

**Port of Houston Authority**  
**BAYPORT TERMINAL**  
**CONSTRUCTION AND OPERATIONS MITIGATION AGREEMENT**  
**(Lots)**



This Bayport Terminal Construction and Operations Mitigation Agreement (the "Agreement") is by and between the undersigned ("Owner") and the Port of Houston Authority ("PHA"), a political subdivision of the State of Texas, located at 111 East Loop North, Houston, TX 77029, with reference to the following:

A. Owner represents that the following is correct identifying information:

OWNER(s) \_\_\_\_\_  
*[If Property is owned by more than one person, please list each Owner]*

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ TEXAS ZIP \_\_\_\_\_  
HARRIS COUNTY APPRAISAL DISTRICT MAP # \_\_\_\_\_ PARCEL # \_\_\_\_\_

LOT NO. \_\_\_\_\_, BLOCK No. \_\_\_\_\_, SUBDIVISION \_\_\_\_\_,  
SECTION \_\_\_\_\_, CITY OF \_\_\_\_\_, HARRIS COUNTY, TX

MAILING ADDRESS \_\_\_\_\_

WORK PHONE \_\_\_\_\_ HOME PHONE \_\_\_\_\_  
CELL PHONE \_\_\_\_\_

B. Owner represents that it owns fee simple title to the real property and improvements described above (the "Property").

C. PHA owns and operates Bayport Container and Cruise Terminal (the "Terminal") and is sponsoring the Bayport Mitigation Solution Program (the "Program"), to address the effects of Terminal construction and operations in areas of LaPorte and Shoreacres adjoining the Bayport Channel.

D. Owner desires to participate in the Program.

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation Payment and Easement Grant. The PHA agrees to pay Owner Five Thousand Dollars (\$5,000) (the "Mitigation Payment"), and Owner agrees to grant PHA an easement on the Property, on the terms set forth herein. PHA ADVISES OWNER TO SEEK INDIVIDUAL TAX AND LEGAL ADVICE AS TO THE TAX AND LEGAL CONSEQUENCES OF THE MITIGATION PAYMENT AND EASEMENT GRANT.

2. Termination. Owner may terminate this Agreement at any time prior to the Closing Date. Upon termination, Title Company shall return the Mitigation Payment to PHA and mark the Easement "void" and send it to Owner with a copy to PHA.

3. Closing Actions.

a. Owner and the PHA have executed and acknowledged a Bayport Easement Agreement ("Easement"), in form acceptable to both, and deposited such Easement in escrow with \_\_\_\_\_ Title Company ("Title Company").

b. The Mitigation Payment and Easement grant are deposited in escrow with Title

Company, and this Agreement constitutes closing instructions to Title Company. However, if required by Title Company, PHA and Owner shall execute and deliver (i) additional closing instructions consistent with this Agreement, and (ii) reasonable evidence of the authority of the parties, and such other documents as reasonably necessary, to perform their obligations hereunder.

c. The PHA shall pay the fees charged by the Title Company for services rendered in connection with this Agreement, any title insurance premium, and any fee for recording for the Easement.

d. Promptly following the PHA's approval of title as provided in paragraph 4 below (the "Closing Date"), Title Company shall pay the Mitigation Payment to Owner, and the Easement shall be recorded against the Property. The Mitigation Payment shall be paid to Owner through the Title Company in immediately available funds.

#### 4. Title Matters.

a. As soon as reasonably practicable, the PHA shall request Title Company to issue to it a preliminary title report or commitment for the Property reflecting the status of title to the Property, together with copies of all items listed in said report (the "Title Report").

b. The PHA shall have fifteen (15) calendar days after receipt of the Title Report to notify Owner and Title Company in writing of PHA's disapproval of any matters indicated as exceptions on the Title Report. Any matters not so disapproved shall be deemed approved.

c. Upon receipt of any notice of disapproval, Owner shall have thirty (30) calendar days to cure any disapproved matter.

d. If Owner is unable to, elects not to, or fails to remove any disapproved matter within that period, PHA may: (i) waive the exception(s) and consummate the transaction contemplated herein, in which event PHA is deemed to have approved the exception(s), (ii) attempt to alleviate the exception(s) at PHA's sole cost and expense, or (iii) terminate this Agreement at anytime prior to the Closing Date. Upon termination, Title Company shall return the Mitigation Payment to PHA and mark the Easement "void" and send it to Owner with a copy to PHA.

e. In the event the Title Company issues any amendment to the Title Report showing additional exceptions, PHA shall have the same rights and options to approve or disapprove additional exceptions as is provided in this paragraph.

f. At the closing, upon PHA's request Title Company shall issue to PHA a policy of title insurance in the amount of the Mitigation Payment, insuring PHA that PHA has acquired an easement interest in the Property subject only to those matters in the Title Report approved by the PHA and the printed exceptions, exclusions and considerations customarily set forth in such policy.

5. No Assignment. Owner's rights and obligations hereunder shall not be assignable without the prior written consent of the PHA (which may be withheld by the PHA for any reason) and any assignment or transfer made in violation hereof shall constitute a default entitling PHA to terminate this Agreement.

#### 6. General Provisions.

a. No changes or additions shall be made to this Agreement except by a written amendment executed by the parties.

b. PHA represents that the individual executing this Agreement on its behalf is empowered to bind the PHA. The individual(s) executing this Agreement on behalf of Owner represent that they are

empowered to bind the Owner.

c. If any provision in this Agreement is void or unenforceable but does not destroy the basis of the bargain among the parties, the unenforceability shall not affect any other provision, and the provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, and this Agreement shall be deemed reformed to replace the provision with a valid and enforceable provision as similar as possible in effect to the void or unenforceable provision.

IN WITNESS WHEREOF, this Agreement is effective as of the latest date set forth below.

OWNER:

Date: \_\_\_\_\_  
Signature of Owner  
Name \_\_\_\_\_  
(Type or Print)

Date: \_\_\_\_\_  
Signature of Owner  
Name \_\_\_\_\_  
(Type or Print)

PHA: Port of Houston Authority  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Counsel

FUNDS ARE AVAILABLE TO MEET  
THIS OBLIGATION WHEN DUE:

\_\_\_\_\_  
Barbara J. Schott, County Auditor

TITLE COMPANY: \_\_\_\_\_ Title Company

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_