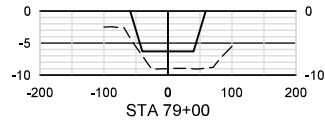
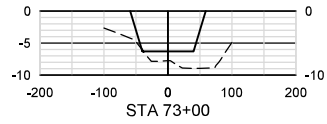
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APPLICANT: CITY OF SOUTH PADRE ISLAND
DATE: 10-18-2021

HDR PROJECT NO: 10310755
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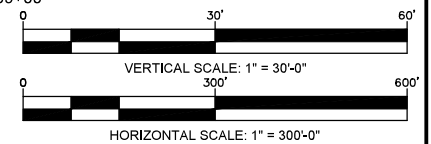
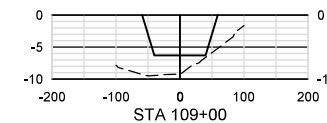
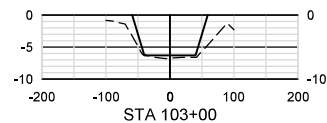
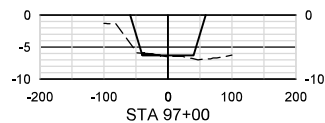
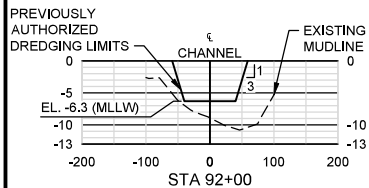
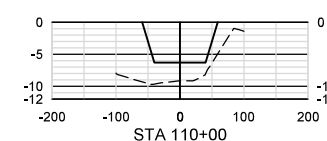
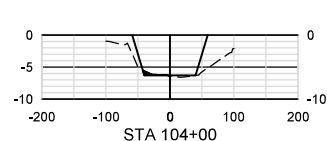
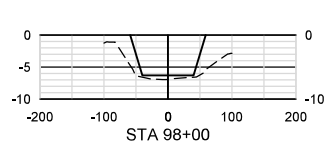
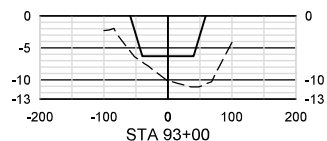
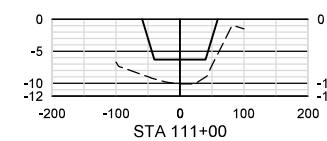
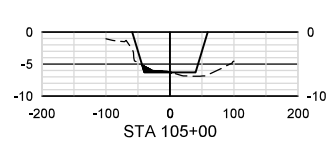
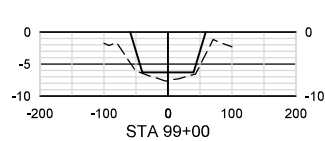
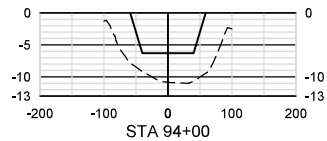
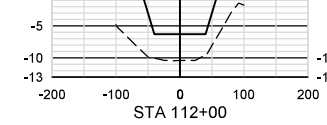
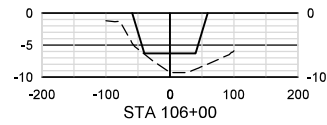
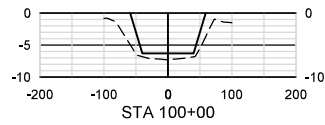
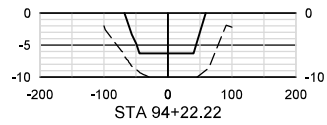
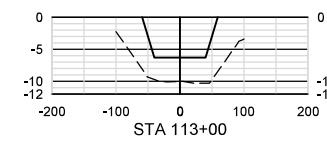
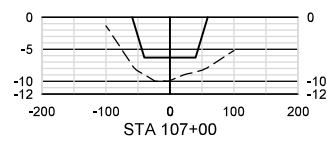
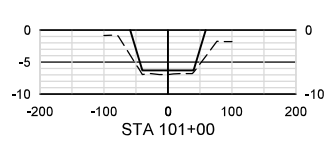
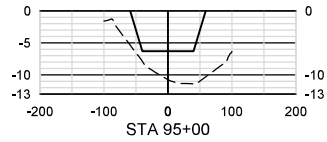
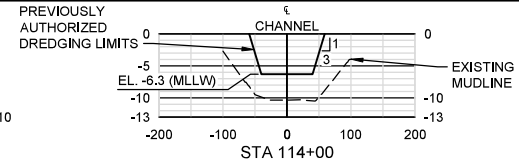
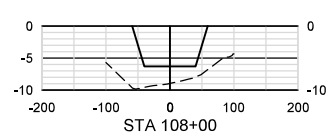
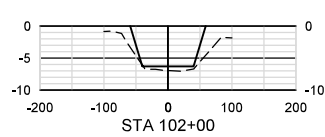
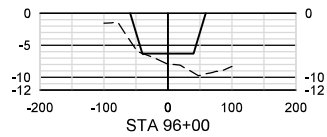
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DATE: 10-18-2021

HDR PROJECT NO: 10310755
DATUM: MLLW
REV. DATE:
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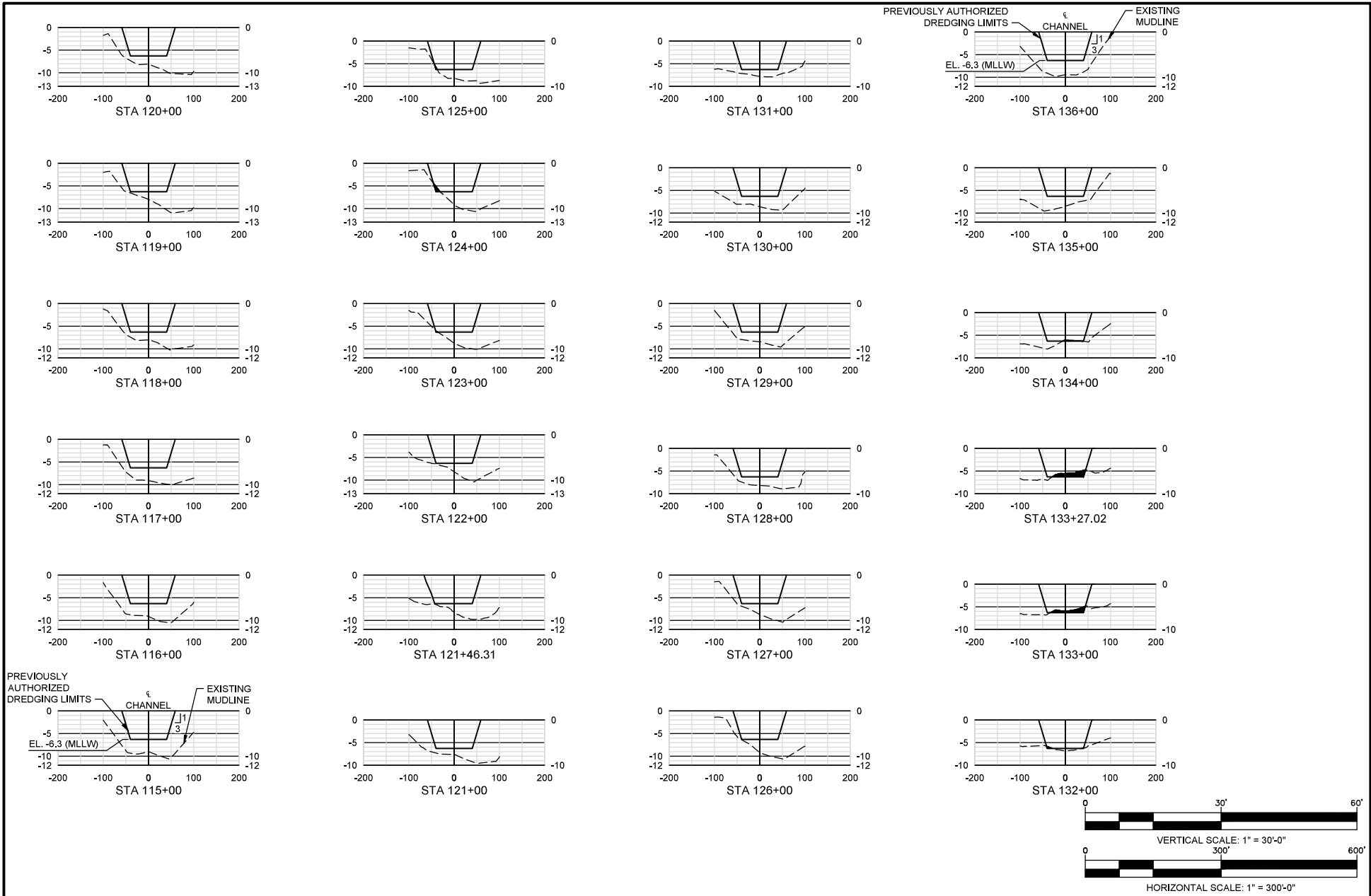
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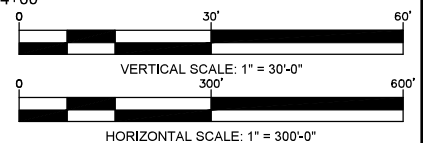
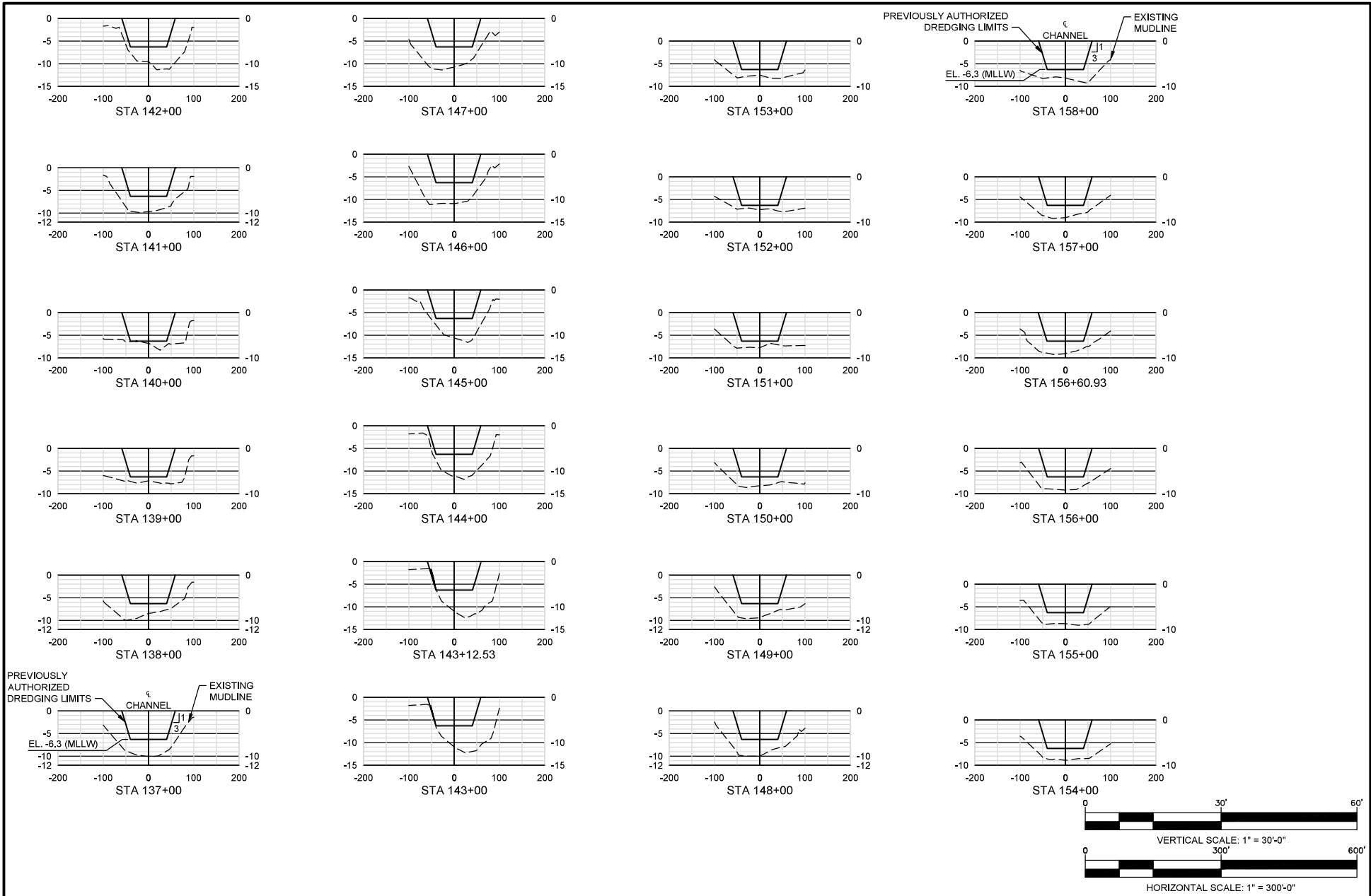
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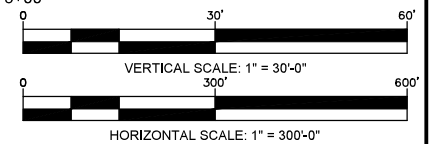
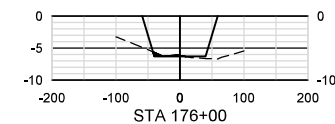
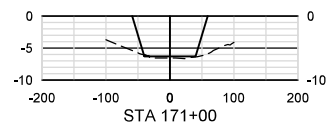
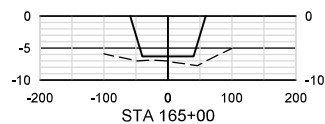
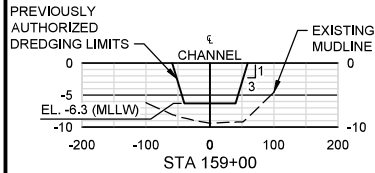
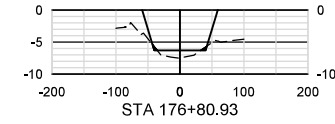
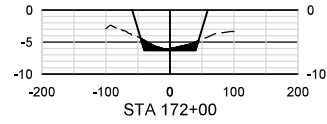
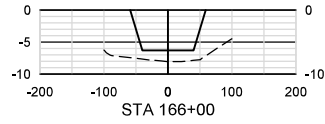
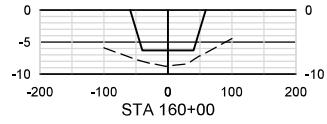
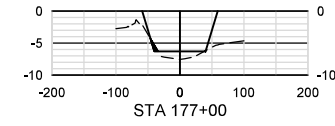
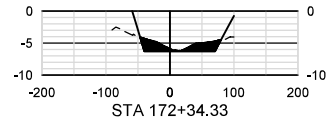
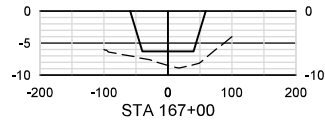
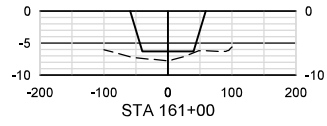
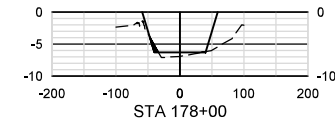
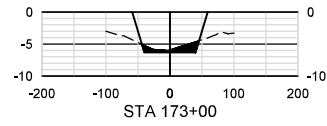
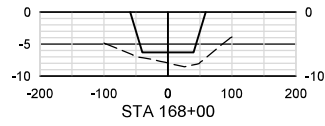
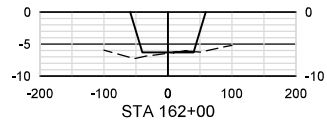
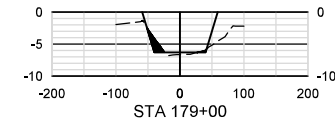
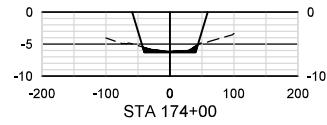
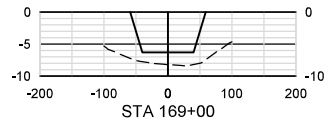
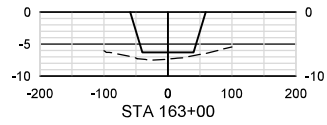
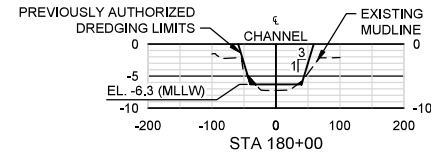
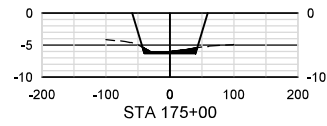
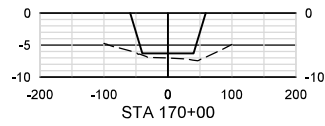
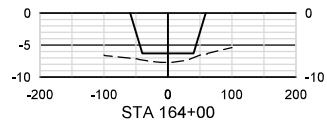
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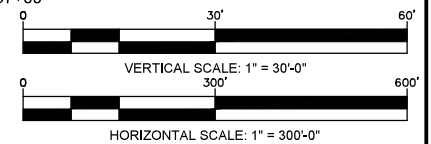
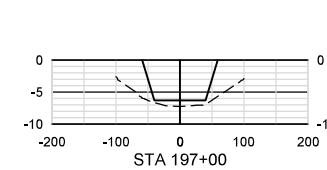
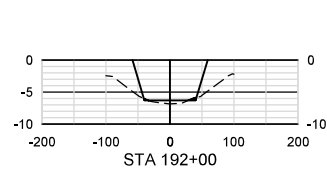
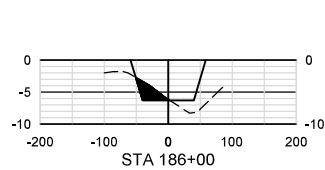
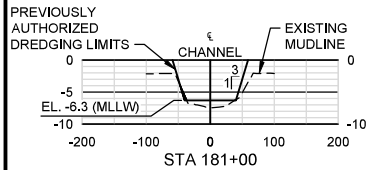
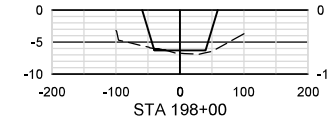
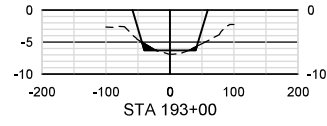
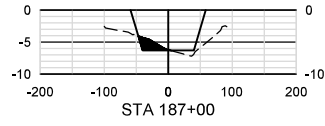
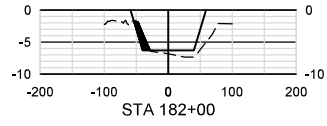
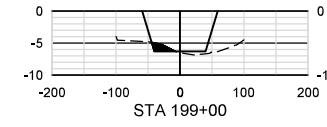
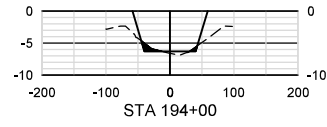
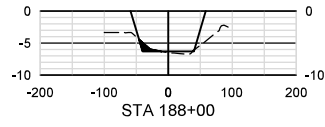
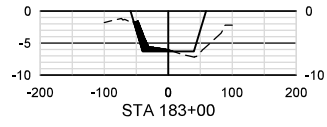
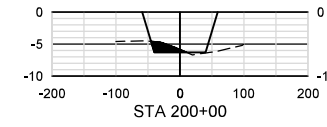
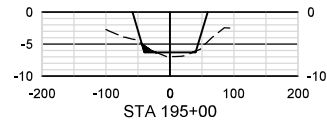
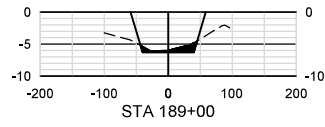
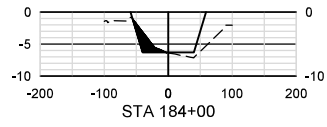
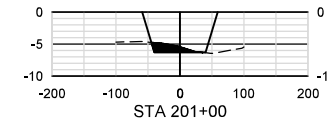
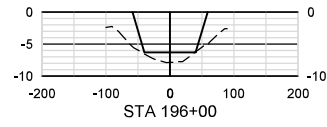
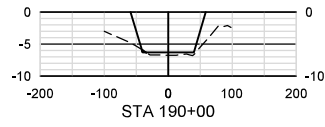
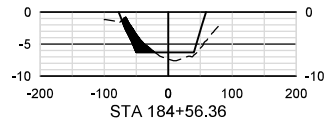
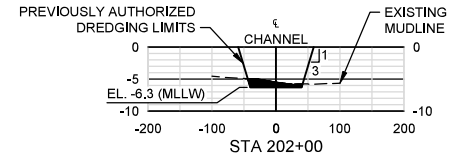
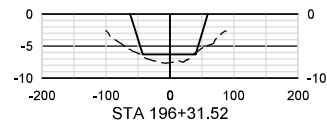
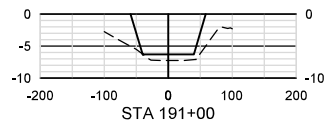
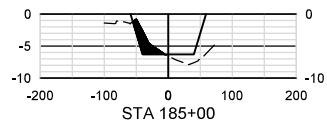
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ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING
APPLICANT: CITY OF SOUTH PADRE ISLAND
DATE: 10-18-2021

HDR PROJECT NO: 10310755
DATUM: MLLW
REV. DATE:
SHEET 23 OF 27

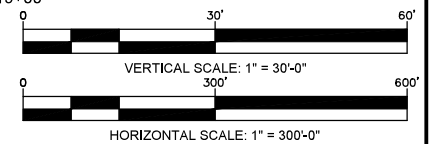
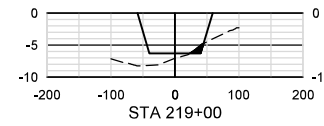
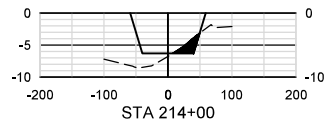
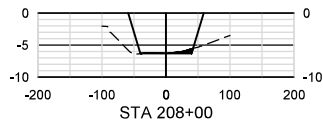
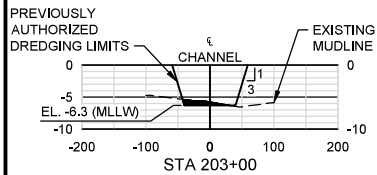
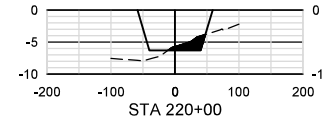
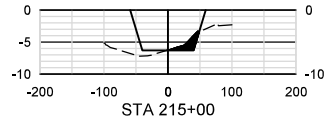
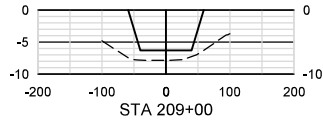
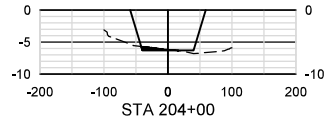
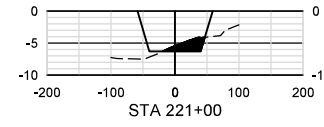
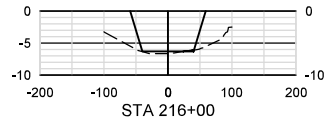
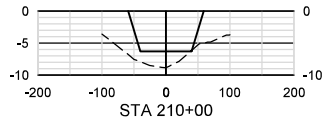
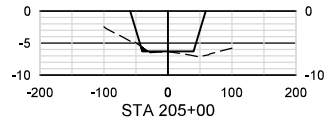
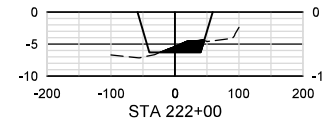
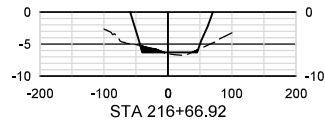
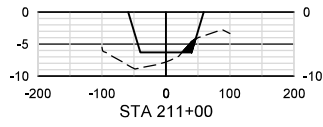
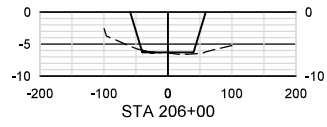
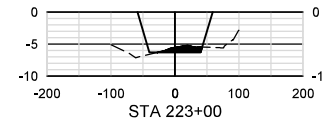
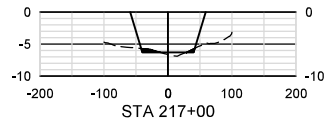
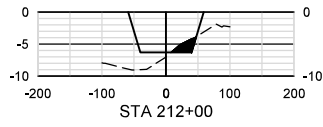
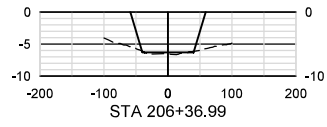
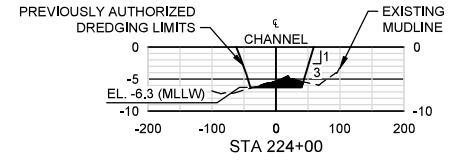
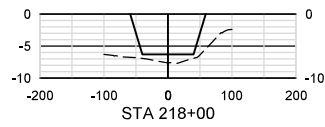
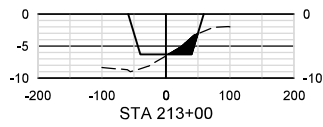
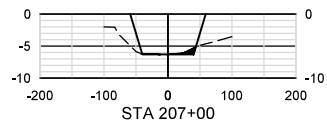
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ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING
APPLICANT: CITY OF SOUTH PADRE ISLAND
DATE: 10-18-2021

HDR PROJECT NO: 10310755
DATUM: MLLW
REV. DATE:
SHEET 24 OF 27

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APPLICANT NAME: _____
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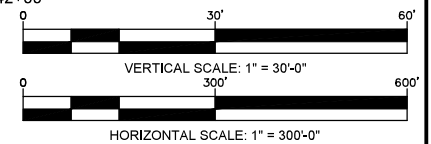
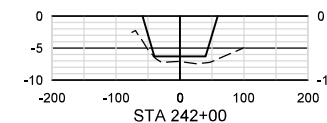
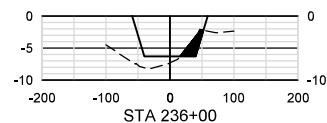
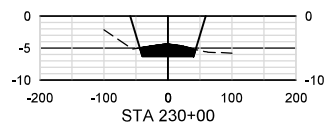
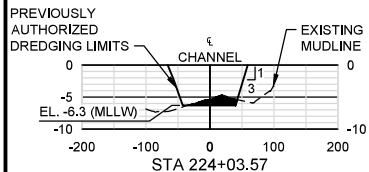
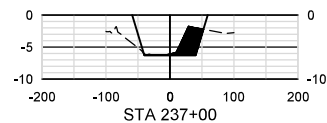
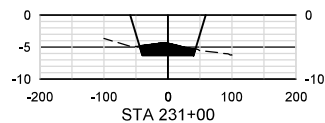
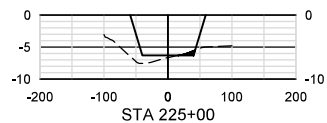
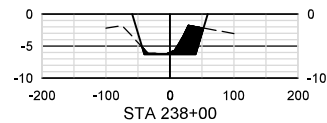
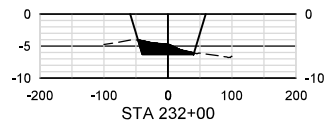
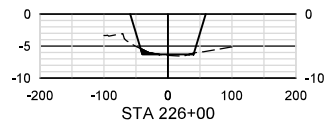
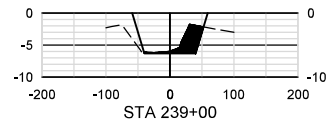
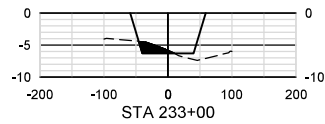
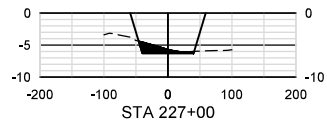
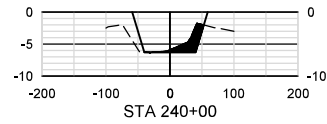
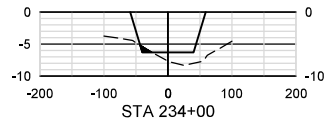
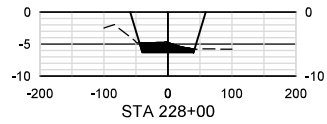
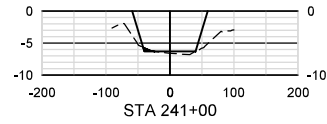
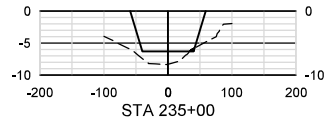
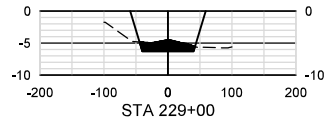


ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING
APPLICANT: CITY OF SOUTH PADRE ISLAND
DATE: 10-18-2021

HDR PROJECT NO: 10310755
DATUM: MLLW
REV. DATE:
SHEET 25 OF 27

FOR COE USE ONLY
PERMIT APPLICATION NO.: _____
APPLICANT NAME: _____
SHEET _____ OF _____
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF PERMITTING ONLY UNDER THE AUTHORITY OF DANIEL E. GARZA, P.E. TX-104628 ON 10/01/2021. IT IS NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.

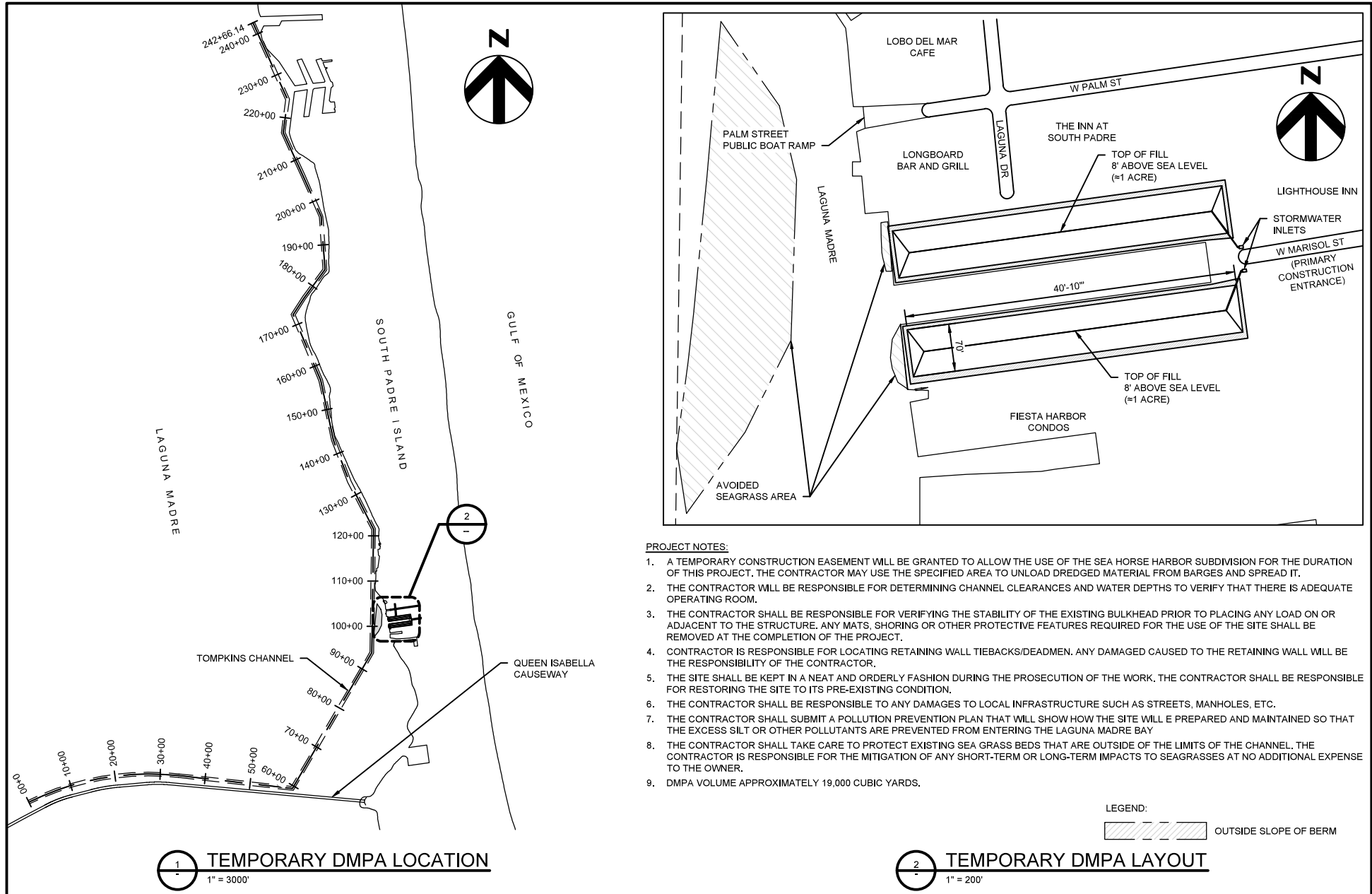
Rec'd 27 Oct 2021



ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING
APPLICANT: CITY OF SOUTH PADRE ISLAND
DATE: 10-18-2021

HDR PROJECT NO: 10310755
DATUM: MLLW
REV. DATE:
SHEET 26 OF 27

FOR COE USE ONLY
PERMIT APPLICATION NO.: _____
APPLICANT NAME: _____
SHEET _____ OF _____
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF PERMITTING ONLY UNDER THE AUTHORITY OF DANIEL E. GARZA, P.E. TX-104628 ON 10/01/2021. IT IS NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.



ACTIVITY: TOMPKINS CHANNEL
MAINTENANCE DREDGING

APPLICANT: CITY OF SOUTH PADRE ISLAND

DATE: 10-18-2021

HDR PROJECT NO: 10310755

DATUM: MLLW

REV. DATE:

SHEET 27 OF 27

FOR COE USE ONLY

PERMIT APPLICATION NO.: _____

APPLICANT NAME: _____

SHEET _____ OF _____

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF PERMITTING ONLY UNDER THE AUTHORITY OF DANIEL E. GARZA, P.E. TX-104628 ON 10/01/2021. IT IS NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: City of South Padre Island		File Number: SWG-1996-00026	Date: 20 Apr 2022
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Michael R. Gala (CESWG-RDR)
U.S. Army Corps of Engineers
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318
361-814-5847 ext. 1009

If you only have questions regarding the appeal process you may also contact:
Mr. Jamie Hyslop
Administrative Appeals Review Officer
Southwestern Division (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas, Texas 75242-1317
Phone: 469-216-8324
Email: Jamie.r.hyslop@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:



TEXAS GENERAL LAND OFFICE

COASTAL LEASE NO. CL20110002

By virtue of the authority granted by [Chapter 33 of the Texas Natural Resources Code](#), Title 31 of the Texas Administrative Code, all amendments thereto, all other applicable statutes, and subject to all rules and regulations promulgated pursuant thereto, the State of Texas (the “Grantor”), acting by and through the Commissioner of the General Land Office (the “GLO”) as Chairman of the School Land Board (the “Board) on behalf of the Permanent School Fund (the “PSF”), hereby grants to the grantee (the “Grantee”) named under the “Grantee Name” section of **Attachment A**, the Control Page, the right to use a tract of state-owned real property (the “Premises”), which property is described in the “Premises” section of **Attachment A** and further depicted in **Attachment B**, for the purposes described in this agreement (the “Agreement”).

ARTICLE I: INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Agreement as a whole and not to any particular provision, section, Attachment, or schedule, unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Agreement, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Agreement; and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement;
- (e) All attachments within this Agreement, including those referenced by incorporation, and any amendments are considered part of the terms of this Agreement;
- (f) This Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the Grantor or by the Grantor by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the Grantor shall not be unreasonably withheld or delayed;
- (h) All due dates and/or deadlines referenced in this Agreement that occur on a weekend or holiday shall be considered as if occurring on the next business day;
- (i) All time periods in this Agreement shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received; and
- (j) Time is of the essence in this Agreement.

ARTICLE II: GRANTING CLAUSE

2.01 GRANTING CLAUSE: IN CONSIDERATION OF THE PAYMENTS STATED IN ARTICLE IV OF THIS AGREEMENT AND OTHER CONSIDERATION STATED THEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND ACCORDING TO THE COVENANTS AND COMMITMENTS HEREIN AGREED TO BE KEPT AND PERFORMED BY THE GRANTEE, THE GRANTOR GRANTS TO THE GRANTEE THE RIGHT TO USE THE PREMISES FOR THE PURPOSES AND UNDER THE CONDITIONS AND OBLIGATIONS DESCRIBED IN THE FOLLOWING SECTION OF THIS AGREEMENT.

2.02 SCOPE OF GRANTING CLAUSE: THE GRANTEE'S USE OF THE PREMISES IS SUBJECT TO COMPLIANCE WITH THE FOLLOWING COVENANTS, OBLIGATIONS, AND CONDITIONS:

- (a) Use: The Premises may be used by the Grantee solely for those uses specified under the "Use(s) of Premises" section of **Attachment A** and for no other purpose. Except as otherwise provided in this Agreement, the Premises are to remain in their current topographical and hydrologic condition during the term of the Agreement. The Grantee is specifically prohibited from modifying the Premises in any manner not authorized in this Agreement and from using, or allowing the use by others, of the Premises for any other purpose.
- (b) Trash: The Grantee shall be responsible for the removal and disposal of all trash at the Premises, whether or not such trash is generated by the Grantee or its guests and invitees.
- (c) Improvements:
- (i) The Grantee's right to use the Premises is exclusive as to those alterations, additions, and/or improvements located, or to be located, on the Premises (collectively the "Improvements"), as more specifically described under the "Use(s) of Premises" section of **Attachment A** and further depicted on **Attachment B**, and non-exclusive as to the remainder. The location of the Improvements shall become fixed as specified under **Attachment B** and shall not be changed except by a written amendment to this Agreement. Improvements existing prior to the execution of this Agreement are and shall remain the property of the Grantor;
- (ii) Except as otherwise allowed in this Agreement, no construction, land modifications or excavation, or permanent property improvements may be allowed or undertaken without the Grantor's prior express written consent. The Grantee may not maintain or allow any nuisances or public hazards on the Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance. The Grantee may file a criminal complaint or institute civil proceedings to protect his right of possession and leasehold interest in the Premises against trespass or other infringement of the Grantee's rights by third parties. The Grantee is specifically prohibited from using or allowing the use by others of the Premises for any purpose not stated herein, including, but not limited to, mining, hauling, or otherwise removing rock, sand, gravel, aggregate, or other such materials, without the Grantor's prior express written approval;
- (iii) Prior to undertaking construction or installation of Improvements on the Premises, the Grantee shall provide written notice of the terms of this Agreement to each person or entity authorized by the Grantee to perform any such activity on its behalf. If a dispute arises concerning construction or installation of the Improvements, the Grantee shall provide the Grantor with a copy of all applicable notices within ten (10) days of the Grantor's written request;
- (iv) The Grantee, in its sole cost and expense, shall make, and be solely responsible for, any repairs, maintenance, or replacements to the Improvements that the Grantor considers necessary or as required by this Agreement. If the Grantee fails or refuses to honor such a request, or in case of an emergency, the Grantor may make such repairs, maintenance, renewals, or replacements. **THE GRANTEE WAIVES ANY CLAIM FOR DAMAGE CAUSED THEREBY AND IS LIABLE TO THE GRANTOR FOR ANY COSTS INCURRED;**
- (v) Prior to expiration of this Agreement or upon notice of termination, the Grantee shall remove all of the Improvements, remove any resulting debris, and pay Grantor all monies due. The grantee shall take whatever measures are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any Improvements. If the Grantee fails to comply with this provision, the Grantor shall have the right to perform the work, in which event the Grantee shall be liable to the Grantor for all cost, loss, and damage incurred by the Grantor;
- (vi) Notwithstanding the preceding, pursuant to Title 31 of the Texas Administrative Code, the Grantor may waive the removal/restoration requirements in this Section if, in the Grantor's sole opinion and discretion, such waiver is in the best interest of the State. Any such waiver shall be in writing and may be conditioned upon factors including the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the State; and
- (vii) Grantee shall insure that all Improvements constructed, placed, or operated by it on the Premises are visible to operators of marine craft at all times. Grantee shall further take any and all steps necessary to insure that Improvements constructed, placed, or operated by it on the Premises do not constitute a hazard to operators of marine craft. Grantee may not restrict or prevent other persons from access to navigating open, navigable waters.

(d) Adjacent Property:

- (i) The Premises are located adjacent to property that is owned by the Grantee or in which the Grantee has a possessory interest (the "Adjacent Property") and is further described under the "Adjacent Property" section of **Attachment A**; and
 - (ii) If the Grantee is divested of its interest in the Adjacent Property, the Grantor may terminate this Agreement upon ten (10) days written notice to the Grantee.
- (e) Special Conditions: The Grantee shall adhere to the special conditions, if any, listed under the "Special Conditions" section of **Attachment A**.

2.03 AS IS: THE GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS THE SAME "AS IS," IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. THE GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION OF THE GRANTOR WITH RESPECT TO THE CONDITION OF THE PREMISES, BUT IS RELYING ON THE GRANTEE'S OWN INSPECTION OF THE PREMISES. THE GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS AGREEMENT IS FREE OF LIENS, ENCUMBRANCES, AND/OR PRIOR RIGHTS. THE GRANTEE IS PUT ON NOTICE THAT OTHER GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD, AND THE GRANTEE IS ADVISED TO EXAMINE THE RECORDS IN THE ARCHIVES AND RECORDS DIVISION OF THE GLO AND RECORDS OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED.

2.04 RESERVATIONS: THE GRANTOR RESERVES THE FULL USE OF THE PREMISES AND ALL RIGHTS WITH RESPECT TO ITS SURFACE AND SUBSURFACE FOR ANY AND ALL PURPOSES EXCEPT FOR THOSE GRANTED TO THE GRANTEE. THE AFOREMENTIONED RESERVED FULL USE OF THE PREMISES BY THE GRANTOR INCLUDES THE RIGHT OF INGRESS, EGRESS, AND USE OF THE PREMISES BY THE GRANTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, AND OTHER AUTHORIZED USERS FOR ANY AUTHORIZED PURPOSE.

2.05 RIGHT OF ENTRY

- (a) In any circumstances where the Grantor is granted a right of entry on the Premises during the term of the Agreement, no such entry shall constitute an eviction or disturbance of the Grantee's use and possession of the Premises, a breach by the Grantor of any of its obligations hereunder, render the Grantor liable for damages for loss of business or otherwise, entitle the Grantee to be relieved from any of its obligations hereunder, grant the Grantee any right of off-set or recoupment, or other remedy.
- (b) In exercising any right of entry, the Grantor agrees to exercise its right of entry only at reasonable times (except in an emergency) for purposes of inspection, repair, and as necessary to protect the State's interests, and the Grantor agrees not to unreasonably interfere with the Grantee's authorized use of the Premises. The Grantee shall provide the Grantor with keys or combinations to all locks that may limit access to the Premises.
- (c) Further, the Grantee authorizes the State, its officers, agents, representatives, and employees to access the Premises over and across Grantee's Adjacent Property. Grantor agrees to use the Adjacent Property only to the extent and for the length of time necessary to provide access to and from the Premises. The foregoing authorization creates a license only, and does not create an easement over the Adjacent Property.
- (d) Grantee acknowledges that Grantor's right of ingress and egress shall remain in effect as long as any improvements placed on the Premises by Grantee remain on the Premises and/or as necessary for Grantor to confirm the removal (in whole or in part) of those improvements.
- (e) Any aforementioned right of entry shall survive the termination of this Contract.

2.06 DAMAGE OR DESTRUCTION OF PREMISES AND/OR IMPROVEMENTS: NO DAMAGE TO THE PREMISES, OR DAMAGE TO OR DESTRUCTION OF ANY IMPROVEMENTS, SHALL IN ANY WAY ALTER, AFFECT, OR MODIFY THE GRANTEE'S OBLIGATIONS UNDER THIS AGREEMENT. IN THE EVENT ANY SUCH DAMAGE OR DESTRUCTION EXCEEDS THE COST LISTED UNDER THE "COST OF DAMAGE" SECTION OF ATTACHMENT A PER EVENT TO REPAIR, THE GRANTEE SHALL GIVE WRITTEN NOTICE TO GRANTOR WITHIN SEVEN (7) CALENDAR DAYS OF THE DAMAGE OR DESTRUCTION, INCLUDING A DESCRIPTION OF THE DAMAGE OR DESTRUCTION AND, AS FAR AS KNOWN TO THE GRANTEE, THE CAUSE OF THE DAMAGE OR DESTRUCTION. THE GRANTEE SHALL IMMEDIATELY REMOVE ALL DEBRIS

RESULTING FROM SUCH DAMAGE OR DESTRUCTION AND TAKE SUCH ACTION AS IS NECESSARY TO PLACE THE PREMISES IN A NEAT, SAFE CONDITION. WITHIN 90 DAYS OF THE EVENT CAUSING THE DAMAGE OR DESTRUCTION, THE GRANTEE MUST EITHER REPAIR OR REPLACE THE IMPROVEMENTS, IF PERMITTED BY LAW, OR RETURN THE PREMISES TO THEIR NATURAL CONDITION. THE GRANTOR MAY MAKE REPAIRS OR REPLACEMENTS PURSUANT TO THIS SECTION, WHEREUPON THE GRANTEE SHALL BE LIABLE TO PAY THE GRANTOR, UPON DEMAND, THE COST AND EXPENSE INCURRED IN ACCOMPLISHING SUCH ACTION. ANY FAILURE BY THE GRANTEE TO MAKE SUCH PAYMENT TO THE GRANTOR MAY BE TREATED BY THE GRANTOR AS AN EVENT OF DEFAULT.

ARTICLE III: TERM

The effective date and termination date of this Agreement are specified under the “Effective and Termination Dates” section of **Attachment A**, unless renewed or earlier terminated as provided herein. Unless otherwise specified herein, renewal of this Agreement is at the sole discretion of the Grantor.

ARTICLE IV: CONSIDERATION

THE GRANTEE SHALL PAY, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE PAYMENT(S) AND/OR FEE(S) LISTED UNDER THE “PAYMENT(S) AND/OR FEE(S)” SECTION OF **ATTACHMENT A** ON OR BEFORE THE DUE DATE.

ARTICLE V: EVENTS OF DEFAULT

5.01 EVENTS OF DEFAULT: WITH RESPECT TO THE GRANTEE, IT SHALL BE AN EVENT OF DEFAULT HEREUNDER (“EVENT OF DEFAULT”) IF:

- (a) the Grantee fails or refuses to timely pay Consideration or any other payments required by this Agreement after it becomes due;
- (b) the Grantee fails or refuses to comply, timely perform, or observe any of the covenants, duties, obligations, and/or conditions under this Agreement;
- (c) the Grantee abandons or vacates the Improvements, the Premises, or any significant portion thereof;
- (d) there is an entry of a court order requiring the dissolution, winding up, or termination of the Grantee’s business affairs; or
- (e) the Grantee fails to materially comply with rules and regulations in the Texas Administrative Code, the Texas Natural Resources Code, or any other rules or regulations promulgated by any state or federal governmental entity with proper jurisdiction over any of the uses permitted under this Agreement, unless such a failure to comply is redressed through an enforcement action by an applicable state agency with proper jurisdiction.

5.02 NOTICE AND CURE: There shall be no consequences for an Event of Default under this Agreement, unless the defaulting party receives written notice of the Event of Default and such Event of Default continues for a period of 30 days after the defaulting party receives the notice. A notice of Event of Default shall specify the event or events constituting the default. This 30 day period shall be extended if the act, event, or condition is one that by its nature or circumstances reasonably requires more than 30 days to cure; provided, however, the defaulting party shall promptly and in good faith initiate and diligently pursue measures that are expected to cure or eliminate the Event of Default in a reasonable period of time. If either party fails to cure an Event of Default, the non-defaulting party shall be entitled to terminate this Agreement by written notice. This notice and cure provision does not apply to an Event of Default under provision 5.01(a) or any emergency situations that affect public health or safety.

5.03 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER: IF AN EVENT OF DEFAULT OCCURS AND THE GRANTEE FAILS TO CURE WITHIN THE PERIOD PROVIDED ABOVE, THE GRANTOR MAY, AT ITS OPTION, DO ANY ONE OR MORE OF THE FOLLOWING:

- (a) terminate this Agreement by sending written notice of such termination, in which event the Grantee shall immediately surrender possession of the Premises to the Grantor (such termination shall not prejudice the rights of the Grantor for any claim of payments due);

- (b) enter upon and take possession of the Premises and expel or remove the Grantee and any other occupant, with or without having terminated the Agreement; or
- (c) alter locks and other security devices, if any, at the Premises.

The failure of either the Grantee or the Grantor to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any other right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Grantee or the Grantor may be exercised from time-to-time and as often as may be deemed expedient by the Grantee or the Grantor, as the case may be. In an Event of Default, the Grantor shall have the option, but not the obligation, to mitigate its damages.

ARTICLE VI: GENERAL TERMS, CONDITIONS, AND EXCEPTIONS

6.01 ASSIGNMENT: THE GRANTEE SHALL NOT ASSIGN OR OTHERWISE DISPOSE OF AN INTEREST IN THIS AGREEMENT OR THE PREMISES WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE GRANTOR; AND ANY ATTEMPT TO ASSIGN OR OTHERWISE DISPOSE WITHOUT CONSENT SHALL BE VOID AND OF NO EFFECT. THIS PROHIBITION AGAINST ASSIGNING OR DISPOSITION SHALL BE CONSTRUED TO INCLUDE A PROHIBITION AGAINST ANY ASSIGNMENT OR DISPOSITION BY OPERATION OF LAW. IF THIS AGREEMENT IS ASSIGNED, OR IF AN INTEREST IN THIS AGREEMENT OR THE PREMISES IS DISPOSED OF, THE GRANTOR MAY NEVERTHELESS COLLECT CONSIDERATION FROM THE ASSIGNEE AND APPLY THE NET AMOUNT COLLECTED TO THE CONSIDERATION PAYABLE HEREUNDER. NO SUCH TRANSACTION OR COLLECTION OF CONSIDERATION SHALL RELEASE THE GRANTEE FROM THE FURTHER PERFORMANCE OF ITS COVENANTS, DUTIES, AND OBLIGATIONS.

6.02 INDEMNITY: EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE GRANTOR, THE GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS THE GRANTOR AND THE GRANTOR'S OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- **THIS AGREEMENT;**
- **THE USE OR OCCUPANCY OF THE PREMISES;**
- **ANY NEGLIGENCE, ACT, OMISSION, NEGLECT, OR MISCONDUCT OCCURRING IN, ON, OR ABOUT THE PREMISES; OR**
- **ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.**

THE GRANTEE ASSUMES RESPONSIBILITY FOR THE CONDITION OF THE PREMISES. THE GRANTEE EXPRESSLY AGREES TO USE AND OCCUPY THE PREMISES AND PLACE ANY IMPROVEMENTS ON THE PREMISES AT ITS OWN RISK. THE GRANTEE SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE GRANTOR.

6.03 PROTECTION OF NATURAL AND HISTORICAL RESOURCES

(a) **Unauthorized Discharge:** The Grantee shall use the highest degree of care and all appropriate safeguards to prevent pollution of air, ground, or water in, on, or about the Premises through an unauthorized discharge, and to protect and preserve natural resources and wildlife habitat. In the event of such discharge or damage to natural resources in, on, or about the Premises that is the result of an act or omission of the Grantee, its officers, employees, agents, representatives, contractors, and/or invitees, the Grantee shall immediately notify appropriate agencies of the State of Texas and the Grantor and undertake all required and appropriate action to remedy the same. The Grantee shall be liable for all damages to the Premises, public lands, and waters as a result of such act or omission and for mitigation of any such damages.

(b) Natural Historical Preservation Act and Antiquities Code of Texas: **THE GRANTEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 AND THE ANTIQUITIES CODE OF TEXAS. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT, OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, THE GRANTEE SHALL IMMEDIATELY CEASE SUCH ACTIVITIES AND SHALL IMMEDIATELY NOTIFY THE GRANTOR AND THE TEXAS HISTORICAL COMMISSION, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.**

6.04 COMPLIANCE WITH OTHER LAWS; NUISANCE: THE GRANTEE, AT ITS OWN EXPENSE, WILL COMPLY WITH ALL FEDERAL, STATE, MUNICIPAL, AND OTHER LAWS, CODES, ORDINANCES, RULES, AND REGULATIONS APPLICABLE TO THE PREMISES; AND WILL INSTALL, REMOVE, AND ALTER SUCH EQUIPMENT AND FACILITIES IN, AND MAKE SUCH ALTERATIONS TO, THE PREMISES AS MAY BE NECESSARY TO COMPLY. THE GRANTEE WILL NOT MAKE ANY UNLAWFUL USE OF THE PREMISES OR PERMIT ANY UNLAWFUL USE THEREOF; AND WILL NOT COMMIT, OR PERMIT ANYONE ELSE TO COMMIT, ANY ACT THAT IS A NUISANCE OR ANNOYANCE TO THE GRANTOR OR ADJACENT PROPERTY OWNERS OR TENANTS, OR WHICH MIGHT, IN THE EXCLUSIVE JUDGMENT OF THE GRANTOR, DAMAGE THE GRANTOR'S GOODWILL OR REPUTATION, OR TEND TO INJURE OR DEPRECIATE THE VALUE OF THE PREMISES AND/OR ANY IMPROVEMENTS LOCATED THEREON. THE OBLIGATIONS OF THE GRANTEE UNDER THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

6.05 NOTICE

(a) The Grantee shall provide written notice to the Grantor of any change in the Grantee's name, address, corporate structure, legal status or any other information relevant to this Agreement. The Grantee shall provide to the Grantor any other information reasonably requested by the Grantor in writing within 30 days following such request.

(b) Any payments and required written notices under this Agreement shall be delivered by hand, facsimile, or United States Registered or Certified Mail, adequate postage prepaid, to the address(es) listed under the "Address(es) for Notification" section of **Attachment A**. A party may change its address by giving notice as provided above. No change of address shall be binding until notice of such change of address is given as required.

6.06 SEVERABILITY: IF ANY PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE UNENFORCEABLE BY A COURT OF LAW OR EQUITY, THIS AGREEMENT SHALL BE CONSTRUED AS IF SUCH PROVISION DID NOT EXIST AND THE NON-ENFORCEABILITY OF SUCH PROVISION SHALL NOT BE HELD TO RENDER ANY OTHER PROVISION OR PROVISIONS OF THIS AGREEMENT UNENFORCEABLE.

6.07 ENTIRE AGREEMENT: THIS AGREEMENT AND ITS ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES AND SUCH ARE INTENDED AS A COMPLETE AND EXCLUSIVE STATEMENT OF THE PROMISES, REPRESENTATIONS, NEGOTIATIONS, DISCUSSIONS, AND OTHER AGREEMENTS THAT MAY HAVE BEEN MADE IN CONNECTION WITH THE SUBJECT MATTER HEREOF. UNLESS AN ATTACHMENT TO THIS AGREEMENT SPECIFICALLY DISPLAYS A MUTUAL INTENT TO AMEND A PARTICULAR PART OF THIS AGREEMENT, GENERAL CONFLICTS IN LANGUAGE BETWEEN ANY SUCH ATTACHMENT AND THIS AGREEMENT SHALL BE CONSTRUED CONSISTENTLY WITH THE TERMS OF THIS AGREEMENT. UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY THE TERMS OF THIS AGREEMENT, NO MODIFICATION, RENEWAL, EXTENSION, OR AMENDMENT TO THIS AGREEMENT SHALL BE BINDING UPON THE PARTIES UNLESS THE SAME IS IN WRITING AND SIGNED BY THE RESPECTIVE PARTIES HERETO.

6.08 TAXES: THE GRANTEE SHALL, AS FURTHER CONSIDERATION FOR THIS AGREEMENT, PAY AND DISCHARGE ALL "TAXES" (AS HEREINAFTER DEFINED) PROPERLY ASSESSED IN ANY CALENDAR YEAR (OR PORTION THEREOF) DURING THE TERM OF THIS AGREEMENT. FOR THE PURPOSES OF THIS AGREEMENT, THE TERM "TAXES" MEANS ALL TAXES, ASSESSMENTS, IMPOSITIONS, LEVIES, CHARGES, EXCISES, FEES, LICENSES, AND OTHER SUMS (WHETHER NOW EXISTING OR HEREAFTER ARISING, WHETHER FORESEEN OR UNFORESEEN, AND WHETHER UNDER THE PRESENT SYSTEM OF TAXATION OR SOME OTHER SYSTEM), THAT DURING THE TERM OF THIS AGREEMENT MAY BE LEVIED, ASSESSED, CHARGED, OR IMPOSED BY ANY GOVERNMENTAL AUTHORITY OR OTHER TAXING AUTHORITY OR ACCRUE ON THE PREMISES AND ANY IMPROVEMENTS OR OTHER PROPERTY THEREON, WHETHER BELONGING TO THE GRANTOR OR THE GRANTEE, OR TO WHICH EITHER OF THEM MAY BECOME LIABLE IN RELATION THERETO. THE TERM "TAXES" SHALL ALSO INCLUDE ALL PENALTIES, INTEREST, AND OTHER CHARGES PAYABLE BY REASON OF ANY DELAY OR

FAILURE OR REFUSAL OF THE GRANTEE TO MAKE TIMELY PAYMENTS AS REQUIRED PURSUANT TO THIS PROVISION. THE GRANTEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE GRANTOR HARMLESS FROM LIABILITY FOR ANY AND ALL TAXES, TOGETHER WITH ANY INTEREST, PENALTIES, OR OTHER SUMS IMPOSED, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.

6.09 ENCUMBRANCE OF INTEREST: THE GRANTEE MAY NOT MORTGAGE, HYPOTHECATE, ENCUMBER, OR GRANT ANY DEED OF TRUST OR SECURITY INTEREST THAT ENCUMBERS THE PREMISES. FURTHER, THE GRANTEE MAY NOT COLLATERALLY ASSIGN ANY RENT OR OTHER INCOME GENERATED FROM THE PREMISES. PRIOR TO EXPIRATION OR TERMINATION OF THIS AGREEMENT, THE GRANTEE WILL PROVIDE THE GRANTOR WITH DOCUMENTATION SUFFICIENT TO EVIDENCE THE GRANTOR'S OWNERSHIP OF THE IMPROVEMENTS NOT REQUIRED TO BE REMOVED PER ARTICLE II.

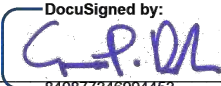
6.10 PROPER AUTHORITY: EACH PARTY HERETO REPRESENTS AND WARRANTS THAT THE PERSON EXECUTING THIS AGREEMENT ON ITS BEHALF HAS FULL POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT.

6.11 RELATIONSHIP OF THE PARTIES: NOTHING CONTAINED IN THIS CONTRACT SHALL BE DEEMED OR CONSTRUED TO CREATE A PARTNERSHIP OR JOINT VENTURE, TO CREATE RELATIONSHIPS OF AN EMPLOYER-EMPLOYEE OR PRINCIPAL-AGENT, OR TO OTHERWISE CREATE FOR THE GRANTOR ANY LIABILITY WHATSOEVER WITH RESPECT TO THE INDEBTEDNESS, LIABILITIES, AND OBLIGATIONS OF THE GRANTEE OR ANY OTHER PARTY.





6.12 GRANTEE'S WAIVER OF CERTAIN RIGHTS AND ASSERTIONS: THE GRANTEE WAIVES AND RELINQUISHES ALL RIGHTS THAT THE GRANTEE MIGHT HAVE TO CLAIM ANY NATURE OF LIEN AGAINST THE GRANTOR AND THE PREMISES, OR WITHHOLD OR DEDUCT FROM OR OFFSET AGAINST ANY CONSIDERATION OR OTHER SUMS PROVIDED HEREUNDER TO BE PAID TO THE GRANTOR BY THE GRANTEE. THE GRANTEE WAIVES AND RELINQUISHES ANY RIGHT, EITHER AS A CLAIM OR AS A DEFENSE, THAT THE GRANTOR IS BOUND TO PERFORM OR IS LIABLE FOR THE NONPERFORMANCE OF ANY IMPLIED COVENANT OR IMPLIED DUTY OF THE GRANTOR NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

GRANTOR: THE STATE OF TEXAS

Signature: _____  Date: 6/2/2022
GEORGE P. BUSH
Commissioner, General Land Office
Chairman, School Land Board

APPROVED:

Contents:  _____
Legal:  _____
Director:  _____
Executive:  _____

COASTAL LEASE: CL20110002

GRANTEE:

City of South Padre Island

By: Randy Smith
(Signature)

Randy Smith
(Printed Name)

City Manager
(Title)

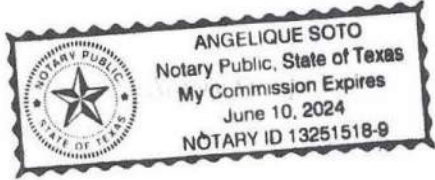
Date: May 15, 2022

ACKNOWLEDGMENT

STATE OF Texas

COUNTY OF Cameron

This instrument was acknowledged before me on the 18th day of May, 2022,
by Randy Smith for the City of South Padre Island.



Angelique Soto
Notary Public, State of Texas

My commission expires: June 10, 2024

ATTACHMENT A: CONTROL PAGE
COASTAL LEASE CL20110002

GRANTEE'S NAME

City of South Padre Island

PREMISES

A portion of State Tract Number 720, 733, 734, 746, 747, Laguna Madre, Cameron County, Texas (the "Premises"). The Premises are further described and depicted on **Attachment B** attached hereto and incorporated herein by reference.

USE(S) OF PREMISES

Authorized Use(s) of the Premises: 2,780,500 square feet (63.8 acres) of coastal public land encumbered by maintenance dredging of a 27,805 foot long public channel measuring 80 feet in bottom width and 100 feet in top width being 50 feet on either side of a centerline.

SPECIAL CONDITIONS

1. Grantee is specifically prohibited from using or permitting the use of the Premises for any commercial or illegal purpose. Provided the Grantor does not unreasonably interfere with Grantee's use of the Premises, the Grantor may use or permit the use of the Premises for any purpose consistent with Grantee's use of the Premises.
2. Grantee shall notify the General Land Office, Corpus Christi Field Office in writing at least sixty (60) days prior to undertaking any maintenance dredging activities occurring during the term of this contract.
3. All maintenance dredging activities are to be confined within the limits of the authorized excavation areas.
4. Depth of the dredged area authorized herein shall not exceed -6.3 feet below Mean Low Water (MLW). Over-dredging for advance maintenance is specifically prohibited.
5. Silt curtains are to be installed prior to beginning any dredging action and shall be maintained around the perimeter throughout the duration of all dredging activity to minimize turbidity levels within adjacent waters.
6. Propwashing is considered a form of dredging and, as such, is specifically prohibited as a method of creating or maintaining areas of increased water depth.
7. The boundary of all areas to be dredged, as depicted in Exhibits, shall be clearly marked using temporary navigation aids (posts, pilings, poles, buoys, flags, etc.) so that construction crews can properly delineate boundaries of the authorized work area and avoid impacts to state-owned land and resources adjacent to the project site. All materials used to mark the work area shall be removed by the Grantee and properly disposed of on private upland property within 30-days following completion of construction.
8. Grantee is required to perform mitigation and/or pay surface damage fees according to General Land Office policy in effect at the time damages occur for any and all surface damages resulting from actions of Grantee's employees, contractors, and/or agents. Such mitigation and/or payment of damage fees shall be performed in the manner and within the time frame specified in written notice provided by the General Land Office to Grantee following said damages.
9. Grantee is to be aware, and is to make Grantee's employees, contractors, and/or agents aware, that submerged state-owned lands adjacent to the project site shall not be used for temporary beaching, grounding, or storage of equipment related to execution of this project, and that any incidental damage to seagrass and/or other natural resources in the project vicinity due to such actions shall be the mutual liability of Grantee and the responsible party, and shall be subject to the requirements of mitigation and/or compensation as specified in the Agreement.
10. Impacts to sensitive habitats, specifically seagrasses, oyster reefs, tidal flats, and emergent vegetation outside of the authorized dredging corridor area are to be strictly avoided. Grantee and its employees, contractors, and/or agents shall be liable for impacts to state natural resources outside of the authorized dredging corridor. If the STATE determines that impacts to sensitive habitat areas have occurred outside the leased corridor, such areas shall be subject to mitigation and/or surface damage fees.
11. Navigation aids, consistent with U.S. Coast Guard guidance, shall be installed and maintained by the Grantee upon completion of dredging operations.

12. All dredged material (spoil) authorized by this instrument shall be placed and contained in authorized disposal areas above the limits of mean high water, and Grantee waives any right to claim ownership of coastal land created by the deposition or run-off of the dredged material.

COST OF DAMAGE

One Thousand and No/100 Dollars (\$1,000) per event.

EFFECTIVE AND TERMINATION DATES

This Agreement is for a total period of ten (10) years, effective on November 1, 2020, and terminating on October 31, 2030.

PAYMENT(S) AND/OR FEE(S)

In consideration of the mutual covenants and conditions set forth herein and the public benefits to be derived therefrom, Grantor and Grantee acknowledge that no rental fees shall be assessed for the described use of the Premises while Grantee is not in default of the terms agreed upon herein.

ADDRESS(ES) FOR NOTIFICATION

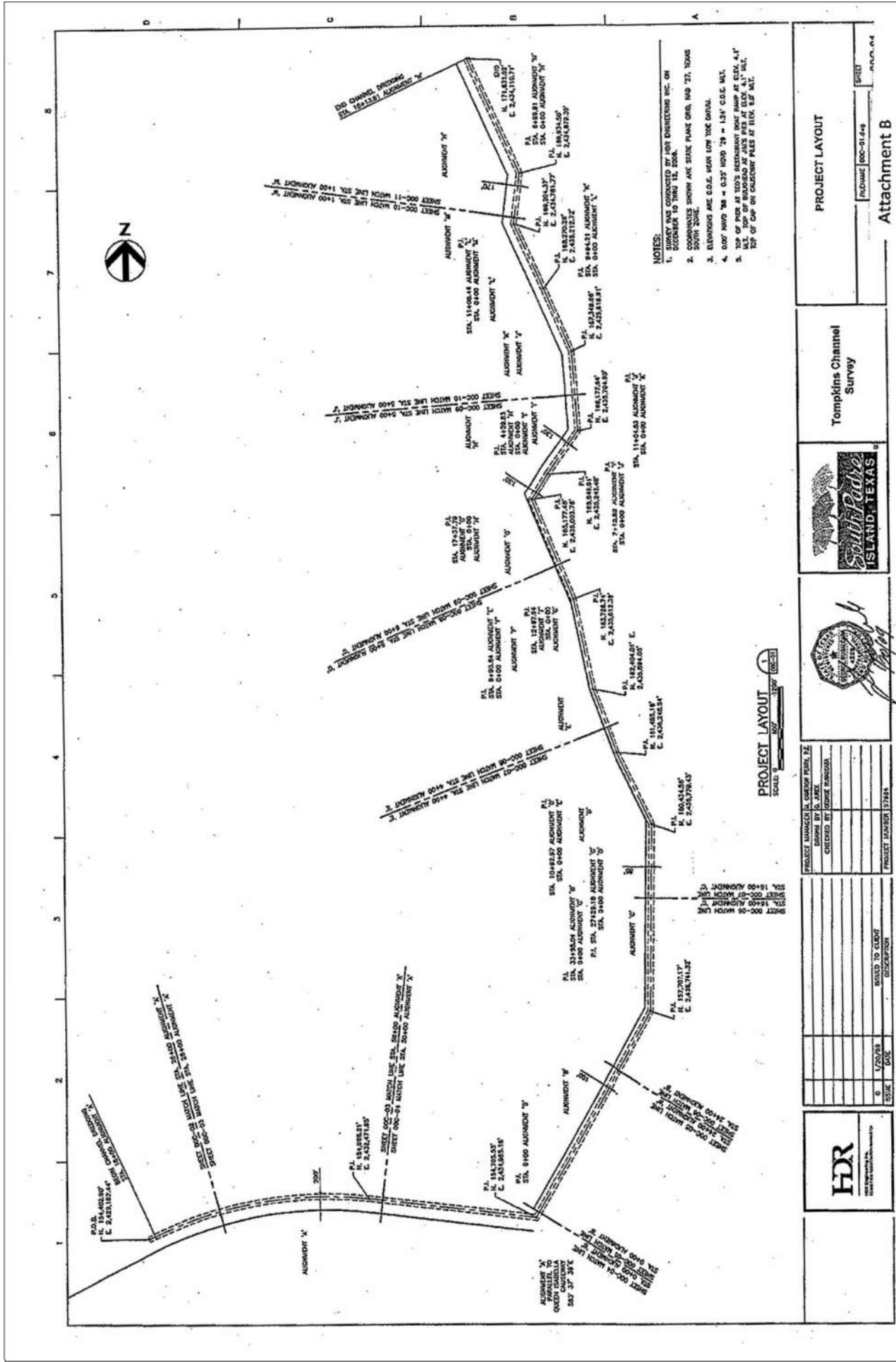
Grantor's Contact Information

Name: Texas General Land Office
Title: Director, Coastal Field Operations
Address: 1700 N. Congress Avenue
Address: Austin, Texas 78701-1495

Grantee's Contact Information

Name: City of South Padre Island
Address: 4601 Padre Blvd
Address: South Padre Island, TX 78597-7325

ATTACHMENT B:



- NOTES:**
1. SURVEY WAS CONDUCTED BY FOR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
 2. COORDINATES SHOWN ARE STATE PLANE COOR. IN D. 2008.
 3. ELEVATIONS ARE 606.2 HIGH LOW THE CURVE.
 4. 0.00' HWD '98 = 0.37' HWD '78 = 1.24' C.O.G. MET.
 5. TOP OF PIER AT TEO'S RESTAURANT BOAT PUMP AT ELEV. 617'. U.S. TOP OF BRIDGE AT JES AT ELEV. 617'. MET. TOP OF CAP ON CULVERT PIERS AT ELEV. 108.45'.

		PROJECT LAYOUT	
		DATE	SCALE
PROJECT MANAGER: JAMES R. JONES, P.E. DRAWN BY: JERRY CHECKED BY: JORDAN BARNARD		PROJECT NUMBER: 17844	
SHEET NO. 02 TOTAL SHEETS: 02		TITLE: Tompkins Channel Survey	
DATE: 01/20/09		PROJECT LAYOUT	
SCALE: AS SHOWN		ATTACHMENT B	

TITLE: City of South Padre Island / CL20110002

DATE OF REVIEW: 03/07/2022

COMPANY: Texas General Land Office

CREATOR: LSchroer

DRAWING SCALE: Not to scale

ATTACHMENT B



TITLE: City of South Padre Island / CL20110002	DATE OF REVIEW: 3/7/2022
COMPANY: Texas General Land Office	CREATOR: JZeplin
DRAWING SCALE: Not to scale	ATTACHMENT B-2

DEPARTMENT OF THE ARMY PERMIT

Permittee Clayton Custom Homes

Permit No. 22969

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

PROJECT DESCRIPTION: To renovate an existing marina to be used in connection with a future residential development surrounding the marina. The renovation activities include maintenance dredging the existing basin, extending the basin further east into uplands, removing existing pilings and a timber deck, installing a new bulkhead, constructing a new boardwalk/deck, filling non-functional boat slips and a boat ramp. The maintenance dredging consists of removing approximately 3,900 cubic yards of material from the existing basin to a depth of -6 feet MLT. Dredging will be by mechanical means and performed using land-based equipment. The dredged material would be placed and contained on uplands behind the existing bulkhead. The placement areas will be configured so that any excess runoff will return to the marina basin. During dredging activities a floating turbidity curtain will be placed across the entrance to the marina basin to reduce any sedimentation that might impact the Laguna Madre. The existing marina basin will be extended approximately 60 feet to the east. Approximately 0.08 acre (3,360 square feet) between the existing bulkhead and Tarpon Drive will be excavated from uplands. The new bulkhead will be installed approximately 5 feet in front of the existing asbestos-laden bulkhead and will consist of either fiberglass or concrete. The area between the bulkheads will be filled with sand and a concrete cap will extend over both bulkheads, resulting in filling of approximately 0.10 acre (4,117 square feet) of waters of the U.S. Approximately 50 square feet of the proposed fill area is vegetated with seagrass. A continuous 5-foot wide timber boardwalk/deck will be installed around the perimeter of the bulkhead. The existing marina has four slips at right angles to the basin that have filled to a shallow depth of less than -2 feet MHT. These slips will be filled with a suitable material consisting mostly of sand. The total area to be filled is approximately 0.13 acre (5,840 square feet), of which 104 square feet is vegetated with seagrass, and will be filled with approximately 1,081 cubic yards of material. Mechanical boatlifts will be installed along the timber decks in front of the new sheet piling. The vertical supports for these lifts will be pile-supported and will be installed flush along the face of the timber deck. Of the approximate 0.05 acre (2,190 square feet) of seagrass currently located within the project area, 0.01 acres will be impacted by either dredging or fill operations. A total of 0.24 acres will be filled for the project and 0.88 acres will be dredged or excavated. The project will be conducted in accordance with the attached plans, in 6 sheets. Approximately 0.04 acres of hard substrate will be created on site for impacts to seagrasses. The mitigation includes creating a 5-foot wide shallow shelf along the edges of the basin and newly excavated area at the east end of the site, allowing for the placement of the existing concrete pilings that are removed, as well as rip-rap (750sf), and the placement of approximately 1,200 square feet of additional concrete rip-rap or other suitable material at the toe of the bulkhead within the basin and west of the newly created portion of the basin at the east end, up to the photic zone. Total on-site mitigation area is approximately 2,000 square feet.

Project Location: The project site is located on the Laguna Madre on South Padre Island between North Tarpon Drive and South Tarpon Drive, Cameron County, Texas. The project can be located on the USGS quadrangle map entitled: Port Isabel, Texas. Approximate UTM coordinates: Zone 14; Easting 683199, Northing: 2887471.

Permit Conditions:

General Conditions:

Rec'd
AUG 19 2003
\$100.00
D. Jones

1. The time limit for completing the work authorized ends on 31 December 2008. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee understands and agrees that if future operations by the United States require the removal, relocation or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. All construction of mitigation must be complete within 6 months of bulkhead completion or within 12 months after the start of construction, whichever ever is sooner. The permittee will notify the Corps of Engineers (COE) Regulatory Branch in writing when the work begins.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344)

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

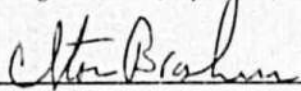
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.


Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITTEE)
PERMITEE

8/5/03
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



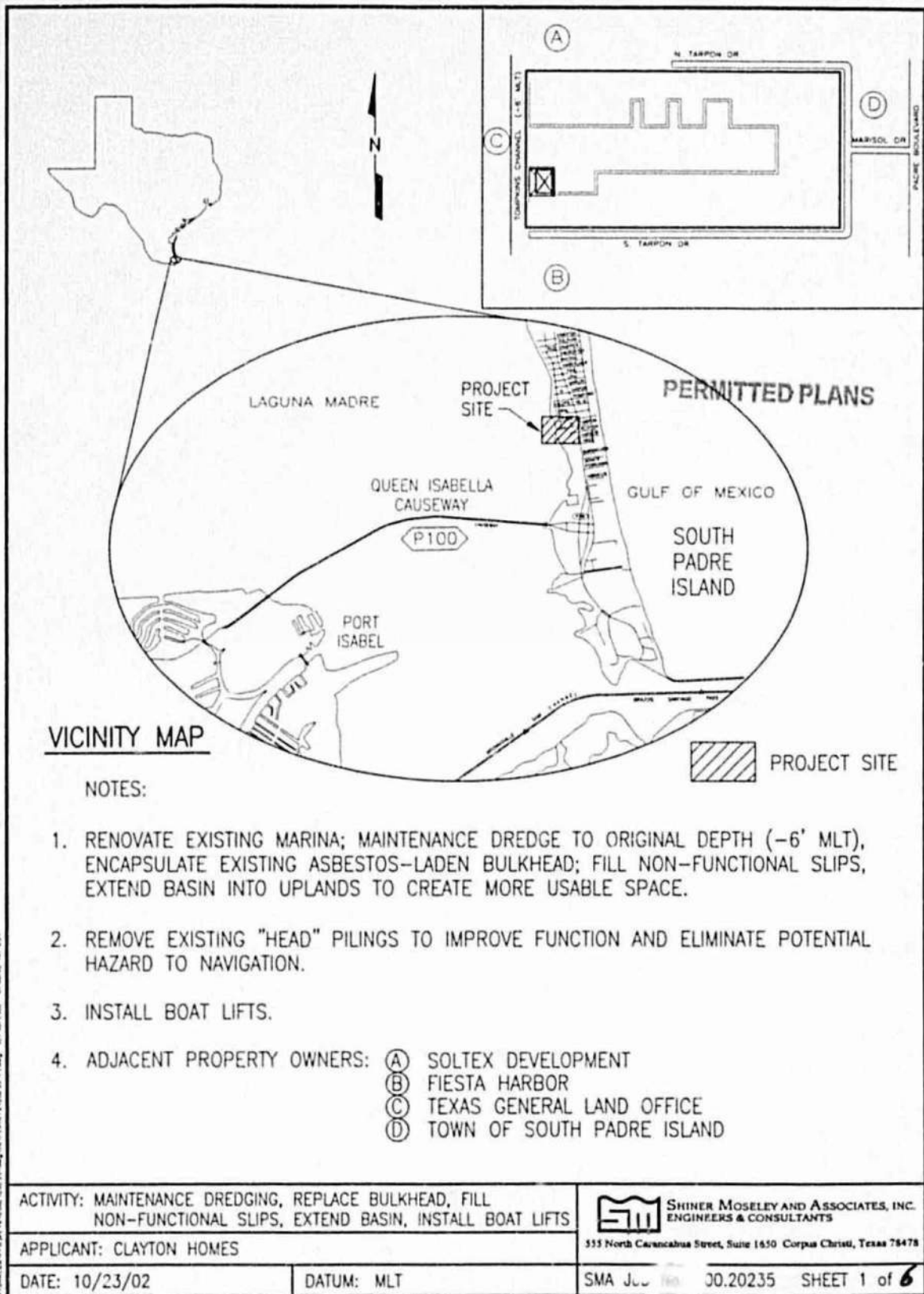
(DISTRICT ENGINEER)
Lloyd Mullins, LEADER
CORPUS CHRISTI FIELD OFFICE
FOR COLONEL LEONARD D. WATEL WORTH

8/19/03
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)



VICINITY MAP

NOTES:

1. RENOVATE EXISTING MARINA; MAINTENANCE DREDGE TO ORIGINAL DEPTH (-6' MLT), ENCAPSULATE EXISTING ASBESTOS-LADEN BULKHEAD; FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN INTO UPLANDS TO CREATE MORE USABLE SPACE.
2. REMOVE EXISTING "HEAD" PILINGS TO IMPROVE FUNCTION AND ELIMINATE POTENTIAL HAZARD TO NAVIGATION.
3. INSTALL BOAT LIFTS.
4. ADJACENT PROPERTY OWNERS:
 - (A) SOLTEX DEVELOPMENT
 - (B) FIESTA HARBOR
 - (C) TEXAS GENERAL LAND OFFICE
 - (D) TOWN OF SOUTH PADRE ISLAND

ACTIVITY: MAINTENANCE DREDGING, REPLACE BULKHEAD, FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN, INSTALL BOAT LIFTS

APPLICANT: CLAYTON HOMES

DATE: 10/23/02

DATUM: MLT



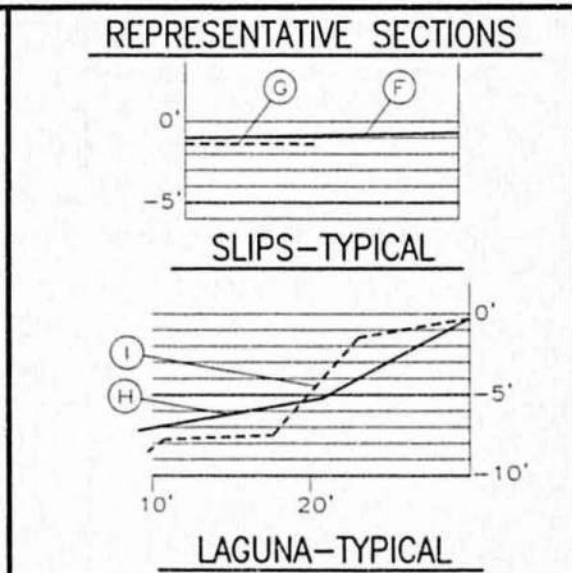
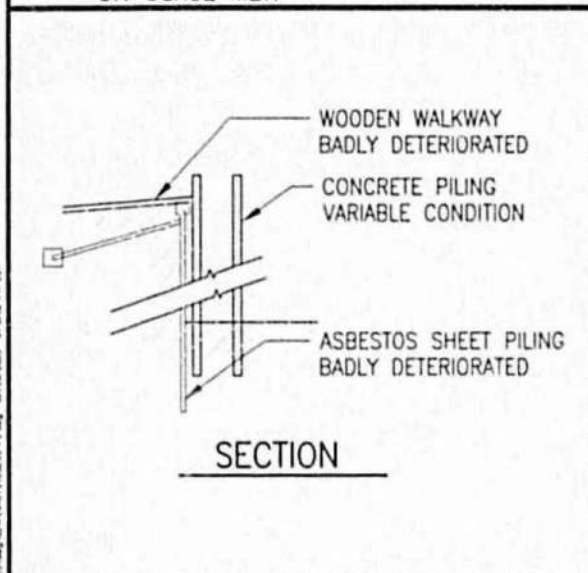
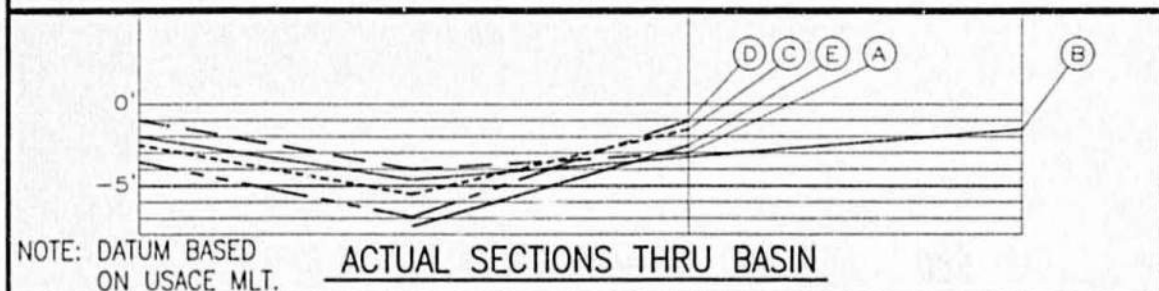
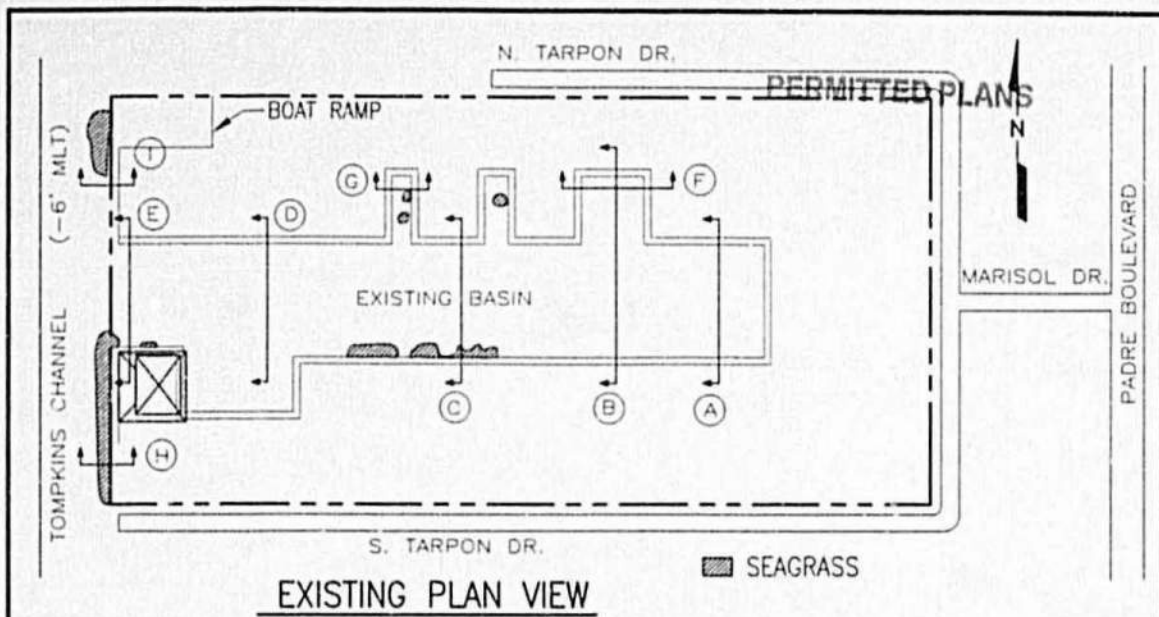
SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS

555 North Caenacahn Street, Suite 1650 Corpus Christi, Texas 78478

SMA JUL 02

JO.20235 SHEET 1 of 6

COE # 22969



ACTIVITY: MAINTENANCE DREDGING, REPLACE BULKHEAD, FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN, INSTALL BOAT LIFTS

APPLICANT: CLAYTON HOMES, CAMERON COUNTY

DATE: 10/23/02

DATUM: MLT

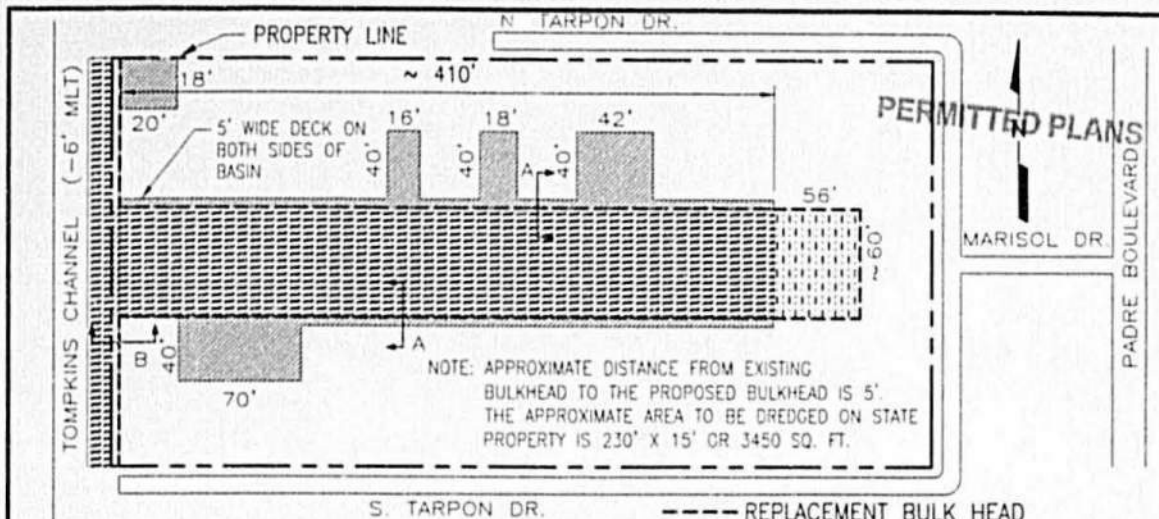


SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS

555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478

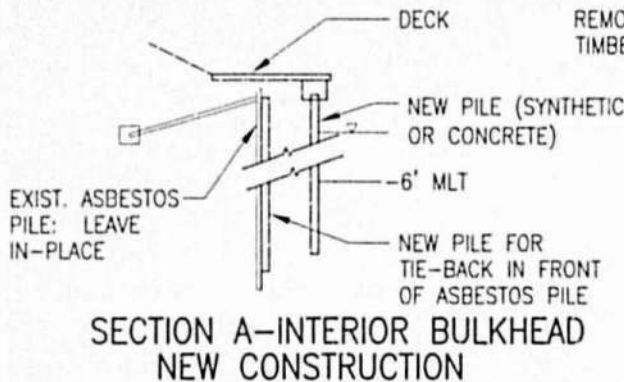
SMA Job No: 200.20235 SHEET 2 of 6

COE # 22969

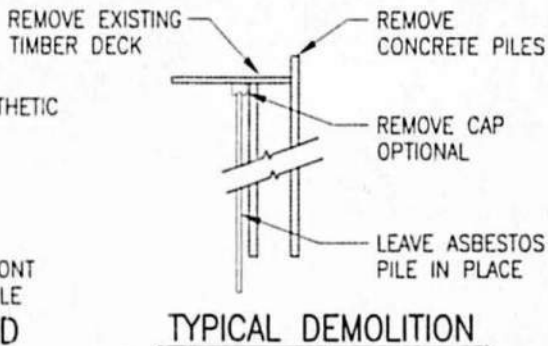


PROPOSED PLAN VIEW-DREDGE/FILL
SCALE : N.T.S.

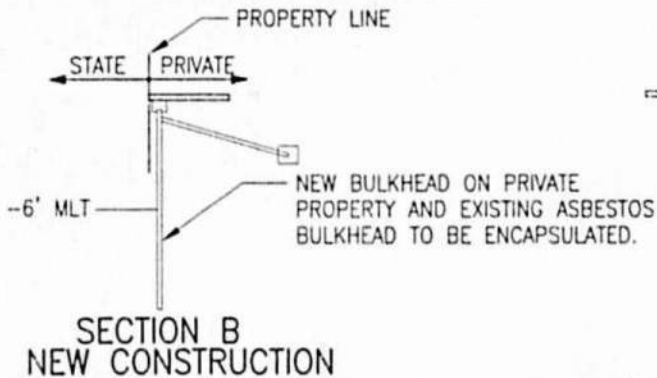
- REPLACEMENT BULK HEAD
- [Solid Grey Box] FILL (1,883 C.Y./ 10,317 SQ FT.)
- [Cross-hatched Box] DREDGE NEW -4' MLT TO -6' MLT (1,369 C.Y./ 3,360 SQ FT.)
- [Diagonal-hatched Box] MAINTENANCE DREDGE -6' MLT (3,900 C.Y./ 35,000 SQ FT.)



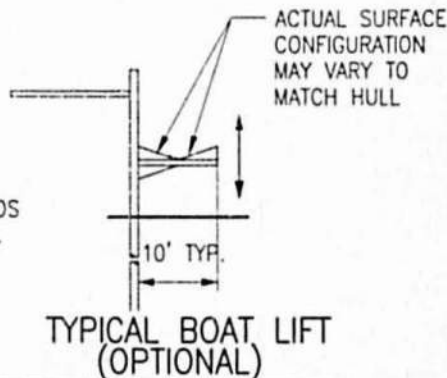
SECTION A-INTERIOR BULKHEAD NEW CONSTRUCTION



TYPICAL DEMOLITION



SECTION B NEW CONSTRUCTION



TYPICAL BOAT LIFT (OPTIONAL)

ACTIVITY: MAINTENANCE DREDGING, REPLACE BULKHEAD, FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN, INSTALL BOAT LIFTS

APPLICANT: CLAYTON HOMES, CAMERON COUNTY

DATE: 10/23/02

DATUM: MLT

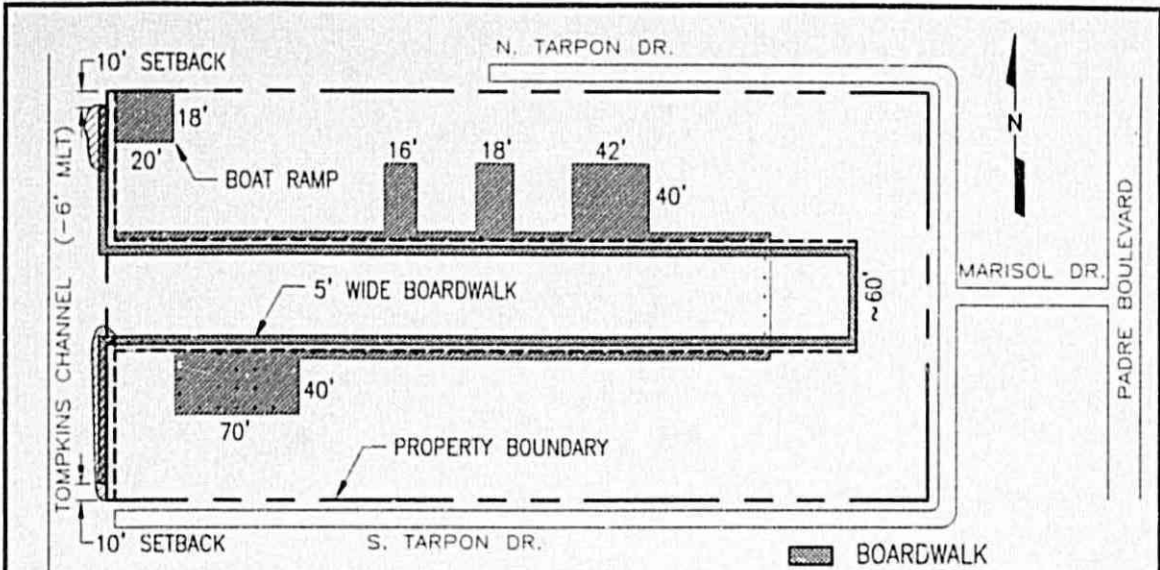


SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS

555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478

SMA Job No: 200.20235 SHEET 3 of 6

COE# 22969



PROPOSED PLAN VIEW-BOARDWALK / DECK

SCALE : N.T.S.

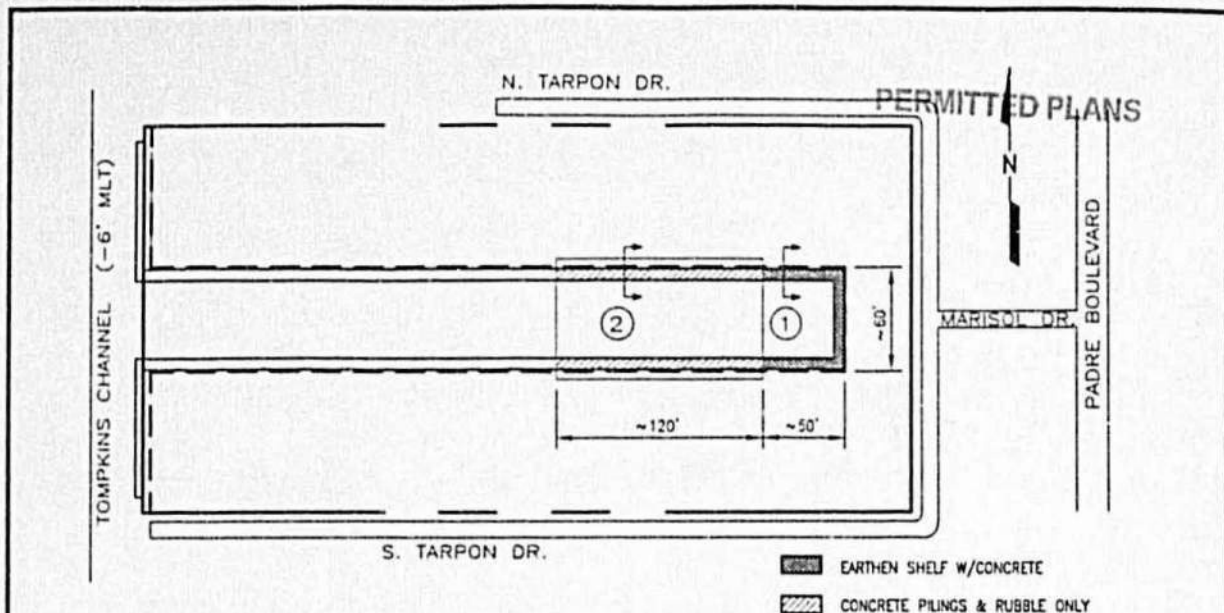
- BOARDWALK
- FILL
- SEAGRASS

PERMITTED PLANS

11/13/04 11:13 AM 11/13/04 11:13 AM 11/13/04 11:13 AM 11/13/04 11:13 AM 11/13/04 11:13 AM 11/13/04 11:13 AM 11/13/04 11:13 AM 11/13/04 11:13 AM

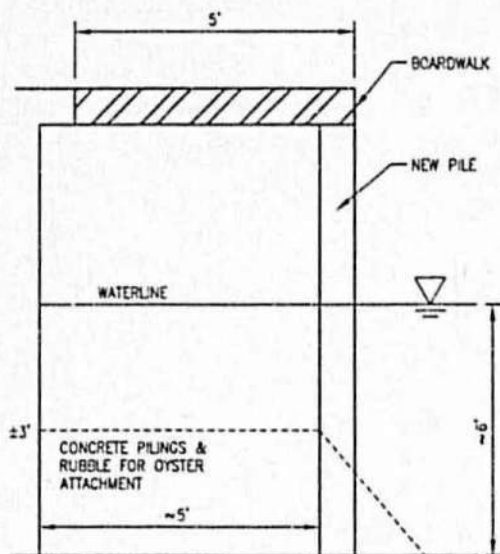
COE # 22969

ACTIVITY: MAINTENANCE DREDGING, REPLACE BULKHEAD, FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN, INSTALL BOAT LIFTS		SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS 535 North Carondelet Street, Suite 1650 Corpus Christi, Texas 78478
APPLICANT: CLAYTON HOMES, CAMERON COUNTY		
DATE: 10/23/02	DATUM: MLT	SMA Job No: 200.20235 SHEET 4 of 6



PROPOSED PLAN VIEW-MITIGATION PLAN

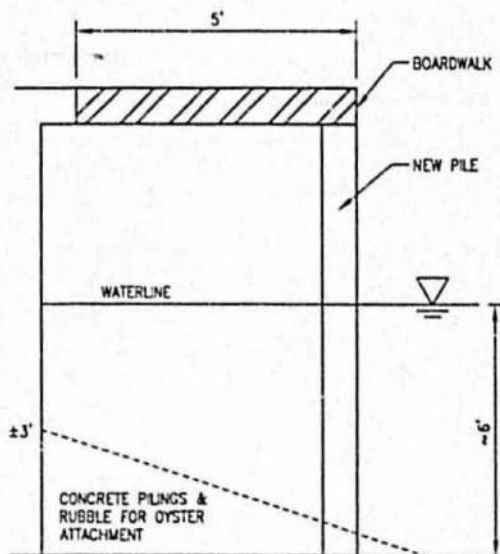
SCALE : N.T.S.



(APPROX. 750 SF.)

SECTION 1 - EAST END OF BASIN (~50'x60')

SCALE : N.T.S.



(APPROX. 1200 SF.)

SECTION 2 - BASIN WEST OF NEWLY EXCAVATED AREA

SCALE : N.T.S.

ACTIVITY: MAINTENANCE DREDGING, REPLACE BULKHEAD, FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN, INSTALL BOAT LIFTS

APPLICANT: CLAYTON HOMES, CAMERON COUNTY

DATE: 05/07/03

DATUM: MLT

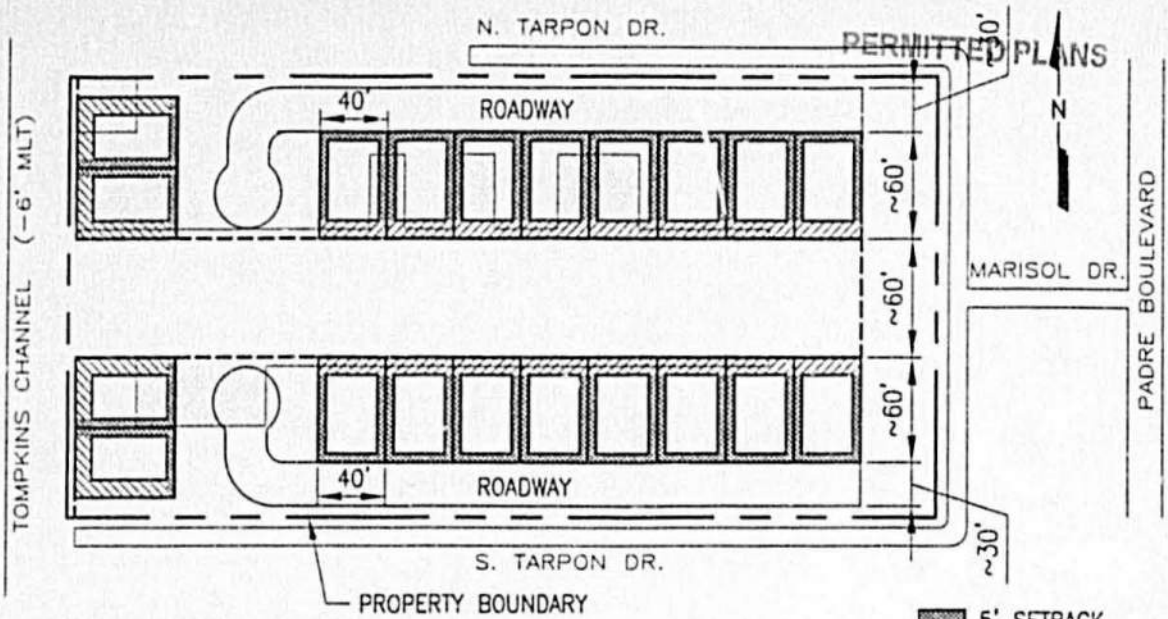


SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS

555 North Carencabus Street, Suite 1650 Corpus Christi, Texas 78478

SMA Job No: 200.20235 SHEET 5 of 6

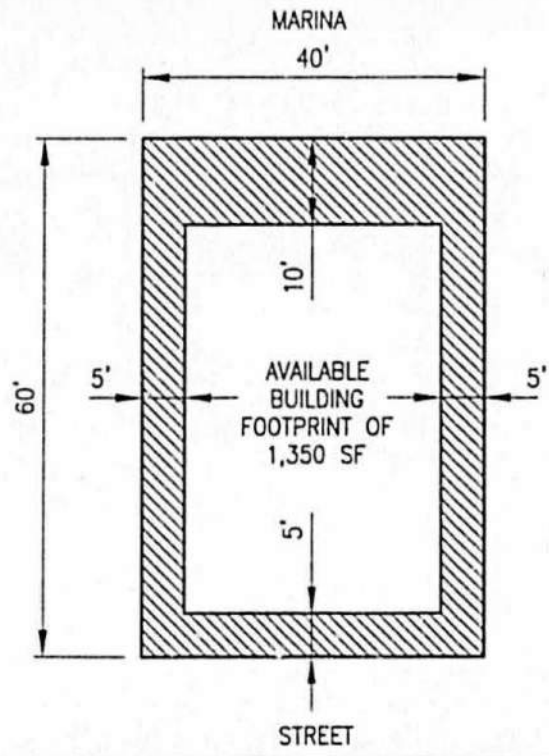
COE# 22969



**PROPOSED PLAN VIEW—
TYPICAL LOT AND HOUSE DESIGNATIONS**

SCALE : N.T.S.

- 5' SETBACK
- 10' SETBACK
- FILL
- TYPICAL HOUSE FOOTPRINT



TYPICAL HOUSE FOOTPRINT

J:\PROJECTS\2002\10\23\10231023.dwg, 10/23/02 10:23:04 AM, 10/23/02 10:23:04 AM, 10/23/02 10:23:04 AM

ACTIVITY: MAINTENANCE DREDGING, REPLACE BULKHEAD, FILL NON-FUNCTIONAL SLIPS, EXTEND BASIN, INSTALL BOAT LIFTS		SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS 555 North Caraculbas Street, Suite 1650 Corpus Christi, Texas 78478
APPLICANT: CLAYTON HOMES, CAMERON COUNTY		
DATE: 10/23/02	DATUM: MLT	SMA Job No: 200.20235 SHEET 6 of 6

COE# 22969

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 28, 2003

U.S. Army Corps of Engineers
Corpus Christi Regulatory Field Office
CESWG-PE-RCC
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318

Attn: Ms. Shelly Carter

Re: USACE Permit Application No. 22969

Dear Sir:

As stated in the Joint Public Notice issued February 28, 2003, the applicant, Clayton Custom Homes, proposes to renovate an existing marina (Seahorse Marina) to be used in connection with a future residential development surrounding the marina. Seahorse Marina was originally excavated from uplands in the late 1960s to a depth of -6 feet mean low tide (MLT) and extends approximately 410 feet east from the Laguna Madre. The proposed renovation activities include maintenance dredging the existing basin, extending the basin further east into uplands, removing existing pilings and a timber deck, installing new bulkhead, constructing a new boardwalk/deck, filling non-functional boat slips and a boat ramp, and installing new boat lifts. In all, the proposed activities will result in 0.24 acre of fill and 0.88 acre of open water dredging and upland excavation. Approximately 0.01 acre of seagrass will be impacted by the dredge and fill operations. The marina is located adjacent to Tompkins Channel on the Laguna Madre in South Padre Island, Cameron County, Texas.

The proposed maintenance dredging will involve the removal of approximately 3,900 cubic yards of material from the existing basin to achieve the original depth of -6 feet MLT. Approximately 0.80 acre of area will be dredged and 70 square feet of seagrass will be adversely impacted. Dredging will be performed mechanically using land-based equipment. The dredged material will be placed on adjacent uplands and contained behind the existing bulkhead. These placement areas will be configured so that excess runoff will return to the marina basin. During dredging, a floating turbidity curtain will be placed across the mouth of the marina basin to reduce suspended sediment impacts to the Laguna Madre. The applicant also plans to implement other best management practices to prevent sediments from washing into the basin.

The existing marina basin will be extended approximately 60 feet to the east, providing waterfront for approximately four berths with movable boat lifts. A total of approximately 0.08 acre of uplands will be excavated to a depth between -4 feet and -6 feet MLT. In addition, a new fiberglass or concrete bulkhead will be installed around the newly excavated area and approximately 5 feet in front of the existing, asbestos-laden bulkhead that is currently in a state of disrepair. The area between the old and new bulkheads will be filled with the maintenance dredged material and capped with concrete. The proposed bulkhead installation will result in the fill of approximately 0.10 acre of open waters. Approximately 50 square feet of this fill area is vegetated with seagrass. A continuous 5-foot-wide timber boardwalk/deck will be installed around the perimeter of the bulkhead.

The existing marina has four slips oriented perpendicular to the basin that have filled to a shallow depth of less than -2 feet MLT. The applicant proposes to fill these slips with maintenance dredged material. The total area to be filled is approximately 0.13 acres, of which 104 square feet is vegetated with seagrass, and will require approximately 1,081 cubic yards of material. Mechanical boat lifts will be installed along the timber deck in front of the new bulkhead. The vertical supports for these lifts will be pilings that will be installed flush along the face of the timber deck.

Project impacts to seagrasses, which provide habitat and water quality functions, will be mitigated by the creation of approximately 0.04 acres of oyster habitat. Though not common in the Laguna Madre ecosystem, oysters have colonized hard substrates (e.g., pilings) in the project area. Approximately 750 square feet of oyster habitat will be created by establishing a 5 foot wide shallow shelf along the east end of the site where concrete rip-rap will be placed as well as existing concrete pilings with attached oysters that will be removed during the project. An additional 1,200 square feet of habitat will be created by the placement of rip-rap at the toe of the bulkhead within the basin up to the photic zone region. No mitigation success criteria have been proposed.

Once the habitat materials are in place, it is anticipated that additional oyster spat will form on top of the rip-rap material. The substrate should also accommodate other encrusting/attachment organisms as well as provide nursery habitat for various invertebrate and fish species. For this reason, the Texas Commission on Environmental Quality (TCEQ) believes that the proposed mitigation will most likely result in the replacement of water quality functions provided by the seagrasses to be impacted.

In response to the Joint Public Notice dated February 28, 2003, and the July 14, 2003, Environmental Assessment and Statement of Findings, the TCEQ certifies that the activity should not result in a violation of established Texas Water Quality Standards as required by Section 401 of the Federal Clean Water Act and pursuant to Title 30, Texas Administrative Code, Chapter 279, provided that the standard provisions in Attachment 1 are followed.

USACE Permit Application No. 22969

Page 3

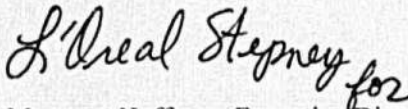
July 28, 2003

Wetlands are protected by the Texas Surface Water Quality Standards, and they play a major role in maintaining water quality. The TCEQ supports a goal of no net loss of wetlands. When USACE personnel follow their Section 404 Guidelines in determining whether to issue a Section 404 permit, wetland impacts/losses can be avoided, minimized, or mitigated.

No review of property rights, location of property lines, nor the distinction between public and private ownership has been made, and this certification may not be used in any way with regard to questions of ownership.

If you require additional information or further assistance, please contact Mr. Gregg Easley, Water Quality Assessment Section, Water Quality Division (MC-150), at (512) 239-4539, or by e-mail at geasley@tceq.state.tx.us.

Sincerely,



Margaret Hoffman, Executive Director
Texas Commission on Environmental Quality

MH/GE/emh

Attachment No. 1

ccs: Clayton Custom Homes, 5800 Padre Boulevard, #113, South Padre Island, Texas
78597-7634
Catherine Respass, Shiner Moseley and Associates, Inc., 555 North Carancahua Street,
Suite 1650, Corpus Christi, Texas 78478-0010

Attachment 1 - Dredge and Fill Certification
USACE Permit No. 22969
July 28, 2003
Page 1 of 2

WORK DESCRIPTION: As described in the public notice dated February 28, 2003, and the July 14, 2003, Environmental Assessment and Statement of Findings

SPECIAL CONDITIONS: None.

GENERAL: This certification, issued pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the application or joint public notice and shall expire five years from the date of issuance of the Corps of Engineers (COE) permit. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The Texas Commission on Environmental Quality (TCEQ) reserves the right to require full joint public notice on a request for minor revision. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TCEQ or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the Corps of Engineers and shall be followed by the permittee or any employee, agent, contractor, or subcontractor of the permittee during any phase of work authorized by a Corps permit.

1. The water quality of wetlands shall be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards including the General, Narrative, and Numerical Criteria.
2. The applicant shall not engage in any activity which will cause surface waters to be toxic to man, aquatic life, or terrestrial life.
3. Permittee shall employ measures to control spills of fuels, lubricants, or any other materials to prevent them from entering a watercourse. All spills shall be promptly reported to the TCEQ, Emergency Spill Response, at (512) 463-7727.
4. Sanitary wastes shall be retained for disposal in some legal manner. Marinas and similar operations which harbor boats equipped with marine sanitation devices shall provide state/federal permitted treatment facilities or pump out facilities for ultimate transfer to a permitted treatment facility. Additionally, marinas shall display signs in appropriate locations advising boat owners that the discharge of sewage from a marine sanitation device to waters in the state is a violation of state and federal law.
5. Materials resulting from the destruction of existing structures shall be removed from the water or areas adjacent to the water and disposed of in some legal manner.
6. A discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color. The use of silt screens or other appropriate methods is encouraged to confine suspended particulates.
7. The placement of any material in a watercourse or wetlands shall be avoided and placed there only with the approval of the Corps when no other reasonable alternative is available. If work within a wetland is unavoidable, gouging or rutting of the substrate is prohibited. Heavy equipment shall be placed on mats to protect the substrate from gouging and rutting if necessary.
8. **Dredged Material Placement:** Dredged sediments shall be placed in such a manner as to prevent any sediment runoff onto any adjacent property not owned by the applicant. Liquid runoff from the disposal area shall be retained on-site or shall be filtered and returned to the watercourse from which the dredged materials were removed. Except for material placement authorized by this permit, sediments from the project shall be placed in such a manner as to prevent any sediment runoff into waters in the state, including wetlands.

Attachment 1 - Dredge and Fill Certification

USACE Permit No. 22969

July 28, 2003

Page 2 of 2

9. If contaminated spoil that was not anticipated or provided for in the permit application is encountered during dredging, dredging operations shall be immediately terminated and the TCEQ, Emergency Spill Response, shall be contacted at (512) 463-7727. Dredging activities shall not be resumed until authorized by the Commission.
10. Contaminated water, soil, or any other material shall not be allowed to enter a watercourse. Noncontaminated stormwater from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Stormwater runoff from construction activities (US EPA Category X) is governed by the requirements of the US Environmental Protection Agency. Applications to apply for a general permit are to be obtained from Region 6, US EPA at (214) 665-7185.
12. Upon completion of earthwork operations, all temporary fills shall be removed from the watercourse/welland, and areas disturbed during construction shall be seeded, ripped, or given some other type of protection to minimize subsequent soil erosion. Any fill material shall be clean and of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters.
13. Disturbance to vegetation will be limited to only what is absolutely necessary. After construction, all disturbed areas will be revegetated to approximate the pre-disturbance native plant assemblage.
14. Where the control of weeds, insects, and other undesirable species is deemed necessary by the permittee, control methods which are nontoxic to aquatic life or human health shall be employed when the activity is located in or in close proximity to water, including wetlands.
15. Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the water, or otherwise interfere with reasonable use of the water in the state.
16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms, putrescible sludge deposits, or sediment layers which adversely affect benthic biota or any lawful uses.
17. Surface waters shall be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of reservoirs, lakes, and bays.
18. The work of the applicant shall be conducted such that surface waters are maintained in an aesthetically attractive condition and foaming or frothing of a persistent nature is avoided. Surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.
19. This certification shall not be deemed as fulfilling the applicant's/permittee's responsibility to obtain additional authorization/approval from other local, state, or federal regulatory agencies having special/specific authority to preserve and/or protect resources within the area where the work will occur.

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Clayton Custom Homes		File Number: 22969	Date: 30 Jul 2003
Attached is:		See Section below	
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Lloyd Mullins
U.S. Army Corps of Engineers
Corpus Christi Regulatory Field Office
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318
Telephone: 361-814-5850

If you only have questions regarding the appeal process you may also contact:
James E. Gilmore, Appeal Review Officer
CESWD-ETO-R, 1100 Commerce Street
Dallas, Texas 75242-0216
Telephone: 214-767-2457; FAX 214-767-9021
Email: James.E.Gimore@swd02.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or authorized agent.	Date:	Telephone number:
---	-------	-------------------

SECTION 01 12 00

PERMITS

PART 1 GENERAL

1.1 OWNER-OBTAINED PERMITS

- a. The Owner has three permits in-hand that are associated with this project: 1) Exhibit A - U.S. Army Corps of Engineers (USACE) Permit SWG-1996-00026, LOP; 2) Exhibit B - Texas General Land Office Coastal Lease No. CL20110002; and 3) Exhibit C - USACE Permit 22969.
- b. A copy of each permit is attached at the end of this section. The Contractor shall comply with all provisions contained in the permits. Where dimensions or configurations conflict between the construction drawings and the permit drawings, the dimensions or configurations shown on the construction drawings shall govern.
- c. Contractor shall file all required notifications to regulatory agencies.

1.2 CONTRACTOR-OBTAINED PERMITS

- a. Any other necessary permits not mentioned in Paragraph 1.1 shall be the responsibility of Contractor.
- b. All Contractor-obtained permits, Contractor shall make application for and pay for any necessary permit fees, temporary or permanent utility interruption fees, and/or re-location fees.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

SECTION 01 13 00

SUPPLEMENTARY CONDITIONS

PART 1 GENERAL

1.1 DEFINITIONS

- a. Section includes Administrative and procedural requirements and information.
- b. Drawings and Conditions of the Contract and Division 01 Specifications Sections, apply to this Section.

1.2 PROJECT

Project Identification: Tompkins Channel Maintenance Dredging.

Project Location: City of South Padre Island, Texas.

1.3 OWNER INFORMATION

Owner: City of South Padre Island, Texas, 4601 Padre Boulevard, South Padre Island, TX 78597, Phone: (956)761-3837.

Owner's Representative: Kristina Boburka, Shoreline Director.

1.4 ENGINEER INFORMATION

Engineer: HDR Engineering, Inc., 555 N. Carancahua, Suite 1600, Corpus Christi, Texas, 78401; Phone 281-206-9464.

Engineer's Representative: Daniel E. Garza, P.E., Direct Phone No. 361-779-7571.

1.5 LANDOWNER INFORMATION

Company: Del Mar SPI, LLC, P.O. Box 40195, South Padre Island, Texas 78597.

Landowner: Mr. Pablo Paez Garza.

1.6 PRECONSTRUCTION CONFERENCE

A preconstruction conference shall be held after award of Contract.

- a. Owner will notify the Contractor as to the date and time of the conference at least five (5) calendar days in advance of beginning the work.
- b. Contractor's Project Manager and Project Superintendent and Contractors's Subcontractor Representatives shall attend.

1.7 SCHEDULE OF VALUES

Where a Contract is awarded on a lump sum basis, the Contractor shall file with the Owner a balanced price segregation of his lump sum bid into items similar to the various subdivisions of the general and detailed specifications, the sum of which shall equal the lump sum bid. Provide

separate breakdown for change order items requested.

1.8 ORDER OF CONSTRUCTION AND CONSTRUCTION SCHEDULE

- a. Within 10 days after award of Contract, submit for approval a construction schedule.
 - (1) Account for schedule of other dredging contracts.
 - (2) Account for schedule of Subcontracts.
 - (3) Show on schedule as a minimum, start and finish dates for each bid item as well as for the whole project.
 - (4) Obtain a temporary construction easement from the Landowner and provide compensation as outlined in the MOU.
- b. Evaluate schedule no less than bi-weekly.
 - (1) Update, correct, and rerun schedule and submit to Owner to show rescheduling necessary to reflect true job conditions.
 - (2) When shortening of various time intervals is necessary to correct for behind schedule conditions, indicate actions to implement to accomplish work in shorter duration.
 - (3) Information shall be submitted to Owner in writing with revised schedule.
- c. If Contractor does not take necessary action to accomplish work according to schedule, Contractor may be ordered by Owner in writing to take necessary and timely action to improve work progress.
 - (1) Owner may require increased work forces, extra equipment, extra shifts or other action as necessary.
 - (2) Should Contractor refuse or neglect to take such action authorized, under provisions of this contract, Owner may take necessary actions including, but not necessarily limited to, withholding of payment and termination of Contract.

1.9 WORKING HOURS

Working hours are 6:00 a.m. to 6:00 p.m., exclusive of legal holidays, Monday through Sunday.

1.10 STORM PREPAREDNESS PLAN

1.10.1 General

- a. During hurricane season, June 1st through November 30th, the Contractor shall be prepared to demobilize from the site in the event of an approaching storm event or hurricane. Any and all work involved in the preparation for the demobilization and remobilization of his crew and equipment shall be at no cost to the Owner.
- b. When a warning of gale force winds is issued by the National Hurricane Center (NHC), take precautions to minimize danger to persons and equipment. Precautions shall include, but are not limited to, closing

openings; and removing loose materials, tools, and equipment from exposed locations.

1.10.2 Hurricane Condition of Readiness

- a. Masters, owners, and operators of vessels retain the ultimate responsibility for the readiness condition of their vessel to withstand hurricane force conditions, whether underway, at anchor, or moored.
- b. Unless directed otherwise, comply with the following:
 - (1) During hurricane season, June 1st through November 30th, the Contractor shall be prepared to secure the site in the event of an approaching hurricane. Any and all work involved in the preparation and securing of the site for a storm event, as well as the demobilization and remobilization of his crew and equipment shall be at no cost to the Owner.
 - (2) When a warning of gale force winds is issued by the National Weather Service, take precautions to minimize danger to persons, and protect the work. Precautions shall include, but are not limited to, closing openings; removing loose materials, tools and equipment from exposed locations; and removing or securing scaffolding and other temporary work. Close openings in the work when storms of lesser intensity pose a threat to the work. Dumpsters shall be emptied when high winds (greater than 35 knots sustained) are imminent.
 - (3) Hurricane Condition of Readiness: Unless directed otherwise, comply with:
 - (a) Condition FOUR (Sustained winds of 50 knots or greater expected within 72 hours): Normal daily jobsite cleanup and good housekeeping practices. Collect and store in piles or containers scrap lumber, waste material, and rubbish for removal and disposal at the close of each workday. Maintain the construction site including storage areas, free of accumulation of debris. Stack form lumber in neat piles less than 4 feet high. Remove all debris, trash, or objects that could become missile hazards.
 - (b) Condition THREE (Sustained winds of 50 knots or greater expected within 48 hours): Maintain "Condition FOUR" requirements and commence securing operations necessary for "Condition ONE" which cannot be completed within 18 hours. Cease all routine activities which might interfere with securing operations. Commence securing and stow all gear and portable equipment. Make preparations for securing site. Review requirements pertaining to "Condition TWO" and continue action as necessary to attain "Condition THREE" readiness. Contact Owner for weather updates and completion of required actions.
 - (c) Condition TWO (Sustained winds of 50 knots or greater expected within 24 hours): Curtail or cease routine activities until securing operation is complete. Reinforce or remove form work and scaffolding. Secure machinery, tools, equipment, materials, or remove from the jobsite. Expend every effort to clear all missile hazards and loose

equipment from work areas. Contact Owner for weather and Condition of Readiness (COR) updates and completion of required actions.

- (d) Condition ONE. (Sustained winds of 50 knots or greater expected within 12 hours): Secure the jobsite, and leave the premises.

1.11 PROJECT MEETINGS

1.11.1 Pre-Dredging Conferences

- a. Coordinate and schedule with Owner. The conference is to be held prior to initiating dredging, but not more than two (2) weeks before scheduled initiation of dredging.
- b. Review Contract Documents Specifications.
- c. Contractor's superintendent and individual who will actually act as foreman of the dredging crew, if other than the Superintendent, shall attend.

1.11.2 Bi-weekly Progress Meetings

- a. Conduct a bi-weekly meeting with the Owner for the purpose of project progress. Meeting attendees should include, at a minimum, the Contractor's Project Manager and Superintendent.
- b. Using the most current schedule, jointly review the actual progress of the project as compared to the as-planned progress and to review planned activities for the upcoming two weeks.
- c. Address status of RFIs, Submittals, Progress Payments, Contract adjustments, and other pertinent project documentation.
- d. Discuss action items, coordination topics, upcoming milestones, and other necessary discussion topics.

1.12 SPECIAL CONSIDERATIONS RELATED TO ADJACENT PROPERTIES AND FACILITIES

- a. Contractor shall be responsible for negotiations of any waivers or alternate arrangements required to enable transportation of materials and equipment to the site.
- b. Contractor will maintain conditions such that access is not hindered as the result of construction related work. Contractor shall repair any damage to roads caused by Contractor's operations.

1.13 HISTORICAL AND ARCHAEOLOGICAL

If during the course of construction, evidence of deposits of historical or archeological interest is found, the Contractor shall cease operations affecting the find and shall notify Owner.

- a. No further disturbance of the deposits shall ensue until the Contractor has been notified by Owner that Contractor may proceed.
- b. Owner will issue a notice to proceed after appropriate authorities have surveyed the find and made a determination to Owner.

- c. Compensation to the Contractor, if any, for lost time or changes in construction resulting from the find, shall be determined in accordance with changed or extra work provisions of the Contract Documents.
- d. The site has been previously investigated and has no known history of historical or archaeological finds.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

SECTION 01 20 00

PRICE AND PAYMENT PROCEDURES

11/20, CHG 2: 08/21

PART 1 GENERAL

1.1 CONTRACTOR'S INVOICE AND CONTRACT PERFORMANCE STATEMENT

1.1.1 Submission of Invoices

Monthly invoices and supporting forms for work performed must be submitted to the Owner within 5 calendar days of the end of each month.

1.2 LUMP SUM PAYMENT ITEMS

Payment items for the work of this Contract for which lump sum payments will be made are listed in the Contractor's Proposal and described below. All costs for items of work which are not specifically mentioned to be included in a particular lump sum or unit price payment item, shall be included in the listed lump sum item most closely associated with the work involved. The lump sum price and payment made for each item listed constitutes full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for which separate payment is not otherwise provided.

1.2.1 Fees for use of Landowner's Temporary Placement Area (Item No. 1)

1.2.1.1 Payment

Payment will be made for costs associated with the execution of a temporary construction easement to place and remove dredged material from the Landowner's temporary placement area.

1.2.1.2 Unit of Measure

Unit of Measure: Lump Sum, paid directly to the Landowner.

1.2.2 Mobilization and Demobilization (Item No. 2)

1.2.2.1 Payment

Payment will be made for costs associated with mobilization and demobilization, including preparatory work and operations necessary for the movement of personnel, equipment, supplies, and incidentals to the project site and other work performed prior to beginning work.

Payment for mobilization will be paid at 60% of the total of Item No. 2 at the end of mobilization.

Payment for demobilization will be paid at 40% of the total of Item No. 2 at the end of demobilization.

1.2.2.2 Unit of Measure

Unit of measure: Lump Sum.

1.2.3 Pre-dredge Hazard Survey (Item No. 3)

1.2.3.1 Payment

Payment will be made for costs associated with the execution of a pre-dredge hazard survey, including labor, supplies, and equipment to perform the survey, and a Report of Findings provided to the Owner.

1.2.3.2 Unit of Measure

Unit of measure: Lump Sum.

1.2.4 Construction General Permit and Stormwater Pollution Prevention Plan (Item No. 4)

1.2.4.1 Payment

Payment will be made for costs associated with the development, submittal, and acquisition of a Construction General Permit and a Stormwater Pollution Prevention Plan.

1.2.4.2 Unit of Measure

Unit of measure: Lump Sum.

1.2.5 Temporary Placement Areas (Item No. 6)

1.2.5.1 Payment

Payment will be made for costs associated with the development of Placement Areas, which includes performing required excavation, construction and maintenance of berms, spillways, ditches, stormwater piping, and other operations incidental thereto, Contractor-constructed temporary placement area; placement into and maintenance of dredged material from the Channel; deconstruction and removal of excess and dredged material with final disposition of material offsite, with disposition meeting all permit and regulatory requirements; and returning site back to its pre-construction condition.

1.2.5.2 Unit of Measure

Unit of measure: Lump Sum.

1.3 UNIT PRICE PAYMENT ITEMS

Payment items for the work of this Contract on which the Contract unit price payments will be made are listed in the Contractor's Proposal and described below. The unit price and payment made for each item listed constitutes full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for each of the unit price items.

1.3.1 Dredging of Material (Item No. 5)

1.3.1.1 Payment

Payment will be made for costs associated with dredge excavation, which

includes performing required excavation and other operations incidental thereto, Contractor-constructed placement areas, with disposal meeting all permit and regulatory requirements.

The dredging conditions specified and indicated describe conditions which are known. However, the Contractor is responsible for other conditions encountered which are not unusual when compared to the conditions recognized in the dredging business as usual in dredging activities such as those required under this contract.

1.3.1.2 Measurement

The total quantity of excavated material for which payment will be made will be the theoretical quantity between the ground surface as determined by Owner-provided Before Dredge survey as indicated on the Contract Drawings and the grade and slope of the theoretical cross sections indicated.

No allowance will be made for overdepth excavation or for the removal of any material outside the required slope lines.

1.3.1.3 Unit of Measure

Unit of measure: Cubic Yard.

1.3.2 Stand-by Time (Item No. 7)

1.3.2.1 Payment

Payment will be made for idle time for equipment and personnel that has been held on the Project site on a stand-by basis at the request of the Owner, where, but for his request, such equipment would have left the project site. Payment will not be made for any idle time for equipment or personnel caused by the Contractor or ordinary maintenance issues, or not caused by the Owner.

The Contractor is responsible for selecting the appropriate dredge equipment for this project. Dredge equipment utilized must correspond to the anticipated quantity of dredge material to achieve the agreed-to calendar-day completion required for this project.

1.3.2.2 Measurement

Stand by time will be measured by the total time in which equipment or personnel are held idle on the project site as described above and will include costs of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, labor and all costs of moving equipment or plant to, on, and away from the site, and all incidentals.

1.3.2.3 Unit of Measure

Unit of measure: Hour.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

SECTION 01 33 00

SUBMITTAL PROCEDURES

08/18, CHG 4: 02/21

PART 1 GENERAL

1.1 SUMMARY

1.1.1 Submittal Information

The Owner may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections. Each submittal is to be complete and in sufficient detail to allow ready determination of compliance with contract requirements.

Units of weights and measures used on all submittals are to be the same as those used in the contract drawings.

1.1.2 Submission of Submittals

Schedule and provide submittals requiring Owner approval before acquiring the material or equipment covered thereby.

1.2 DEFINITIONS

1.2.1 Submittal Descriptions (SD)

Submittal requirements are specified in the technical sections. Examples and descriptions of submittals identified by the Submittal Description (SD) numbers and titles follow:

SD-01 Preconstruction Submittals

For Owner approved Division 01 preconstruction submittals that are required prior to or commencing with the start of work shall be submitted within 30 calendar days of contract award unless specified elsewhere in the specifications.

Preconstruction Submittals include schedules and a tabular list of locations, features, and other pertinent information regarding products, materials, equipment, or components to be used in the work.

Certificates Of Insurance

Surety Bonds

List Of Proposed Subcontractors

Submittal Register

Accident Prevention Plan

Work Plan

Quality Control (QC) plan

Environmental Protection Plan

SD-02 Shop Drawings

Drawings, diagrams and schedules specifically prepared to illustrate some portion of the work.

Drawings prepared by or for the Contractor to show how multiple systems and interdisciplinary work will be coordinated.

1.2.2 Approving Authority

Office or designated person authorized to approve the submittal.

1.2.3 Work

As used in this section, on-site and off-site construction required by contract documents, including labor necessary to produce submittals, construction, materials, products, equipment, and systems incorporated or to be incorporated in such construction.

1.3 SUBMITTALS

Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Submittal Register

1.4 PREPARATION

1.4.1 Transmittal Form

These forms will be furnished to the Contractor. Properly complete this form by filling out all the heading blank spaces and identifying each item submitted. Exercise special care to ensure proper listing of the specification paragraph and sheet number of the contract drawings pertinent to the data submitted for each item.

1.4.2 Submittal Format

1.4.2.1 Format of SD-01 Preconstruction Submittals

When the submittal includes a document that is to be used in the project, or is to become part of the project record, other than as a submittal, do not apply the Contractor's approval stamp to the document itself, but to a separate sheet accompanying the document.

Provide data in the unit of measure used in the contract documents.

1.4.2.2 Format of SD-02 Shop Drawings

Provide shop drawings not less than 8 1/2 by 11 inches nor more than 30 by 42 inches, except for full-size patterns or templates. Prepare drawings to accurate size, with scale indicated, unless another form is required. Ensure drawings are suitable for reproduction and of a quality to produce clear, distinct lines and letters, with dark lines on a white background.

a. Include the nameplate data, size, and capacity on drawings. Also

include applicable federal, military, industry, and technical society publication references.

- b. Dimension drawings, except diagrams and schematic drawings. Prepare drawings demonstrating interface with other trades to scale. Use the same unit of measure for shop drawings as indicated on the contract drawings. Identify materials and products for work shown.
- c. Submit an electronic copy of drawings in PDF format.

1.4.2.2.1 Drawing Identification

Include on each drawing the drawing title, number, date, and revision numbers and dates, in addition to information required in paragraph IDENTIFYING SUBMITTALS.

Number drawings in a logical sequence. Each drawing is to bear the number of the submittal in a uniform location next to the title block. Place the Government contract number in the margin, immediately below the title block, for each drawing.

1.4.3 Electronic File Format

Provide submittals in electronic format. Compile the submittal file as a single, complete document, to include the Transmittal Form described within. Name the electronic submittal file specifically according to its contents, and coordinate the file naming convention with the Owner. Electronic files must be of sufficient quality that all information is legible. Use PDF as the electronic format, unless otherwise specified or directed by the Owner. If documents are scanned, optical character resolution (OCR) routines are required.

E-mail electronic submittal documents smaller than 20MB to an e-mail address as directed by the Owner.

1.5 QUANTITY OF SUBMITTALS

Unless otherwise specified, submit by email:

- a. PDF of Submittal.
- b. DOCX (native file) of Submittal form.

1.6 PROJECT SUBMITTAL REGISTER

The Project Submittal Register indicating Submittals as required by the Specifications is provided as "Exhibit A - Submittal Register".

1.6.1 Submittal Management

Prepare and maintain a submittal register, as the work progresses. Do not change data that is output in columns (c), (d), (e), and (f) as delivered by Owner; retain data that is output in columns (a), (g), (h), and (i) as approved. As an attachment, provide a submittal register showing items of equipment and materials for which submittals are required by the specifications. This list may not be all-inclusive and additional submittals may be required. The Owner will provide the initial submittal register in electronic format with the following fields completed, to the extent that will be required by the Owner during subsequent usage.

Column (c): Lists specification section in which submittal is required.

Column (d): Lists each submittal description (SD Number, and type, e.g., SD-02 Shop Drawings) required in each specification section.

Column (e): Lists one principal paragraph in each specification section where a material or product is specified. This listing is only to facilitate locating submitted requirements. Do not consider entries in column (e) as limiting the project requirements.

Thereafter, the Contractor is to track all submittals by maintaining a complete list, including completion of all data columns and all dates on which submittals are received by and returned by the Owner.

1.6.2 Preconstruction Use of Submittal Register

Submit the submittal register. Include the QC plan and the project schedule. Verify that all submittals required for the project are listed and add missing submittals. Coordinate and complete the following fields on the register submitted with the QC plan and the project schedule:

Column (a) Activity Number: Activity number from the project schedule.

Column (g) Contractor Submit Date: Scheduled date for the approving authority to receive submittals.

Column (h) Contractor Approval Date: Date that Contractor needs approval of submittal.

Column (i) Contractor Material: Date that Contractor needs material delivered to Contractor control.

1.6.3 Contractor Use of Submittal Register

Update the following fields in the Owner-furnished submittal register program or equivalent fields in the program used by the Contractor with each submittal throughout the contract.

Column (b) Transmittal Number: List of consecutive, Contractor-assigned numbers.

Column (j) Action Code (k): Date of action used to record Contractor's review when forwarding submittals to QC.

Column (l) Date submittal transmitted.

Column (q) Date approval was received.

1.6.4 Owner Use of Submittal Register

Update the following fields:

Column (b) Transmittal Number: List of consecutive, Contractor-assigned numbers.

Column (l) Date submittal was received.

Column (m) through (p) Dates of review actions.

Column (q) Date of return to Contractor.

1.6.5 Delivery of Copies

Submit an updated electronic copy of the submittal register to the Owner with each invoice request. Provide an updated Submittal Register monthly regardless of whether an invoice is submitted.

1.7 SCHEDULING

No delay damages or time extensions will be allowed for time lost in late submittals.

- a. Coordinate scheduling, sequencing, preparing, and processing of submittals with performance of work so that work will not be delayed by submittal processing. The Contractor is responsible for additional time required for Government reviews resulting from required resubmittals. The review period for each resubmittal is the same as for the initial submittal.
- b. Submittals required by the contract documents are listed on the submittal register. If a submittal is listed in the submittal register but does not pertain to the contract work, the Contractor is to include the submittal in the register and annotate it "N/A" with a brief explanation. Approval by the Owner does not relieve the Contractor of supplying submittals required by the contract documents but that have been omitted from the register or marked "N/A."
- c. Resubmit the submittal register and annotate it monthly with actual submission and approval dates. When all items on the register have been fully approved, no further resubmittal is required.

Owner review will be completed within five (5) calendar days after the date of submission.

1.8 OWNER APPROVING AUTHORITY

When the approving authority is the Owner, the Owner will:

- a. Note the date on which the submittal was received.
- b. Review submittals for approval within the scheduling period specified and only for conformance with project design concepts and compliance with contract documents.
- c. Identify returned submittals with one of the actions defined in paragraph REVIEW NOTATIONS and with comments and markings appropriate for the action indicated.

Upon completion of review of submittals requiring Government approval, stamp and date submittals. One copy of the submittal will be retained by the Owner and one copy of the submittal will be returned to the Contractor.

1.8.1 Review Notations

Submittals will be returned to the Contractor with the following notations:

- a. Submittals marked "No Exception Taken" authorize proceeding with the work covered.
- b. Submittals marked "approved as noted" or "approved, except as noted, resubmittal not required," authorize proceeding with the work covered provided that the Contractor takes no exception to the corrections.
- c. Submittals marked "Make Corrections Noted" authorize proceeding with the work covered provided that the Contractor takes no exception to the corrections.
- d. Submittals marked "Rejected" or "Revise and Resubmit" indicate incomplete submittal or noncompliance with the contract requirements or design concept. Resubmit with appropriate changes. Do not proceed with work for this item until the resubmittal is approved.
- e. Submittals marked "No Action Required" indicate that the submittal has been previously reviewed and approved, is not required, does not have evidence of being reviewed and approved by Contractor, or is not complete. A submittal marked "No Action Required" will be returned with an explanation of the reason it is not reviewed. Resubmit submittals returned for lack of review by Contractor or for being incomplete, with appropriate action, coordination, or change.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION		CONTRACTOR												CONTRACT NO.				
SPI Tompkins Channel Final Design																		
TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARRA#	GOVT OR A/E REVIEW CLASSIFICATION	CONTRACTOR SCHEDULE DATES			CONTRACTOR ACTION		APPROVING AUTHORITY			MAILED TO CONTR/	DATE RCD FRM APPR AUTH	REMARKS			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	
ACTIVITY NO	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	
	01 33 00		SD-01 Preconstruction Submittals Submittal Register	1.6														
	01 57 19		SD-01 Preconstruction Submittals Environmental Protection Plan Stormwater Pollution Prevention Plan	1.6 3.2.1.1														
			Stormwater Notice of Intent Inspection Reports	3.2.1.2 3.2.1.3														
			Stormwater Pollution Prevention Plan Compliance Notebook	3.2.1.4														
			Stormwater Notice of Termination Regulatory Notifications	3.2.1.5 3.7.1.1														
	35 20 23		SD-01 Preconstruction Submittals Pre-Dredge Hazard Survey Notice Of Intent To Dredge Dredge Spill Contingency Plan Spill Contingency Plan	1.6.2 1.6.2 3.3.6 1.5														
			SD-02 Shop Drawings Soundings	3.2.10														

SECTION 01 57 19

TEMPORARY ENVIRONMENTAL CONTROLS

08/22

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

29 CFR 1910.1200	Hazard Communication
40 CFR 64	Compliance Assurance Monitoring
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 261.7	Residues of Hazardous Waste in Empty Containers
40 CFR 263	Standards Applicable to Transporters of Hazardous Waste
40 CFR 268	Land Disposal Restrictions
40 CFR 273	Standards for Universal Waste Management
40 CFR 279	Standards for the Management of Used Oil
49 CFR 171	General Information, Regulations, and Definitions
49 CFR 172	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements
49 CFR 173	Shippers - General Requirements for Shipments and Packagings

1.2 DEFINITIONS

1.2.1 Class I and II Ozone Depleting Substance (ODS)

Class I ODS is defined in Section 602(a) of The Clean Air Act. A list of Class I ODS can be found on the EPA website at the following weblink.
<https://www.epa.gov/ozone-layer-protection/ozone-depleting-substances>.

Class II ODS is defined in Section 602(s) of The Clean Air Act. A list of Class II ODS can be found on the EPA website at the following weblink.
<https://www.epa.gov/ozone-layer-protection/ozone-depleting-substances>.

1.2.2 Contractor Generated Hazardous Waste

Contractor generated hazardous waste is materials that, if abandoned or disposed of, may meet the definition of a hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction. Examples include, but are not limited to, excess paint thinners (i.e., methyl ethyl ketone, toluene), waste thinners, excess paints, excess solvents, waste solvents, excess pesticides, and contaminated pesticide equipment rinse water.

1.2.3 Environmental Pollution and Damage

Environmental pollution and damage is the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally or historically.

1.2.4 Environmental Protection

Environmental protection is the prevention/control of pollution and habitat disruption that may occur to the environment during construction. The control of environmental pollution and damage requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

1.2.5 Hazardous Debris

As defined in paragraph SOLID WASTE, debris that contains listed hazardous waste (either on the debris surface, or in its interstices, such as pore structure) in accordance with 40 CFR 261. Hazardous debris also includes debris that exhibits a characteristic of hazardous waste in accordance with 40 CFR 261.

1.2.6 Hazardous Materials

Hazardous material as defined in 49 CFR 171 and listed in 49 CFR 172.

Hazardous material is any material that: Is regulated as a hazardous material in accordance with 49 CFR 173; or requires a Safety Data Sheet (SDS) in accordance with 29 CFR 1910.1200; or during end use, treatment, handling, packaging, storage, transportation, or disposal meets or has components that meet or have potential to meet the definition of a hazardous waste as defined by 40 CFR 261 Subparts A, B, C, or D. Designation of a material by this definition, when separately regulated or controlled by other sections or directives, does not eliminate the need for adherence to that hazard-specific guidance which takes precedence over this section for "control" purposes. Such material includes ammunition, weapons, explosive actuated devices, propellants, pyrotechnics, chemical and biological warfare materials, medical and pharmaceutical supplies, medical waste and infectious materials, bulk fuels, radioactive materials, and other materials such as asbestos, mercury, and polychlorinated biphenyls (PCBs).

1.2.7 Hazardous Waste

Hazardous Waste is any material that meets the definition of a solid waste and exhibits a hazardous characteristic (ignitability, corrosivity, reactivity, or toxicity) as specified in 40 CFR 261, Subpart C, or contains a listed hazardous waste as identified in 40 CFR 261, Subpart D.

1.2.8 Land Application

Land Application means spreading or spraying discharge water at a rate that allows the water to percolate into the soil. No sheeting action, soil erosion, discharge into storm sewers, discharge into defined drainage areas, or discharge into the "waters of the United States" must occur. Comply with federal, state, and local laws and regulations.

1.2.9 Municipal Separate Storm Sewer System (MS4) Permit

MS4 permits are those held by municipalities or installations to obtain NPDES permit coverage for their stormwater discharges.

1.2.10 National Pollutant Discharge Elimination System (NPDES)

The NPDES permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States.

1.2.11 Oily Waste

Oily waste are those materials that are, or were, mixed with Petroleum, Oils, and Lubricants (POLs) and have become separated from that POLs. Oily wastes also means materials, including wastewaters, centrifuge solids, filter residues or sludges, bottom sediments, tank bottoms, and sorbents which have come into contact with and have been contaminated by, POLs and may be appropriately tested and discarded in a manner which is in compliance with other state and local requirements.

This definition includes materials such as oily rags, "kitty litter" sorbent clay and organic sorbent material. These materials may be land filled provided that: It is not prohibited in other state regulations or local ordinances; the amount generated is "de minimus" (a small amount); it is the result of minor leaks or spills resulting from normal process operations; and free-flowing oil has been removed to the practicable extent possible. Large quantities of this material, generated as a result of a major spill or in lieu of proper maintenance of the processing equipment, are a solid waste. As a solid waste, perform a hazardous waste determination prior to disposal. As this can be an expensive process, it is recommended that this type of waste be minimized through good housekeeping practices and employee education.

1.2.12 Regulated Waste

Regulated waste are solid wastes that have specific additional federal, state, or local controls for handling, storage, or disposal.

1.2.13 Sediment

Sediment is soil and other debris that have eroded and have been transported by runoff water or wind.

1.2.14 Solid Waste

Solid waste is a solid, liquid, semi-solid or contained gaseous waste. A solid waste can be a hazardous waste, non-hazardous waste, or non-Resource Conservation and Recovery Act (RCRA) regulated waste. Types of solid waste typically generated at construction sites may include:

1.2.14.1 Debris

Debris is non-hazardous solid material generated during the construction, demolition, or renovation of a structure that exceeds 2.5-inch particle size that is: a manufactured object; plant or animal matter; or natural geologic material (for example, cobbles and boulders), broken or removed concrete, masonry, and rock asphalt paving; ceramics; roofing paper and shingles. Inert materials may be reinforced with or contain ferrous wire, rods, accessories and weldments. A mixture of debris and other material such as soil or sludge is also subject to regulation as debris if the mixture is comprised primarily of debris by volume, based on visual inspection.

1.2.14.2 Green Waste

Green waste is the vegetative matter from landscaping, land clearing and grubbing, including, but not limited to, grass, bushes, scrubs, small trees and saplings, tree stumps and plant roots. Marketable trees, grasses and plants that are indicated to remain, be re-located, or be re-used are not included.

1.2.14.3 Material Not Regulated As Solid Waste

Material not regulated as solid waste is nuclear source or byproduct materials regulated under the Federal Atomic Energy Act of 1954 as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows, or other regulated point source discharges; regulated air emissions; and fluids or wastes associated with natural gas or crude oil exploration or production.

1.2.14.4 Non-Hazardous Waste

Non-hazardous waste is waste that is excluded from, or does not meet, hazardous waste criteria in accordance with 40 CFR 263.

1.2.14.5 Recyclables

Recyclables are materials, equipment and assemblies such as doors, windows, door and window frames, plumbing fixtures, glazing and mirrors that are recovered and sold as recyclable, wiring, insulated/non-insulated copper wire cable, wire rope, and structural components. It also includes commercial-grade refrigeration equipment with Freon removed, household appliances where the basic material content is metal, clean polyethylene terephthalate bottles, cooking oil, used fuel oil, textiles, high-grade paper products and corrugated cardboard, stackable pallets in good condition, clean crating material, and clean rubber/vehicle tires. Metal meeting the definition of lead contaminated or lead based paint contaminated may not be included as recyclable if sold to a scrap metal company. Paint cans that meet the definition of empty containers in accordance with 40 CFR 261.7 may be included as recyclable if sold to a scrap metal company.

1.2.14.6 Surplus Soil

Surplus soil is existing soil that is in excess of what is required for this work, including aggregates intended, but not used, for on-site mixing of concrete, mortars, and paving. Contaminated soil meeting the definition of hazardous material or hazardous waste is not included and must be managed in accordance with paragraph HAZARDOUS MATERIAL MANAGEMENT.

1.2.14.7 Scrap Metal

This includes scrap and excess ferrous and non-ferrous metals such as reinforcing steel, structural shapes, pipe, and wire that are recovered or collected and disposed of as scrap. Scrap metal meeting the definition of hazardous material or hazardous waste is not included.

1.2.14.8 Wood

Wood is dimension and non-dimension lumber, plywood, chipboard, hardboard. Treated or painted wood that meets the definition of lead contaminated or lead based contaminated paint is not included. Treated wood includes, but is not limited to, lumber, utility poles, crossties, and other wood products with chemical treatment.

1.2.15 Surface Discharge

Surface discharge means discharge of water into drainage ditches, storm sewers, or creeks meeting the definition of "waters of the United States". Surface discharges from construction sites are discrete, identifiable sources and require a permit from the governing agency. Comply with federal, state, and local laws and regulations.

1.2.16 Wastewater

Wastewater is the used water and solids that flow through a sanitary sewer to a treatment plant.

1.2.16.1 Stormwater

Stormwater is any precipitation in an urban or suburban area that does not evaporate or soak into the ground, but instead collects and flows into storm drains, rivers, and streams.

1.2.17 Waters of the United States

Waters of the United States means Federally jurisdictional waters, including wetlands, that are subject to regulation under Section 404 of the Clean Water Act or navigable waters, as defined under the Rivers and Harbors Act.

1.2.18 Wetlands

Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

1.2.19 Universal Waste

The universal waste regulations streamline collection requirements for

certain hazardous wastes in the following categories: batteries, pesticides, mercury-containing equipment (for example, thermostats), and lamps (for example, fluorescent bulbs). The rule is designed to reduce hazardous waste in the municipal solid waste (MSW) stream by making it easier for universal waste handlers to collect these items and send them for recycling or proper disposal. These regulations can be found at 40 CFR 273.

1.3 SUBMITTALS

Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Environmental Protection Plan

Stormwater Pollution Prevention Plan (SWPPP)

Stormwater Notice of Intent

Inspection Reports

Stormwater Pollution Prevention Plan

Compliance Notebook

Stormwater Notice of Termination (for NPDES coverage under the general permit for construction activities)

Regulatory Notificiations

1.4 ENVIRONMENTAL PROTECTION REQUIREMENTS

Provide and maintain, during the life of the contract, environmental protection as defined. Plan for and provide environmental protective measures to control pollution that develops during construction practice. Plan for and provide environmental protective measures required to correct conditions that develop during the construction of permanent or temporary environmental features associated with the project. Protect the environmental resources within the project boundaries and those affected outside the limits of permanent work during the entire duration of this Contract. Comply with federal, state, and local regulations pertaining to the environment, including water, air, solid waste, hazardous waste and substances, oily substances, and noise pollution.

1.5 RESULTS OF MARINE DREDGING SAMPLING REPORT

A sampling program was performed for the Tompkins Channel Maintenance Dredging Project. This effort was undertaken to provide all parties assurance that dredged material from the Tompkins Channel met all USACE requirements for placement of these dredged materials in an appropriate upland dredge management placement area. The testing agency cover letter can be found at the end of this specification section as Exhibit A - Dredging Sampling Report - Cover Letter. The full report can be obtained from the Owner.

1.6 ENVIRONMENTAL PROTECTION PLAN

The purpose of the EPP is to present an overview of known or potential environmental issues that must be considered and addressed during construction. Submit the EPP within 15 days after Contract award and not less than 5 days before the preconstruction meeting. Revise the EPP throughout the project to include any reporting requirements, changes in site conditions, or contract modifications that change the project scope of work in a way that could have an environmental impact. No requirement in this section will relieve the Contractor of any applicable federal, state, and local environmental protection laws and regulations. During Construction, identify, implement, and submit for approval any additional requirements to be included in the EPP. Maintain the current version onsite.

The EPP includes, but is not limited to, the following elements:

1.6.1 General Overview and Purpose

1.6.1.1 Descriptions

A brief description of each specific plan required by environmental permit or elsewhere in this Contract such as stormwater pollution prevention plan, spill control plan, and solid waste management plan.

1.6.1.2 Duties

The duties and level of authority assigned to the person(s) on the job site who oversee environmental compliance, such as who is responsible for adherence to the EPP, who is responsible for spill cleanup and training personnel on spill response procedures, who is responsible for manifesting hazardous waste to be removed from the site (if applicable), and who is responsible for training the Contractor's environmental protection personnel.

1.6.1.3 Procedures

A copy of any standard or project-specific operating procedures that will be used to effectively manage and protect the environment on the project site.

1.6.1.4 Communications

Communication and training procedures that will be used to convey environmental management requirements to Contractor employees and subcontractors.

1.6.1.5 Contact Information

Emergency contact information contact information (office phone number, cell phone number, and e-mail address).

1.6.2 General Site Information

1.6.2.1 Drawings

Drawings showing locations of proposed temporary excavations or embankments for haul roads, stream crossings, jurisdictional wetlands, material storage areas, structures, sanitary facilities, storm drains and conveyances, and stockpiles of excess soil.

1.6.2.2 Work Area

Work area plan showing the proposed activity in each portion of the area and identify the areas of limited use or nonuse. Include measures for marking the limits of use areas, including methods for protection of features to be preserved within authorized work areas and methods to control runoff and to contain materials on site, and a traffic control plan.

1.6.3 Management of Natural Resources

- a. Land resources
- b. Replacement of damaged landscape features
- c. Temporary construction
- d. Fish and wildlife resources
- e. Wetland areas

1.6.4 Stormwater Management and Control

- a. Ground cover
- b. Erodible soils
- c. Temporary measures
 - (1) Structural Practices
 - (2) Temporary and permanent stabilization
- d. Effective selection, implementation and maintenance of Best Management Practices (BMPs).

1.6.5 Protection of the Environment from Waste Derived from Contractor Operations

Control and disposal of solid and sanitary waste. Control and disposal of hazardous waste.

This item consist of the management procedures for hazardous waste to be generated. As a minimum, include the following:

- a. List of the types of hazardous wastes expected to be generated
- b. Procedures to ensure a written waste determination is made for appropriate wastes that are to be generated
- c. Sampling/analysis plan, including laboratory method(s) that will be used for waste determinations and copies of relevant laboratory certifications
- d. Methods and proposed locations for hazardous waste accumulation/storage (that is, in tanks or containers)
- e. Management procedures for storage, labeling, transportation, and disposal of waste (treatment of waste is not allowed unless

specifically noted)

- f. Management procedures and regulatory documentation ensuring disposal of hazardous waste complies with Land Disposal Restrictions (40 CFR 268)
- g. Management procedures for recyclable hazardous materials such as lead-acid batteries, used oil, and similar
- h. Used oil management procedures in accordance with 40 CFR 279; Hazardous waste minimization procedures
- i. Plans for the disposal of hazardous waste by permitted facilities; and Procedures to be employed to ensure required employee training records are maintained.

1.6.6 Prevention of Releases to the Environment

Procedures to prevent releases to the environment

Notifications in the event of a release to the environment

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

3.1 PROTECTION OF NATURAL RESOURCES

Minimize interference with, disturbance to, and damage to fish, wildlife, and plants, including their habitats. The protection of rare, threatened, and endangered animal and plant species identified, including their habitats, is the Contractor's responsibility.

Preserve the natural resources within the project boundaries and outside the limits of permanent work. Restore to an equivalent or improved condition upon completion of work. Confine construction activities to within the limits of the work indicated or specified.

3.1.1 Flow Ways

Do not alter water flows or otherwise significantly disturb the native habitat adjacent to the project and critical to the survival of fish and wildlife, except as specified and permitted.

3.1.2 Vegetation

Except in areas to be cleared, do not remove, cut, deface, injure, or destroy trees or shrubs without the Owner's consent. Do not fasten or attach ropes, cables, or guys to existing nearby trees for anchorages unless authorized by the Owner.

Protect existing trees that are to remain to ensure they are not injured, bruised, defaced, or otherwise damaged by construction operations. Remove displaced rocks from uncleared areas. Coordinate with the Owner and Installation Environmental Office to determine appropriate action for trees and other landscape features scarred or damaged by equipment operations.

3.2 STORMWATER

Do not discharge stormwater from construction sites to the sanitary sewer. If the water is noted or suspected of being contaminated, it may only be released to the storm drain system if the discharge is specifically permitted.

3.2.1 Construction General Permit

Provide a Construction General Permit as required by the State of Texas. Under the terms and conditions of the permit, install, inspect, maintain BMPs, prepare stormwater erosion and sediment control inspection reports, and submit SWPPP inspection reports. Maintain construction operations and management in compliance with the terms and conditions of the general permit for stormwater discharges from construction activities.

3.2.1.1 Stormwater Pollution Prevention Plan

Submit a project-specific Stormwater Pollution Prevention Plan (SWPPP) to the Owner for approval, within 30 days of Contract Award and prior to the commencement of work. The SWPPP must meet the requirements of the Texas State General Permit for stormwater discharges from construction sites.

Include the following:

- a. Comply with terms of the state general permit for stormwater discharges from construction activities. Prepare SWPPP in accordance with state requirements.
- b. Select applicable BMPs in accordance with applicable state or local requirements.
- c. Include a completed copy of the Notice of Intent, BMP Inspection Report Template, and Stormwater Notice of Termination, except for the effective date.

3.2.1.2 Stormwater Notice of Intent for Construction Activities

Submit the approved NOI and appropriate permit fees onto the appropriate federal or state agency for approval. No land disturbing activities may commence without permit coverage. Maintain an approved copy of the SWPPP at the onsite construction office, and continually update as regulations require, reflecting current site conditions.

3.2.1.3 Inspection Reports

Submit "Inspection Reports" to the Owner in accordance with the State of Texas Construction General Permit.

3.2.1.4 Stormwater Pollution Prevention Plan Compliance Notebook

Create and maintain a three ring binder of documents that demonstrate compliance with the Construction General Permit. Include a copy of the permit Notice of Intent, proof of permit fee payment, SWPPP and SWPPP update amendments, inspection reports and related corrective action records, copies of correspondence with the State Permitting Agency, and a copy of the permit Notice of Termination in the binder. At project completion, the notebook becomes property of the Owner. Provide the compliance notebook to the Owner.

3.2.1.5 Stormwater Notice of Termination for Construction Activities

Submit a Notice of Termination to the Owner for approval once construction is complete and final stabilization has been achieved on all portions of the site for which the permittee is responsible. Once approved, submit the Notice of Termination to the appropriate state or federal agency.

3.2.2 Erosion and Sediment Control Measures

Provide erosion and sediment control measures in accordance with state and local laws and regulations. Preserve vegetation to the maximum extent practicable.

Erosion control inspection reports may be compiled as part of a stormwater pollution prevention plan inspection reports.

3.2.2.1 Erosion Control

Prevent erosion by mulching, Compost Blankets, Geotextiles, temporary slope drains, etc. Stabilize slopes by such combination of these methods necessary for effective erosion control. Use of hay bales is prohibited..

3.2.2.2 Sediment Control Practices

Implement sediment control practices to divert flows from exposed soils, temporarily store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Implement sediment control practices prior to soil disturbance and prior to creating areas with concentrated flow, during the construction process to minimize erosion and sediment laden runoff. Include the following devices: silt fence, temporary diversion dikes, storm drain inlet protection. Location and details of installation and construction are indicated on the drawings.

3.2.3 Work Area Limits

Mark the areas that need not be disturbed under this Contract prior to commencing construction activities. Mark or fence isolated areas within the general work area that are not to be disturbed. Protect monuments and markers before construction operations commence. Where construction operations are to be conducted during darkness, all markers must be visible in the dark. Personnel must be knowledgeable of the purpose for marking and protecting particular objects.

3.2.4 Contractor Facilities and Work Areas

Place field offices, staging areas, stockpile storage, and temporary buildings in areas designated on the drawings or as directed by the Owner. Move or relocate the Contractor facilities only when approved by the Owner.

Provide erosion and sediment controls for onsite borrow and spoil areas to prevent sediment from entering nearby waters. Control temporary excavation and embankments for plant or work areas to protect adjacent areas.

3.3 SURFACE AND GROUNDWATER

3.3.1 Cofferdams, Diversions, and Dewatering

Construction operations for dewatering, removal of cofferdams, tailrace

excavation, and tunnel closure must be constantly controlled to maintain compliance with existing state water quality standards and designated uses of the surface water body. Comply with the State of Texas water quality standards and anti-degradation provisions and the permit. Refer to Specification Section 01 12 00 - Permits. Do not discharge excavation ground water to the sanitary sewer, storm drains, or to surface waters outside the direction of the permit. Discharge of hazardous substances will not be permitted under any circumstances. Use sediment control BMPs to prevent construction site runoff from directly entering any storm drain or surface waters.

If the construction dewatering is noted or suspected of being contaminated, it may only be released to the storm drain system if the discharge is specifically permitted. Discharge of hazardous substances will not be permitted under any circumstances.

3.3.2 Waters of the United States

Do not enter, disturb, destroy, or allow discharge of contaminants into waters of the United States except as authorized herein. The protection of waters of the United States is the Contractor's responsibility. Refer to Specification Section 01 12 00 Permits for additional information. Authorization to enter specific waters of the United States identified does not relieve the Contractor from any obligation to protect other waters of the United States within, adjacent to, or in the vicinity of the construction site and associated boundaries.

In accordance with the TGLO permit, the following special conditions apply:

- a. All maintenance dredging activities are to be confined within the limits of the authorized excavation areas.
- b. Silt curtains are to be installed prior to beginning any dredging action and shall be maintained around the perimeter throughout the duration of all dredging activity to minimize turbidity levels within adjacent waters.
- c. The boundary of all areas to be dredged, as depicted in Exhibits, shall be clearly marked using temporary navigation aids (posts, piling, poles, buoys, flags, etc.) so that construction crews can properly delineate boundaries of the authorized work area and avoid impacts to state-owned land and resources adjacent to the project site. All materials used to mark the work area shall be removed by the Contractor and properly disposed of on private upland property within 30-days following completion of construction.

3.4 PROTECTION OF CULTURAL RESOURCES

3.4.1 Archaeological Resources

If, during excavation or other construction activities, any previously unidentified or unanticipated historical, archaeological, and cultural resources are discovered or found, activities that may damage or alter such resources will be suspended. Resources covered by this paragraph include, but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone, charcoal, or other deposits; rock or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human activities. Upon such discovery or find, immediately notify the Owner so that the appropriate authorities may be

notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. Cease all activities that may result in impact to or the destruction of these resources. Secure the area and prevent employees or other persons from trespassing on, removing, or otherwise disturbing such resources. The Owner retains ownership and control over archaeological resources.

3.5 AIR RESOURCES

Equipment operation, activities, or processes will be in accordance with 40 CFR 64 and state air emission and performance laws and standards.

3.5.1 Burning

Burning is prohibited on the Owner premises.

3.5.2 Dust Control

Keep dust down at all times, including during nonworking periods. Sprinkle or treat, with dust suppressants, the soil at the site, haul roads, and other areas disturbed by operations.

3.6 WASTE MINIMIZATION

Minimize the use of hazardous materials and the generation of waste. Include procedures for pollution prevention/ hazardous waste minimization in the Hazardous Waste Management Section of the EPP.

3.7 WASTE MANAGEMENT AND DISPOSAL

3.7.1 Releases/Spills of Oil and Hazardous Substances

3.7.1.1 Response and Notifications

Exercise due diligence to prevent, contain, and respond to spills of hazardous material, hazardous substances, hazardous waste, sewage, regulated gas, petroleum, lubrication oil, and other substances. Maintain spill cleanup equipment and materials at the work site. In the event of a spill, take prompt, effective action to stop, contain, curtail, or otherwise limit the amount, duration, and severity of the spill/release. In the event of any releases of oil and hazardous substances, chemicals, or gases; immediately (within 15 minutes) notify the Owner and the state or local authority.

Submit verbal and written notifications as required by the federal, state, local regulations and instructions (regulatory notifications). Provide copies of the written notification and documentation that a verbal notification was made within 20 days. Spill response must be in accordance with applicable state and local regulations. Contain and clean up these spills without cost to the Owner.

3.7.1.2 Clean Up

Clean up hazardous and non-hazardous waste spills. Reimburse the Owner for costs incurred including sample analysis materials, clothing, equipment, and labor if the Owner will initiate its own spill cleanup procedures, for Contractor-responsible spills, when: Spill cleanup procedures have not begun within one hour of spill discovery/occurrence; or, in the Owner's judgment, spill cleanup is inadequate and the spill remains a threat to

human health or the environment.

3.8 INADVERTENT DISCOVERY OF PETROLEUM-CONTAMINATED SOIL OR HAZARDOUS WASTES

If petroleum-contaminated soil, or suspected hazardous waste is found during construction that was not identified in the Contract documents, immediately notify the Owner. Do not disturb this material until authorized by the Owner.

3.9 POST CONSTRUCTION CLEANUP

Clean up areas used for construction in accordance with Contract Clause: "Cleaning Up". Unless otherwise instructed in writing by the Owner, remove traces of temporary construction facilities such as haul roads, work area, structures, foundations of temporary structures, stockpiles of excess or waste materials, and other vestiges of construction prior to final acceptance of the work. Grade parking area and similar temporarily used areas to conform with surrounding contours.

END OF SECTION



August 30, 2022

Daniel E. Garza, P.E.
HDR Engineering, Inc.
11700 Katy Freeway, Suite 250
Houston, TX 77079
Dan.Garza@hdrinc.com

Subject: Public Marine Dredging Application Sampling Report
Tompkins Channel Maintenance Dredging Project
Tompkins Channel, South Padre Island, Texas
CEC Project 322-148

Dear Mr. Garza:

Civil & Environmental Consultants, Inc. (CEC) appreciates the opportunity to present this Public Marine Dredging Application Sampling Report (Report) to HDR Engineering Inc. regarding the Tompkins Channel Maintenance Dredging Project in South Padre Island, Texas.

This Report covered an area called the Tompkins Channel, which is a public, narrow channel, owned and managed by the City of South Padre Island, that extends from west to east along the Queen Isabella Causeway then turning north along the west side of South Padre Island. CEC collected and analyzed representative samples in general accordance with United States Army Corps of Engineers (USACE) May 2019 guidelines prior to the planned maintenance dredging in Tompkins Channel.

Based on our findings from the representative sample results and our previous collective employee experience in performing and submitting dredge material sampling reports to the USACE for approval, CEC expects that the results described in the Report would be acceptable to the USACE for placement of the dredged materials in an appropriate upland dredge management placement area (DMPA), if they had received and approved the Sampling Analysis Plan prior to sampling.

We appreciate the opportunity to be of service to you. Please contact Noah Hoffmann at nhoffmann@cecinc.com or Larry Lew at llew@cecinc.com if you have any questions.

Very truly yours,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Noah Hoffmann, P.G. (TX No. 15099)
Project Manager



Larry Lew, P.G. (TX No. 5146)
Principal

SECTION 35 20 23

DREDGING

08/20

PART 1 GENERAL

1.1 GENERAL INFORMATION

This Section covers furnishing suitable dredging plant and performing all work required to remove the specified materials from within the prescribed work area limits as indicated, and placement of the dredge material within the prescribed material placement areas.

The Contractor is responsible for making their own investigation of submerged, surface, and overhead structures in the work areas and other locations they find necessary to traverse. The exact location, depths, and heights of various structures including, but not limited to submarine cables, pipes, highlines, docks, piers, bulkheads, and bridges (as applicable), are not known and it will be necessary for the Contractor to ascertain interference problems and notify the respective owners in advance of dredging operations.

The Contractor is responsible for making necessary arrangements with the respective owners of the structure(s) to assure satisfactory completion of dredging in the vicinity with a minimum interruption of service, and shall perform their operations in such a manner as will avoid damage to these facilities.

1.2 DEFINITIONS

1.2.1 Maintenance Material

Maintenance material is defined as that comprising shoaling which has occurred since the channel areas were last dredged.

1.2.2 New Work Material

New work material is defined as previously undredged material.

1.3 SUBMITTALS

Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Pre-Dredge Hazard Survey

Submit survey of nearshore and underwater obstructions (including pipelines and other utilities) prior to commencement of any field work

Notice Of Intent To Dredge

Prior to commencement of work on this contract, the Contractor shall notify the U.S. Army Corps of Engineers and the U.S. Coast Guard of his intended operations to dredge in writing at least 10

calendar days prior to the commencement of dredging activities. A copy of the notification shall be submitted to the Owner on the same day as submittal to the U.S. Army Corps of Engineers and the U.S. Coast Guard.

Dredge Spill Contingency Plan

Prior to dredging operations, the Contractor shall submit a Dredge Spill Contingency Plan.

Spill Contingency Plan

Prior to dredging operations, the Contractor shall submit a Spill Contingency Plan for oil, fuel, hydraulic fluids or any other environmentally hazardous material.

SD-02 Shop Drawings

Soundings

Submit drawings of monthly surveys during progress of work by soundings.

1.4 METHOD OF COMMUNICATION

Provide a system of communication between the dredge crew and the crew at the placement area. A portable two-way radio is acceptable.

1.5 ENVIRONMENTAL COMPLIANCE AND PROTECTION

Comply with conditions and requirements of State or Federal permits. The Owner has secured the permit for dredging and placement of material as indicated.

During the life of the contract, provide and maintain environmental protective measures. Also, environmental protective measures required to correct conditions, such as oil spills or debris, that occur during the dredging operations, must be provided (spill contingency plan). Comply with Federal, State, and local regulations pertaining to water, air, and noise pollution.

1.6 SPECIAL INSTRUCTIONS

1.6.1 Misplaced Material

The Contractor shall notify the Owner of any misplaced material.

1.6.2 Artificial Obstructions

Prior to commencing excavation activities, a pre-dredge hazard survey or gradiometer/magnetometer survey shall be performed over the entire area to be excavated to search for uncharted pipelines and/or other anomalies below the existing seafloor. The Owner reserves the right to suspend dredging work for up to ten (10) calendar days upon completion of survey by the Contractor, to review survey results/findings, and if applicable, provide direction regarding any interferences or discrepancies encountered. Said suspension of dredging work shall not suspend the contract time, nor be construed as Standby Time. Survey passes shall be no greater than 100 ft apart. Prior to dredging, the Contractor shall rake the dredge areas and

shall remove debris encountered. Debris removed from the dredged area shall be removed from the water. Disposal shall be the responsibility of the Contractor and disposal shall be outside the limits of Owner property.

In case the actual conditions differ from those stated or shown, or both, an adjustment in contract price or time of completion, or both, will be made in accordance with the following:

- a. The Contractor shall promptly (within 24 hours of the findings), and before the conditions are disturbed, give a written notice of intent to dredge to the Owner of:
 - (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
 - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent of the work of the character provided for in the contract.
- b. The Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this section and the contract modified in writing accordingly.
- c. No request by the Contractor for an equitable adjustment to the contract under this section shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this section for giving written notice may be extended by the Owner.
- d. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

1.7 QUANTITY OF MATERIAL

1.7.1 Quantity of Material

The total estimated amount of material to be removed from within the specified limits, including side slopes, but excluding overdepths, is 21,500 CY for Tompkins Channel and Seahorse Harbor Canal. There is no allowable quantity for overdepth dredging. The quantities listed are estimates only. Within the limits of available funds, complete the work specified whether the quantities involved are greater or less than those estimated.

1.8 UTILITY CROSSINGS

1.8.1 General

It is the Contractor's responsibility to investigate the location of all utility crossings. The Contractor shall take precautions against damages which might result from his operations in the vicinity of the utility crossings. If any damage occurs as a result of his operations, the Contractor will be required to suspend dredging until the damage is

repaired and approved by the Owner. Costs of such repairs and downtime of the dredge and attendant plant shall be at the Contractor's expense.

PART 2 PRODUCTS

2.1 CHARACTER OF MATERIAL

The material to be removed is maintenance material. Information on the material is as follows:

- a. Grain sieve analyses were performed on the ten soil samples of material that were obtained from the channel in the locations as indicated on the Contract Drawings. The locations were selected at areas that indicated greater shoaling in a previous study. Refer to Exhibit A - Grain Sieve Analyses following this specification section.
- b. The Contractor is ultimately responsible for determination of the characteristics of materials to be dredged.

PART 3 EXECUTION

3.1 INSPECTION

Inspect the work, keep records of work performed, and ensure that gages, targets, ranges, and other markers are in place and usable for the intended purpose. Provide, at the request of the Owner, boats, boatmen, laborers, and materials necessary for inspecting, supervising, and surveying the work. When required, provide transportation for the Owner and inspectors to and from the placement area and between the dredging plant and adjacent points on shore.

3.2 DREDGING

3.2.1 Order of Work

The sequence of construction shall be determined by the Contractor, unless otherwise restricted by the contract documents. Construction shall be continuous from start to finish with no appreciable shut down periods.

3.2.2 Interference with Navigation

The project site is located in an active, public channel for pleasure craft, bounded by environmentally sensitive areas on the west and public and private property on the east. Contractor shall coordinate with Owner and schedule work so that dredging operations do not impact use of adjacent public and private docks and piers and use of adjacent docks and piers do not impact dredging work schedule.

Delays caused by use of adjacent docks shall not be grounds for claims, changed conditions, or time extensions to the contract.

Minimize interference with the use of channels and passages. The Contractor is responsible for shifting or moving of dredges or the interruption of dredging operations to accommodate the movement of vessels and floating equipment, if necessary. Adhere to Coast Guard Regulations for passing vessels.

3.2.3 Lights

Each night, between sunset and sunrise and during periods of restricted visibility, provide lights for floating plants, pipelines, ranges, and markers. Also, provide lights for buoys that could endanger or obstruct navigation. When night work is in progress, maintain lights from sunset to sunrise for the observation of dredging operations. Lighting must conform to United States Coast Guard requirements for visibility and color.

3.2.4 Navigation Warnings

Provide notice to increase public awareness of potential hazards presented by dredge plant equipment by stating the location, date of construction, equipment mooring, marshalling areas, using local newspapers, radios, television, waterway users associations, or other appropriate area specific communication networks. Ensure that an announcement is made through the same networks at the beginning of the dredging operation. Make periodic updates/status announcements at intervals of not more than a month throughout the contract life.

Display a sturdy and prominent warning sign at all public boat marinas within two miles of dredging operations or moored equipment. The Contractor is responsible for keeping this sign current with respect to the dredging operations and equipment.

Maintain appropriate clearance from existing navigation markers, buoys, and other aids to navigation in the performance of the work. Location of existing navigation markers for the project site can be found here: <https://nauticalcharts.noaa.gov/NCDSviewer/>.

3.2.5 Dredge Plant and Equipment

- a. A mechanical dredging plant will be used to perform all dredging work under this contract.
- b. Maintain all dredge plant and associated equipment such as, but not limited to, scows, coamings, barges, and pipelines, to meet the requirements of the work. Promptly repair leaks or breaks along equipment.

3.2.6 Layout of Work

The Contractor will be provided layout charts for all dredging areas based on the schedule of work, the Contractor's hydrosurvey requests, and/or the results of Owner's hydrographic survey monitoring. The most current Owner hydrosurvey information will be displayed on the dredging layout charts and provided to the Contractor. Other pertinent information to be included with each layout package will be: payment method, required and maximum dredging depths, coordinates for the material placement site, distance one-way from dredging location to placement site, specific placement site instructions, supplemental tide gauge information, horizontal control locations, and computed hydrosurvey quantities.

The total estimated quantity of material to be removed is computed as that material that is within the specified limits, including side slopes, but excluding unpaid overdepth. The quantities listed are estimates only.

3.2.7 Obstructions and Debris

The Owner has no knowledge of cables, pipes, or other artificial obstructions or of any wrecks, wreckage, or other material that would necessitate the use of explosives or the employment of additional equipment for economical removal. Contractors should however exercise due diligence in determining the existence of any obstructions within proposed work areas during bid preparation.

The Owner has no knowledge of existing wrecks, wreckage, or other material of such size or character as to require the use of explosives or special or additional plant for its economical removal.

The use of explosives is not permitted.

3.2.8 Dredging Requirements

Dredge Areas

a. Dredge Area

- (1) As determined by the results of a hydrographic survey monitoring, the Owner will direct the Contractor to dredging areas as indicated on the Contract Drawings. Dredging depths at this area are as indicated in the Contract Drawings.
- (2) Material placement will be at the temporary Placement Areas as indicated on the Contract Drawings. See Section 01 20 00 PRICE AND PAYMENT PROCEDURES for more details.

3.2.9 Quality Control

Establish and maintain quality control for operations to assure compliance with contractual requirements and maintain records of this quality control for dredging operations.

While performing all dredging work control the horizontal positioning of the dredge with electronic positioning.

3.2.10 Surveys during Progress of Work

Quality of dredging depth will be determined by soundings taken behind the dredge as work progresses. The Contractor will take progress soundings.

3.2.11 Salvaged Material

Anchors, chains, firearms, and other articles of value, which are brought to the surface during dredging operations, become the property of the Contractor and will be disposed of in compliance with rules and regulations of all federal, state, and local authorities.

3.2.12 Safety of Structures

Dredging adjacent to any structure will not be permitted any closer than that shown on the Contract Drawings. The prosecution of work must ensure the stability of piers, bulkheads, and other structures lying on or adjacent to the site of the work, insofar as structures may be jeopardized by dredging operations. Repair damage resulting from dredging operations is the responsibility of the Contractor, insofar as such damage may be caused

by variation in locations or depth of dredging, or both, from that indicated or permitted under the contract. The Contractor is responsible for coordinating with the owner of the structure for any necessary repairs.

3.2.13 Protection of Existing Waterways

The Contractor shall conduct his operations in such a manner that material or other debris are not pushed outside of dredging limits or otherwise deposited in existing side channels, basins, docking areas, or other areas being utilized by vessels. The Contractor will be required to change his method of operations as may be required to comply with the above requirements. Should any bottom material or other debris be pushed into areas described above, as a result of the Contractor's operations, the same must be promptly removed by and at the expense of the Contractor to the satisfaction of the Owner.

3.3 PLACEMENT OPERATIONS

3.3.1 Protection of Existing Site for Placement Area

The prosecution of work shall ensure the stability of the existing bulkheads, storm drains, and other structures lying on or adjacent to the site of the Placement Area, insofar as structures may be jeopardized by construction of berms and dredging operations. The Contractor is responsible for maintaining the integrity of the existing bulkhead for the duration of the project. As a result of the Contractor's operations, any failure of or damage to the existing bulkheads shall be the sole responsibility of the Contractor.

3.3.2 Placement of Excavated Materials

Provide for safe transportation and placement of dredged materials. Transport and placement of dredged material is in the placement area designated for placement of dredged material. The placement of dredged materials in unauthorized places is forbidden. Comply with rules and regulations of all, federal, state and local authorities.

3.3.3 Method of Placement

Place all dredged material by mechanical means.

3.3.4 Placement in Indicated Site(s)

In placing excavated material for fill, uniformly grade and allow for shrinkage. Provide and maintain necessary bulkheads, dikes, ditches, weirs, spillways, and other construction necessary to confine and retain the fill in the dredge fill area.

Contractor shall have sole responsibility for the safe operation and maintenance of the disposal area during its dredging activities. Contractor shall inspect the disposal area to ensure their operations and dredged material discharge into the disposal area will not be in violation or cause a violation of the applicable project permits and regulations.

Contractor shall adequately inspect its placement operations in the disposal area daily to reduce the possibility of accidental breaching of dikes, levees, drop-outlet structures, and weirs with resulting spillage of dredged materials outside of the disposal area. Contractor shall note the results of the inspections on the daily dredging and disposal logs and

summarize the daily observations in the weekly dredging and disposal logs to be submitted to the Owner. If a levee, weir, or drop-outlet structure failure occurs while materials are being pumped into the disposal area, dredging operations shall be stopped and the Owner notified immediately. Placement of the material in the disposal area shall not be resumed until the confining structures have been restored by Contractor to a condition that is acceptable to the Owner. Materials shall be deposited in the disposal area so that no water is impounded and natural drainage is not obstructed.

The Contractor will maintain a minimum 2 feet of freeboard throughout the dredging and placement operations. The Contractor will not allow sediments to stack in the placement area more than 2 feet above the freeboard level and will avoid stacking conditions that may result in overflowing the frontal levees. The drop-outlet structure will be maintained to maximize confinement within the area and ensure that water quality criteria are met. Drop-outlet structure discharges shall be controlled to maximize confinement of material within the areas indicated and specified.

Contractor's dredge operator shall remain in radio contact with the Contractor's disposal area operations manager at all times during dredging activities. The disposal area operations manager shall provide directions to the dredge operator to achieve safe and optimal use of the disposal area. Contractor shall assess the capacity of the disposal area in its planning and schedule of the work. The disposal area will be used for settling and clarifications of dredge return water, prior to discharging.

In the event that the settling retention time required to achieve the specified water quality criteria dictates the need to temporarily cease dredging operations, Contractor shall do so, at no additional cost to the Owner. Contractor shall include provision in its bid price for dredging and disposal, to accommodate such delays in dredging operations as may be required to maintain acceptable disposal area effluent water conditions. Further disposal area operation requirements are specified in this section. Contractor shall place all dredged materials in the discharge section of the placement area as shown on the drawings and in the permit. Contractor shall minimize mounding in the discharge area by frequent relocation of the discharge point.

3.3.5 Dredge Material Placement Area Construction and Maintenance

The Contractor is responsible for construction and maintenance of new berms and drainage ditches to the dimensions necessary to confine the material to be deposited with the area shown in the Construction Drawings. Any breaches or low areas in the berm shall be repaired to the lines and grades of the adjacent berm. Material for the construction and repair of the berms shall be from the existing material obtained from within the disposal area. Any vegetation shall be stripped from the borrow areas and berm foundations prior to berm construction and repair.

Dredge material shall be placed within the limits shown on the plans and shall be evenly distributed within the placement area and graded to provide positive drainage and prohibit ponding of water or dredge slurry. The height of the dredged material shall not exceed the elevation of any adjacent berm.

The Contractor is responsible for removing and properly disposing of dewatered dredge material from placement areas in accordance with all applicable laws and regulations. Material should be dewatered and dry,

easily handled with standard construction equipment, and be soil-like in transit for removal to an offsite facility selected by the Contractor.

3.3.6 Dredge Spill Contingency Plan

The Contractor shall develop and submit a Dredge Spill Contingency Plan. This plan is expected to be an effective plan that includes the following as a minimum:

- a. The Contractor shall be required to have 24-hour a day monitoring of each placement area during disposal operations. The personnel monitoring the levees will be in radio contact with the dredging plant. The number of qualifications of personnel to be used for this purpose should be included in the plan.
- b. The Contractor shall be required to identify and have available the names and phone numbers of companies having portable hydraulic dredges or vacuum pumps ready to clean up any dredge material discharges from the placement areas.
- c. The Contractor shall be required to identify and have available the names and phone numbers of companies having silt curtains which can contain any dredged material discharged from the placement areas.
- d. The Contractor's Dredge Spill Contingency Plan shall include the following procedures to be followed in the event of a spill:
 - (1) The dredging operations shall cease in the placement areas.
 - (2) The Contractor shall immediately notify the Owner.
 - (3) The Contractor shall submit a specific clean-up plan to the Owner for approval. No clean-up actions will commence until the plan has been approved by the Owner. The clean-up of misplaced material will be at the Contractor's expense.

3.3.7 Charges for Material Placement

The Contractor is responsible for payment of charges for disposal of material offsite.

3.3.8 Misplaced Dredged Material

Any dredged materials deposited at locations other than in areas designated or approved by the Owner will be considered misplaced material and will not be paid for until the Contractor, at his own expense, removes and deposits such misplaced material where directed. This required removal and redeposit of the misplaced material and any necessary placement site restoration work is not the basis for a time extension or additional compensation under this contract.

3.4 MEASUREMENT

The Owner will be responsible for taking soundings before and after dredging.

Final quantities will be subject to deductions or correction of deductions previously made because of excessive overdepth, dredging outside or

authorized areas, or placement of material in an unauthorized manner.

3.4.1 Method of Measurement

Quantity of material removed that will be paid for will be measured by cubic yard by means of volume difference from soundings taken before and after dredging. The drawings represent existing conditions based on current available information, but will be verified and corrected, if necessary, by soundings taken before dredging in each locality. The Contractor has the option of being present when such soundings are made.

3.4.2 Monthly Estimates

Monthly estimates of work completed will be based on the result of soundings taken by the Contractor during the progress of the work. Deductions will be made for dredging and placement not in accordance with the specifications.

3.5 FINAL EXAMINATION AND ACCEPTANCE

As soon as practicable after the completion of areas, which in the opinion of the Owner, will not be affected by further dredging operations, each area will be examined by the Owner by sounding. Remove shoals and lumps as required by methods approved by the Owner. However, if the bottom is soft and the shoal areas form no material obstruction to navigation, removal may be waived at the discretion of the Owner. The Contractor will be notified when soundings are to be made and will be permitted to accompany the sounding party and to inspect the data and methods used in preparing the final quantity for payment. When areas are found to be in a satisfactory condition, the work therein will be accepted as complete.

Re-dredging at the Contract price, within the limit of available funds, may be completed with the consent of both the Owner and the Contractor when infill or shoaling beyond the Contractor's control occurs in any area previously accepted.

3.6 PLANT REMOVAL

Upon completion of the work, remove all dredging plant, including ranges, buoys, piles, and other markers or obstructions within 15 calendar days.

END OF SECTION



Rock Engineering - Corpus Christi
 6817 Leopard St
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 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S01

Issue No: 1

THIS REPORT APPLIES ONLY TO THE STANDARDS OR PROCEDURES INDICATED AND TO THE SAMPLE(S) TESTED AND/OR OBSERVED AND ARE NOT NECESSARILY INDICATIVE OF THE QUALITIES OF APPARENTLY IDENTICAL OR SIMILAR PRODUCTS OR PROCEDURES, NOR DO THEY REPRESENT AN ONGOING QUALITY ASSURANCE PROGRAM UNLESS SO NOTED. THESE REPORTS ARE FOR THE EXCLUSIVE USE OF

Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S01
Date Sampled 12/18/2020
Material Dark Brown Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #1

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	87.1	
Test Method			
Initial dry mass (g)		139.8	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
 6817 Leopard St
 Corpus Christi, TX 78409
 Ph: 361-883-4555
 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S02

Issue No: 1

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Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S02
Date Sampled 12/18/2020
Material Brown Clay with Sand
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #2

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	81.1	
Test Method			
Initial dry mass (g)		165.5	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
 6817 Leopard St
 Corpus Christi, TX 78409
 Ph: 361-883-4555
 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S03

Issue No: 1

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Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S03
Date Sampled 12/18/2020
Material Dark Brown Sandy Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #3

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	62.3	
Test Method			
Initial dry mass (g)		209.2	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
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Material Test Report

Report No: MAT:CC20-W07352-S04

Issue No: 1

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Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S04
Date Sampled 12/18/2020
Material Dark Brown Sandy Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #4

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	68.8	
Test Method			
Initial dry mass (g)		135.4	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
 6817 Leopard St
 Corpus Christi, TX 78409
 Ph: 361-883-4555
 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S05

Issue No: 1

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Client: HDR Engineering, Inc.
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Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S05
Date Sampled 12/18/2020
Material Brown Sandy Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #5

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	63.1	
Test Method			
Initial dry mass (g)		142.5	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
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Material Test Report

Report No: MAT:CC20-W07352-S06

Issue No: 1

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Client: HDR Engineering, Inc.
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Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S06
Date Sampled 12/18/2020
Material Dark Gray Sandy Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #6

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	61.6	
Test Method			
Initial dry mass (g)		152.0	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
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 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S07

Issue No: 1

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Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S07
Date Sampled 12/18/2020
Material Dark Gray Clayey Sand
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #7

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	38.8	
Test Method			
Initial dry mass (g)		169.1	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
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 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S08

Issue No: 1

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Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S08
Date Sampled 12/18/2020
Material Dark Gray Clayey Sand
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #8

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	27.6	
Test Method			
Initial dry mass (g)		156.0	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



Rock Engineering - Corpus Christi
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 Ph: 361-883-4555
 TXPE Firm Registration No. 2101

Material Test Report

Report No: MAT:CC20-W07352-S09

Issue No: 1

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Client: HDR Engineering, Inc.
 555 N. Carancahua, Ste. 1600 Corpus Christi TX 78401

Project: Tompkins Channel Maintenance Dredging
 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S09
Date Sampled 12/18/2020
Material Dark Gray Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #9

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	85.6	
Test Method			
Initial dry mass (g)		88.2	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO



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Material Test Report

Report No: MAT:CC20-W07352-S10

Issue No: 1

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 Corpus Christi, TX
 120610

Caller : Clay Cottle

CC: Dan Garza, RETL CC

Reviewed By: James P. Bauer, P.E. (Engineer)

Date of Issue: 12/23/2020

Sample Details

Sample ID CC20-W07352-S10
Date Sampled 12/18/2020
Material Dark Gray Clay
Sampling Method Grab Sample
General Location Customer Drop Off
Sample Location Client ID - Sample #10

Test Results

Description	Method	Result	Limits
Material Finer than No. 200 (%)	ASTM D 1140	87.6	
Test Method			
Initial dry mass (g)		100.3	
Dry mass determination		Dry mass directly determined	

Comments

CLIENT INFO