

Memorandum of Understanding

Galveston County
and
Port of Houston Authority

This Memorandum of Understanding (“MOU”), to facilitate the development of a new vehicular bridge and potential rail bridge between Galveston Island and Pelican Island, is entered into this 12th day of April, 2016 between Galveston County (“County”), a political subdivision of the State of Texas, and the Port of Houston Authority of Harris County, Texas (“Port Authority”), a political subdivision of the State of Texas.

WHEREAS, the existing vehicular bridge between Galveston Island and Pelican Island is in a deteriorated condition, requiring replacement and expanded capacity;

WHEREAS, the County is interested in facilitating the development of a new rail bridge, if feasible, between Galveston Island and Pelican Island;

WHEREAS, the Project would serve existing and future academic, industrial, commercial, and other uses on Pelican Island and may enhance the value of property on the island owned by the Port Authority;

WHEREAS, the County has developed preliminary alignments, cost estimates, and other data and information regarding the future replacement of the existing Pelican Island vehicular bridge and the potential development of a new freight rail bridge between Galveston Island and Pelican Island (“Project”);

WHEREAS, the County has determined that the most feasible alignment for a new vehicular bridge and potential rail bridge would require right-of-way on Port Authority-owned property located on Pelican Island (“ROW”) for the vehicular and rail bridge landing points and connectivity to the existing road system and other landowners on the island;

WHEREAS, the County desires an MOU with the Port Authority regarding the use of its ROW at locations to be determined, to provide an area for Project improvements;

WHEREAS, this MOU delineates a phased approach toward defining the scope and nature of the proposed Project, including bridge and ROW footprint, capital development, and operating cost, which will enable the County, with the Port Authority’s consent, to determine the feasibility of the proposed Project in the shortest possible time frame.

Introduction

This MOU establishes a process of phased activities to initially determine the feasibility of the proposed Project, its scope and size, and ultimately, if feasible, to more specifically define the alignment of the proposed bridge(s) and the utilization of the ROW to facilitate the implementation of the Project. The MOU recognizes that any future development of the Project must be accomplished with full coordination and approval of the Port Authority. The MOU expresses the intent of both parties to achieve the following objectives:

1. Enhance the economic viability of all of Pelican Island and Pelican Island stakeholders;
2. Significantly add to vehicular bridge capacity, and considering the design of the load for the vehicular bridge, to provide for the potential for a future heavy-weight corridor to be established between Galveston Island and Pelican Island;
3. Optimize the traffic safety of constructing such added-capacity vehicular bridge, especially in relation to the existing and future expansion of the Texas A&M University at Galveston ("TAMUG") campus and Port Authority property on Pelican Island; and
4. Provide for an alignment for future competitive rail connectivity, which accommodates existing Class 1 rail interests and enables planning for a future competitive rail interface, to serve existing and future industry development on Pelican Island.

Article 1

Preliminary Engineering and Environmental Analysis

- a. The County shall initiate the Preliminary Engineering Phase of the proposed Project;
- b. The County, the Port Authority, the City of Galveston, and TAMUG shall work together to determine the most feasible bridge landing area and ROW required to support the other principles of the MOU, including ROW for a connection to the existing Seawolf Parkway, that is consistent with the Port Authority's intent to create commercial reserves between the ROW and TAMUG, and its other existing and future development objectives for the property it owns on Pelican Island;
- c. The County is solely responsible for funding the cost of completing preliminary engineering and environmental studies for the Project; and

- d. The County is solely responsible for obtaining the necessary permits to develop the proposed Project and funding necessary to develop the Project.

Article 2

Feasibility of the Project and Availability of Port Authority ROW

- a. The Port Authority and County intend, subject to the parties' agreement regarding feasibility of the new vehicular bridge and potential new rail bridge, including identification of an alignment for the bridges and configuration of the ROW, and other terms and conditions, and approval by the Port Commission of the Port Authority, to enter into an interlocal agreement, lease, or other agreement to provide the ROW for use in the Project, including its to-be-determined location, and dimensions ("ROW Agreement") without charge from the Port Authority to the County, in its "as-is" condition.
- b. ROW provided by the Port Authority to the County pursuant to such interlocal agreement may not be transferred or assigned to a private non-governmental entity and otherwise without the Port Authority's consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the parties agree that any such transfer may be subject to the terms of this MOU and the ROW Agreement, and requirements of law requiring payment of consideration to the Port Authority. The County may, upon notice to the Port Authority but without such consent, transfer or assign right of way for vehicular bridges or roadways to the City of Galveston, including the ROW, subject to the terms of this MOU and the ROW Agreement, for purpose of incorporating such facilities into the existing City road system.
- c. Vehicular Bridge and Roadway. Following County completion of the preliminary engineering and environmental phase of the Project, and issuance of the necessary permits to develop the proposed Project and funding commitments to build the vehicular bridge contemplated by this MOU, the Port Authority will convey through a mutually-agreed upon legal instrument and as provided in the ROW Agreement, the ROW necessary for the landing of the vehicular bridge and road segments connecting the bridge to (i) the Port Authority's commercial reserves and (ii) existing Seawolf Parkway.
 - i. The Port Authority may reasonably require that the road alignment, its future curb cuts, and corresponding ROW is configured in a manner that enhances the development and operational potential of Port Authority-owned property, provided that such alignment does not: (i) compromise the viability or functionality of the road system; or (ii) materially increase the Project construction cost. The County and Port Authority shall coordinate during the Project to ensure alignments are developed consistent with the Port Authority's rights under this paragraph, and provide for sufficient utility placement to fully serve future development of Pelican Island.

- ii. The County agrees that, in the event the vehicular bridge and connecting roadways are constructed, the County shall permit the Port Authority to have curb cuts and connections from adjacent Port Authority property to the roadways in such numbers and locations as the Port Authority reasonably determines are necessary for the enhancement or operation of current or future commercial interests on its property; provided, however, that the quantity and location of such access points shall not unreasonably impair the operation or safety of the roadway for the traveling public. This access shall be provided at no additional cost or impairment to the Port Authority other than conveyance of the ROW.
- d. Rail Bridge and Railway. Following County completion of the preliminary engineering and environmental phase of the Project, and issuance of the necessary permits to develop the proposed Project and funding commitments to complete the rail bridge contemplated by this MOU, the Port Authority will convey through a mutually-agreed upon legal instrument, and as provided in the ROW Agreement, the ROW necessary for the landing of the rail bridge and construction of rail lines which optimize Port Authority development on its property and provide connectivity to other commercial property rail users located throughout Pelican Island.
- i. The parties recognize that, while this MOU creates an obligation to negotiate a conveyance of ROW for rail service, the Port Authority may impose significant reasonable conditions upon such conveyance, including but not limited to conditions regarding the alignment of the rail lines, operations, access, and rates for use of such facilities. Conditions required by the Port Authority must be commercially reasonable and consistent with the purposes of this MOU to enhance the value of property throughout Pelican Island, including property owned by the Port Authority.
 - ii. The Port Authority may require that rail alignment and corresponding ROW is configured in a manner that enhances the development and operational potential of Port Authority-owned property, provided that such alignment does not (i) compromise the viability or functionality of the existing and proposed road system or (ii) prevent access to the rail system by other property owners on Pelican Island. The rail alignments shall be developed in a manner that reasonably maximizes the Port Authority's and other Pelican Island property owners' opportunities for access to the rail system, subject to practical design limitations and recognition that those segments of rail lines running across Port Authority property shall be aligned and configured primarily in accordance with the Port Authority's business needs for its property.

- iii. The Port Authority may require that any rail bridge and rail lines be developed in a manner that ensures the Port Authority's access to such rail network at commercially reasonable rates. Any rail bridge and rail lines shall be designed and developed in a manner that permits other Pelican Island property owners to have access to utilize the rail system on materially financially equivalent terms as the Port Authority, subject to commercially reasonable differences in rates attributable to variations in connectivity, access costs between customers, and other similar factors determined by rail service providers.

Article 3

Coordination of Project Activities

- a. The County agrees to provide written reports and updates to the Port Authority at least each quarter regarding progress made toward the completion of preliminary engineering and environmental studies essential toward the success of the Project.
- b. The Port Authority agrees to work with the County and its consultant team to provide requested data and information in its current possession to aid in the success of the Project.

Article 4

Term of Memorandum of Understanding Termination of Agreement

This Memorandum of Understanding shall be in effect for the earlier of forty-two (42) months from the date of final execution or the expiration date of the Memorandum of Understanding regarding the Project between the County and the City of Galveston, and may be extended by mutual written agreement of the Port Authority and County. However, this MOU shall terminate upon the following:

- a. Notification to the Port Authority by the County that the proposed Project has been abandoned.
- b. The parties' agreement that Project alignments not involving Port Authority property have been selected as the preferred alternative.
- c. Notification by the Port Authority to the County after 3 years from the date hereof that the County has failed to accomplish substantive progress of preliminary engineering and environmental studies for the Project in a timely manner after execution of this agreement, as determined by the Port Authority in its reasonable discretion.
- d. Notification by the Port Authority to the County after 3 years from the date hereof that the County has failed to pursue funding in pursuit of constructing this Project,

as determined by the Port Authority in its reasonable discretion. In addition, the Port Authority reserves the right to terminate any provisions herein relating to the rail bridge after 10 years from the date hereof if the Port Authority determines in its reasonable discretion that establishing rail service to Pelican Island is not economically feasible.

**Article 5
Project Costs**

The cost of the preliminary engineering and environmental studies necessary to support the proposed project will be solely the responsibility of the County and its other stakeholders.

**Article 6
Liability and Indemnification**

The Port Authority and the County agree that neither party is be liable to the other for any wrongdoing or acts of negligence of the employees, agents, and contractors engaged to support completion of the activities described within this MOU.

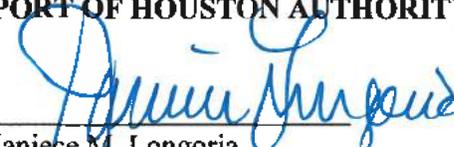
NOW, THEREFORE, BE IT RESOLVED THAT THIS MEMORANDUM OF UNDERSTANDING IS APPROVED BY THE PORT OF HOUSTON AUTHORITY AND GALVESTON COUNTY, AND SHALL BECOME EFFECTIVE ON THE DATE SET FORTH ABOVE.

GALVESTON COUNTY

PORT OF HOUSTON AUTHORITY

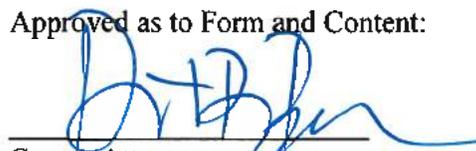


Judge Mark Henry
County Judge



Janiece M. Longoria
Chairman

Approved as to Form and Content:



County Attorney



Chief Legal Officer