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FEDERAL MARITIME COMMISSION

BEFORE THE  
FEDERAL MARITIME COMMISSION

CITGO Refining and Chemicals )  
Company L.P. )  
 )  
Complainant, )  
 )  
v. )  
 )  
PORT OF CORPUS CHRISTI AUTHORITY )  
OF NUECES COUNTY, TEXAS )  
 )  
Respondent. )

FMC Docket No. 11-15

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND  
DISMISSAL OF THE COMPLAINT WITH PREJUDICE

Complainant, CITGO Refining and Chemicals Company L.P. ("Complainant") and Respondent, Port of Corpus Christi Authority of Nueces County ("Respondent"), pursuant to §502.91 of the Federal Maritime Commission ("FMC") Rules of Practice and Procedure, hereby respectfully submit this joint motion to dismiss with prejudice the Complaint because the parties have agreed to settle this dispute as set forth in the Settlement Agreement between the Complainant and Respondent attached hereto as Attachment A. The parties believe that the proposed settlement meets the Commission's criteria for approval of agreements resolving disputes among private parties, and therefore, should be approved.

I. INTRODUCTION

On October 20, 2011, Complainant filed its Complaint against Respondent, alleging violations of §§ 41102(c), and 41106(2) and (3) of the Shipping Act of 1984, as amended. As relief for these alleged violations, the Complainants sought damages, attorneys' fees, interest, and a cease and desist order. In addition, Complainant filed requests for admission, interrogatories, and production of documents.

On November 17, 2011, Respondent filed a Motion to Dismiss Complaint asserting multiple jurisdictional arguments as a bar to the bringing of the Complaint at the FMC. The Complainant filed

its Reply to Respondent's Motion to Dismiss on December 20, 2011. As of the date of this Motion, the Motion to Dismiss is still pending decision. As to Complainant's discovery, Respondent on January 3, 2012 filed a Motion to Stay Discovery during the pendency of the Motion to Dismiss, and Complainant filed on January 25, 2012, a Reply to Respondent's Motion to Stay Discovery opposing the stay. The Motion to Stay Discovery also remains pending before the Administrative Law Judge.

Complainant believes it would prevail on the allegations set forth in its Complaint. Respondent believes that it would prevail on its lack of jurisdiction arguments, and that even if the FMC asserted jurisdiction that Respondent would successfully defeat the allegations set forth in the Complaint.

Notwithstanding these beliefs, the parties recognize the potential extremely high remaining costs of this litigation and the inherent uncertainties in heavily disputed litigation and the parties agreed to conduct discussions to see if the issues and the Complaint could be resolved. The settlement agreement that accompanies this Motion is the result of these discussions among the parties and reflects each party's view of the case and is submitted to the Presiding Officer for approval.

## II. AUTHORITY FOR SETTLEMENT

The Commission has a strong policy in favor of settlements. In part this policy is based on §502.91 of the Commission's Rules of Practice and Procedure, which provides in subsection (b):

Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

The Commission's rule is based on the Administrative Procedure Act ("APA"), 5 U.S.C. §554(c)(1), which requires agencies to provide parties with the right to submit offers of settlement "when time, the nature of the proceeding, and the public interest permit", and on the legislative history of the APA, which shows that Congress intended the provision to be read broadly so as to encourage the use of settlements such as proposed by Complainant and Respondent here:

... even when formal hearing and decision procedures are available to parties, the agencies and the parties are authorized to undertake the informal settlement of cases in whole or in part before undertaking the more formal hearing procedure. Even courts through pretrial proceedings dispose of much of their business in that fashion. There is much more reason to do so in the administrative process, for informal procedures constitute the vast bulk of administrative adjudication.... The statutory recognition of such informal methods should strengthen the administrative arm and serve to advise private parties that they may legitimately attempt to dispose of cases at least in part through conferences, agreement, or stipulations.

Senate Committee on the Judiciary, Administrative Procedure Act-Legislative History, S. Doc. No. 248, 79<sup>th</sup> Cong., 2d Sess. 24 (1946).

It is "well settled that the law and Commission policy encourage settlements and engage in every presumption which favors a finding that they are fair, correct, and valid." Old Ben Coal Company v. Sea-Land Service, Inc., 21 FMC 506, 512 (1978). The Presiding Judge said it well in American Stevedoring, Inc. v. The Port Authority Of New York And New Jersey, 32 SRR 466, 468 (ALJ 2011), when she said:

[I]f "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." [I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." (Internal citations omitted).

The Commission also has reaffirmed in its decisions that potential costs and uncertainties of success are valid factors to be considered both in negotiation of settlement and in review of a settlement agreement. Investigation of Unfiled Agreements- Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Line, Inc., Order Adopting Initial Decision, 24 SRR 910 (FMC 1988). See also, Atlantis Line, Ltd. v. Australia New Zealand Direct Line, 25 SRR 557 (ALJ 1989) (Withdrawal of complaint because of settlement allowed in

accordance with general Commission policy of settlement, and the concomitant avoidance of undue and unnecessary expenses, and expenditure of working time).

### III. BASIS FOR SETTLEMENT

In line with the APA and the Commission's analysis, the instant proposed settlement is to be evaluated against litigative probabilities, litigative and administrative costs and such other matters as justice may require.

This is private party litigation which appears to be destined, with the jurisdiction issues involved, for many years of proceedings not only before the FMC but potentially before the courts. As discussed above, there are *bona fide* disagreements between Complainant and Respondent as to certain facts and legal issues. Although each side is confident it would prevail, the outcome of any litigation is uncertain. In view of the litigative probabilities, and the probability that this proceeding will continue to be complicated, time consuming, and costly, the proposed settlement which dismisses all FMC claims and the Complaint with prejudice would save all parties time and expense.

The parties have reviewed the relevant documents, engaged in months of discussions and negotiations, and have determined that the mutual concessions made fairly address the outstanding issues between them. Under the Settlement Agreement, the Parties have made mutual agreements that represent, in their view, a fair and reasonable resolution of the disputes. The parties are represented by counsel and have engaged in arms-length negotiations. In short, there is no evidence of fraud, duress, undue influence, or mistake or harm to the public. Therefore, as these parties no longer wish to litigate the issues or the Complaint, the Complainant and Respondent submit that the litigative probabilities, and savings in potential litigative and administrative costs, favor approval of the settlement agreement.

IV. CONCLUSION

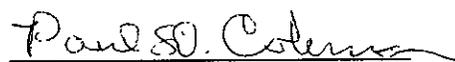
The settlement agreement meets the Commission's and general administrative law criteria for approval of agreements for settling administrative claims. It should be approved.

CITGO REFINING AND CHEMICALS  
COMPANY L.P.

PORT OF CORPUS CHRISTI  
AUTHORITY OF NUECES COUNTY,  
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Date: June 27, 2012

Date: \_\_\_\_\_

IT IS SO ORDERED:

\_\_\_\_\_  
Erin M. Wirth  
Administrative Law Judge  
Date:

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**BEFORE THE FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

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**CITGO REFINING AND CHEMICALS COMPANY, L.P.**

Complainant

v.

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

Respondent

**DOCKET NO. 11-15**

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**AGREEMENT OF SETTLEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the "Agreement") is entered into between CITGO Refining and Chemicals Company, L.P. ("CITGO") and the Port of Corpus Christi Authority of Nueces County, Texas ("Port"). CITGO and the Port shall sometimes be referred to herein individually as a "Party" and collectively as "Parties."

**WHEREAS**, on August 30, 2011 CITGO filed its complaint against the Port (the "Complaint"), alleging violations of §§ 41102 (c), and 41106(2) and (3) of the Shipping Act of 1984 as amended; and

**WHEREAS**, the Port filed a timely Motion to Dismiss the Complaint based on jurisdictional grounds, CITGO replied thereto, and there are also pending motions concerning discovery and procedural matters in this proceeding; and

**WHEREAS**, CITGO and the Port recognize that they have differing contentions concerning the issues raised by both Parties in this proceeding; and

**WHEREAS**, the Parties have engaged in good faith efforts and negotiations to achieve a mutually acceptable settlement of the issues and to avoid the expense, lengthy duration, burden and uncertainty likely to occur in continued litigation over these issues; and

**WHEREAS**, the Port denies fully the validity of the allegations and claims set forth in the Complaint and further denies any liability to CITGO arising from said allegations and claims; and

**WHEREAS**, the Port further contends that the Federal Maritime Commission (“FMC” or “Commission”) does not have jurisdiction over the issues raised in the Complaint, but given litigation risk and the expense of contesting the issues the Port desires to submit this Settlement Agreement to the FMC to end the litigation and settle the disputes as to the issues raised in the Complaint; and

**WHEREAS**, CITGO opposes fully the Port’s arguments and allegations in response to the Complaint but in view of the litigation risk and expense also desires to submit this Settlement Agreement to the FMC to end the litigation and settle the disputes as to the issues raised in the Complaint;

**NOW, THEREFORE**, in consideration of the premises herein, and the mutual covenants and undertakings set out herein as well as in the Volume Incentive Agreement between the Parties executed concurrently herewith (the “Volume Incentive Agreement”), and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties now desire to reach an arms-length settlement of the claims between them, with prejudice, and without any admission of any liability with respect thereto and agree as follows:

1. CITGO and the Port, for themselves and for anyone claiming under them, hereby agree to release, acquit and forever discharge each other, and all of their respective officers, directors, employees, commissioners, agents, parents, affiliates and successors in interest, from any and all causes of action, claims, counterclaims, liabilities and demands of whatever nature, including breach of contract claims that either Party has or may have against the other Party, whether known or unknown, past or present, under the Constitution, the Shipping Act of 1984, as amended, FMC regulations, or any other federal or state statute, law, or regulation, including breach of contract, arising from the alleged facts and alleged violations of law described in the Complaint.

2. The Parties acknowledge and agree that this Agreement shall neither be effective nor legally binding upon the Parties unless and until the Parties shall have executed the Volume Incentive Agreement, in the form attached hereto as Appendix 1. Once executed, the Volume Incentive Agreement will remain in effect for a period up to and ending December 31, 2021.

3. It is expressly understood that by entering into this Agreement and the Volume Incentive Agreement, CITGO and the Port make no admission of any liability of any sort to one another, which liability is expressly denied. Instead, this Agreement and the Volume Incentive Agreement represent a full and complete settlement of any and all disputes between the Parties, to resolve once and for all, for the period ending December 31, 2021, every disputed claim that has been asserted or could have been asserted by CITGO and the Port arising from the allegations and claims set forth in the Complaint. This Agreement and the Volume Incentive Agreement represent the complete agreement of the Parties, incorporating all possible and alleged agreements and representations,

covenants and warrants with respect to the subject matter hereof, which are now waived, merged herein and superseded hereby. It is expressly understood and agreed that this Agreement and the settlement and releases contained herein cover the period ending on December 31, 2021, and that should a dispute arise between the Parties at any time subsequent to December 31, 2021, with respect to the matters covered by this Agreement and/or the Volume Incentive Agreement, neither Party shall be barred or precluded in any way from pursuing an action against the other for matters occurring on or after January 1, 2022 that pertains to such dispute.

4. The Parties agree to cooperate with each other and to execute all additional or supplementary documents and take any additional actions necessary or appropriate to effect the terms and intent of this Agreement and the Volume Incentive Agreement, including but not limited to such actions as may be necessary to comply with statutory, regulatory and procedural requirements of the Shipping Act of 1984, as amended, and the Commission's regulations. The Parties further agree to the submission to and filing with the Commission of any documents necessary to Commission approval of this Agreement and to its implementation as not contrary to the Shipping Act of 1984, as amended, including the filing with the Commission of the Volume Incentive Agreement and the dismissal with prejudice of the Complaint. Notwithstanding the foregoing, the Parties agree that neither this Agreement nor the terms set forth in the Volume Incentive Agreement will become effective until approved by the Commission.

5. Notwithstanding any other terms of this Agreement and the Volume Incentive Agreement, CITGO or the Port do not by this Agreement release or settle any allegations, claims and issues that may arise from or concern the implementation and



APPENDIX 1  
TO AGREEMENT OF SETTLEMENT AND RELEASE

**VOLUME INCENTIVE AGREEMENT**

VOLUME INCENTIVE AGREEMENT (the "**Agreement**") dated this the 12 day of June, 2012 (the "**Effective Date**"), by and between the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, a navigation district and political subdivision of the State of Texas ("**PCCA**"), and **CITGO REFINING AND CHEMICALS COMPANY L.P.**, a limited partnership organized and existing under the laws of the State of Delaware ("**CITGO Refining**").

WHEREAS, CITGO Refining is one of PCCA's largest customers, having imported or exported through the Port of Corpus Christi almost 140 million barrels of liquid bulk petroleum per year for the past three calendar years; and

WHEREAS, the revenues for PCCA generated by CITGO Refining's activities in the Port of Corpus Christi are a critical component of PCCA's income each year; and

WHEREAS, for the foregoing reasons, PCCA deems it prudent and advisable to incentivize CITGO Refining to continue to import and export large amounts of liquid bulk petroleum through the Port of Corpus Christi by offering lower tariff and franchise rates to CITGO Refining if it imports or exports a minimum number of barrels of liquid bulk petroleum through the Port of Corpus Christi each year; and

WHEREAS, CITGO Refining wishes to enter into this Agreement to evidence its acceptance of PCCA's tariff and franchise incentives set forth in this Agreement and its agreement to pay to PCCA's published tariff and franchise rental rates on liquid bulk petroleum if it does not meet the minimum throughput requirements set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, rights, and obligations set forth herein, the benefits to be derived therefrom, and other good and valuable consideration, the receipt and the sufficiency of which is hereby acknowledged, PCCA and CITGO Refining, intending to be legally bound, hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 **Certain Definitions.** Except as provided in Section 1.2 or unless the context requires otherwise, capitalized terms in this Agreement shall have the meanings given them in this Section 1.1.

**"Actual LBP Throughput"** means, for each Calendar Year, the actual number of Barrels of CITGO LBP that CITGO loads on and/or discharges from Vessels at PCCA's Public Oil Docks or CITGO's Private Oil Docks during that Calendar Year.

**"Adjustment Amount"** means, for any Calendar Year, an amount equal the Base Rate for the prior Calendar Year multiplied by eighty-two percent (82%) of a fraction, the numerator

of which is the difference between the Index for such Calendar Year and the Index for the prior Calendar Year, and the denominator of which is the Index for the prior Calendar Year.

“**Agreement**” shall have the meaning assigned to it in the introductory paragraph of this Agreement, including all exhibits attached hereto and amendments thereto.

“**Barrel**” or “**BBL**” means a 42 gallon barrel.

“**Base Rate**” means, with respect to any Calendar Year during the Term, the Base Rate for that Calendar Year as calculated in accordance with Section 4.1.

“**Calendar Year**” means each twelve-month period during the Term which begins on January 1<sup>st</sup> and ends on the following December 31<sup>st</sup>. The first Calendar Year shall be the year 2012, the second Calendar Year shall be the year 2013, and so on. The tenth and final Calendar Year shall be the year 2021.

“**CITGO**” means CITGO Refining and CITGO Refining’s Affiliates.

“**CITGO LBP**” means Liquid Bulk Petroleum (i) which is owned by CITGO or in which CITGO otherwise has an ownership interest, or (ii) which CITGO is purchasing or selling in connection with the shipment of such Liquid Bulk Petroleum in the Port of Corpus Christi.

“**CITGO Refining**” shall have the meaning assigned to it in the introductory paragraph of this Agreement.

“**CITGO Refining’s Affiliates**” means the entities which, directly or indirectly, control or are controlled by or are under common control or ownership with CITGO Refining.

“**CITGO’s Franchises**” means, collectively, all of the franchises that PCCA has granted to CITGO or CITGO’s predecessors in interest which are still in effect on the Effective Date, and all of the franchises that PCCA may grant to CITGO after the Effective Date while this Agreement is still in effect.

“**CITGO’s Private Oil Docks**” means, collectively, all of the private oil docks in the Port of Corpus Christi owned by CITGO which are used for receiving and/or shipping LBP, including any such private oil docks constructed or acquired by CITGO during the Term.

“**Dockage**” means the charges PCCA assesses in its Tariff against a Vessel for berthing at a wharf, pier, bulkhead, or bank, or for mooring to a Vessel so berthed.

“**Effective Date**” shall have the meaning assigned to it in the introductory paragraph of this Agreement.

“**Franchise Rental Payments**” means the rental payments made by CITGO Refining to PCCA under CITGO’s Franchises for LBP moving across CITGO’s Private Oil Docks, including the rental payments made pursuant to this Agreement.

**“Grand Total”** means one billion, one hundred twenty-three million, three hundred twenty-one thousand, four hundred and thirty Barrels (1,254,021,730 BBLs) of Liquid Bulk Petroleum.

**“Harbor Safety Fee”** means the charge PCCA assesses in its Tariff (currently Item 301 in the Tariff) to assist in defraying the expense and administration, maintenance and operation of a fire response vessel and marine patrol, including personnel and equipment.

**“Incentive Franchise Rate”** means, with respect to any Calendar Year for which CITGO satisfies the Minimum LBP Throughput Test, the rental rate payable under CITGO’s Franchises for LBP for that Calendar Year as calculated pursuant to Section 5.3.

**“Incentive Rates”** means, collectively, with respect to any Calendar Year for which CITGO satisfies the Minimum LBP Throughput Test, the Incentive Franchise Rate and the Incentive Wharfage Rate for that Calendar Year.

**“Incentive Wharfage Rate”** means, with respect to any Calendar Year for which CITGO satisfies the Minimum LBP Throughput Test, the Wharfage rate for LBP for that Calendar Year as calculated pursuant to Section 5.2.

**“Index”** means, with respect to any Calendar Year, the PPI Index for the month of October of the prior Calendar Year. For example, the Index for the Calendar Year 2014 would be the PPI Index for October 2013.

**“Liquid Bulk Petroleum”** or **“LBP”** means all liquid bulk cargo, including but not limited to crude and refined petroleum, petroleum products, petrochemicals, chemicals and other bulk liquids, except liquefied natural gas (LNG).

**“Lower Volume Customer”** means any other Liquid Bulk Petroleum customer doing business in the Port of Corpus Christi that is loading and/or discharging less than one hundred twenty-five million, four hundred two thousand, one hundred seventy-three Barrels (125,402,173 BBLs) of LBP per year from Vessels at the public or private oil docks in the Port of Corpus Christi.

**“Maximum Franchise Rate”** means, with respect to any Calendar Year, fifty percent (50%) of the Wharfage rate for LBP for that Calendar Year as published in the Tariff.

**“Minimum LBP Throughput Test”** means the Minimum LBP Throughput Test described in Article 3.

**“Normal Rates”** means, collectively, with respect to any Calendar Year, the Maximum Franchise Rate and the Normal Wharfage Rate for that Calendar Year.

**“Normal Wharfage Rate”** means, with respect to any Calendar Year, one hundred percent (100%) of the Wharfage rate for LBP for that Calendar Year as published in the Tariff.

**“Normalizing Payment”** means, for any Calendar Year, the total amount CITGO is required to pay to PCCA pursuant to Section 7.1.

“**Notice**” or “**Notices**” shall have the meanings assigned to such terms in Section 10.2.

“**Parties**” means PCCA and CITGO Refining.

“**Party**” means PCCA or CITGO Refining, as the case may be.

“**PCCA’s Public Oil Docks**” shall mean the public oil docks in the Port of Corpus Christi, which are owned by PCCA.

“**Person**” means any natural person, partnership, corporation, association, and other form of business association or entity.

“**PPI Index**” means the Producer Price Index for Port and Harbor Operations (not seasonally adjusted) published by the Bureau of Labor Statistics of the U.S. Department of Labor in the *PPI Detailed Report*.

“**Tariff**” means PCCA’s Tariff 100-A, Naming Rates, Rules and Regulations Applying on the Public and Private Wharves, as such may be amended from time to time.

“**Term**” shall have the meaning assigned to it in Section 2.2.

“**Vessel**” means any waterborne vessel or barge.

“**Wharfage**” means the charges PCCA assesses pursuant to its Tariff against the cargo or Vessel on all cargo passing or conveyed over, onto or under wharves or between Vessels (to or from barge, lighter or water) when berthed at a wharf or when moored in a slip adjacent to a wharf within PCCA’s jurisdiction. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

“**Wharfage Payments**” means Wharfage payments made by CITGO Refining to PCCA under the Tariff for LBP moving across PCCA’s Public Oil Docks, including the Wharfage payments made pursuant to this Agreement.

1.2 **Other Definitions.** Subject to Section 1.1, capitalized terms in this Agreement which are not defined in Section 1.1, or are defined in Section 1.1 only by reference to later text, are defined in the later text of this Agreement.

1.3 **Construction.** Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine, and neuter. Unless the context required otherwise, the singular number includes the plural number and vice versa. All references to Article(s) and Section(s), unless the context requires otherwise, are to article(s) and section(s) of this Agreement, and all references to Exhibit(s), unless the context requires otherwise, are to exhibit(s) attached hereto, each of which is incorporated herein and made a part of this Agreement for all purposes. The recitals are incorporated herein and made a part hereof.

## ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 **Effective Date.** This Agreement shall become effective on the Effective Date and shall continue in effect until the December 31, 2021. Although this Agreement does not become effective until the Effective Date, it shall also apply to matters occurring during the portion of the Term which is prior to the Effective Date.

2.2 **Term.** The term of this Agreement ("**Term**") shall be the period beginning January 1, 2012, and ending December 31, 2021. All calculations under this Agreement shall be made with respect to the Calendar Years occurring during the Term. The first Calendar Year of the Term is the period beginning January 1, 2012, and ending December 31, 2012, even though the Effective Date occurs after January 1, 2012.

2.3 **Payments Before the Effective Date.** As soon as practicable after the Effective Date, the Parties shall determine the following amounts for the period beginning on January 1, 2012, and ending on the Effective Date (the "**Interim Period**"):

(a) the Wharfage Payments actually made by CITGO to PCCA for CITGO LBP moved across PCCA's Public Oil Docks during the Interim Period (the "**Interim Period Wharfage Payments**"):

(b) the Franchise Rental Payments actually made by CITGO to PCCA for CITGO LBP moved across CITGO's Private Oil Docks during the Interim Period (the "**Interim Period Franchise Rental Payments**"):

(c) the Wharfage Payments CITGO would have made to PCCA for the LBP described in Section 2.3(a) had this Agreement been in effect on January 1, 2012 (the "**Recalculated Wharfage Payments**"): and

(d) the Franchise Rental Payments CITGO would have made to PCCA for the LBP described in Section 2.3(b) had this Agreement been in effect on January 1, 2012 (the "**Recalculated Franchise Payments**").

CITGO shall be entitled to a credit against future Wharfage Payments or Franchise Rental Payments in an amount equal to the sum of (A) the Interim Period Wharfage Payments minus the Recalculated Wharfage Payments, and (B) the Interim Period Franchise Rental Payments minus the Recalculated Franchise Payments. The Parties shall apply this credit against the first Wharfage Payments and Franchise Rental Payments payable to PCCA after the amount of the credit has been determined.

## ARTICLE 3 MINIMUM LBP THROUGHPUT

3.1 **Minimum LBP Throughput Test.** To incentivize CITGO to continue importing and exporting large amounts of Liquid Bulk Petroleum through the Port of Corpus Christi, PCCA is offering CITGO lower Wharfage Payments and lower Franchise Rental Payments for each Calendar Year in which CITGO satisfies the Minimum LBP Throughput Test for that

Calendar Year. CITGO may satisfy the Minimum LBP Throughput Test for a Calendar Year by satisfying the One-Year Test in Section 3.2 or the Three-Year Test in Section 3.3.

3.2 **One-Year Test.** CITGO shall satisfy the Minimum LBP Throughput Test for a Calendar Year if the Actual LBP Throughput for that Calendar Year equals or exceeds one hundred twenty-five million, four hundred two thousand, one hundred seventy-three Barrels (125,402,173 BBLs) of Liquid Bulk Petroleum.

3.3 **Three-Year Test.** CITGO shall also satisfy the Minimum LBP Throughput Test for a Calendar Year if the sum of the Actual LBP Throughput for that Calendar Year and the prior two calendar years (including calendar years occurring before the Term) equals or exceeds three hundred seventy-six million, two hundred six thousand, five hundred nineteen Barrels (376,206,519 BBLs) of Liquid Bulk Petroleum.

3.4 **Ten-Year Total.** If CITGO fails to satisfy the Minimum LBP Throughput Test for any Calendar Year, it shall pay to PCCA the Normalizing Payment described in Section 7.1 for that Calendar Year; provided, however, that if the Actual LBP Throughput for the entire Term equals or exceeds the Grand Total, then PCCA shall rebate to CITGO in accordance with Section 7.3 any Normalizing Payments which CITGO may have made to PCCA during the Term.

#### **ARTICLE 4 BASE RATE**

##### 4.1 **Base Rate.**

(a) The Base Rate for the first and second Calendar Years shall be \$0.0883 (8.83 cents) per BBL of LBP.

(b) The Base Rate for the third Calendar Year and each Calendar Year thereafter shall equal the Base Rate for the prior Calendar Year plus or minus, as the case may be, the Adjustment Amount for the then current Calendar Year (rounded to the nearest hundredth of one cent). The Adjustment Amount for the then current Calendar Year shall equal the Base Rate for the prior Calendar Year multiplied by eighty-two percent (82%) of a fraction, the numerator of which is the difference between the Index for the then current Calendar Year and the Index for the prior Calendar Year, and the denominator of which is the Index for the prior Calendar Year. If the Index for the then current Calendar Year exceeds the Index for the prior Calendar Year, the Adjustment Amount shall be added to the Base Rate for the prior Calendar Year to determine the Base Rate for the then current Calendar Year. If the Index for the then current Calendar Year is less than the Index for the prior Calendar Year, the Adjustment Amount shall be subtracted from the Base Rate of the prior Calendar Year to determine the Base Rate for the then current Calendar Year. See Exhibit A for example Base Rate and Adjustment Amount calculations for the first Calendar Year through the fourth Calendar Year.

4.2 **PPI Index Information.** As of the Effective Date, the numerical industry code for Port and Harbor Operations in the *PPI Detailed Report* is 488310, which is provided for identification purposes only. For purposes of this Agreement, the PPI Index for any given calendar month is the first-published version of the PPI Index for that month. If the PPI Index

shall be discontinued with no successor or comparable successor index, the Parties shall substitute a similar index that is mutually agreeable to both Parties.

4.3 **Application of Base Rate.** The Base Rate for each Calendar Year shall be used to determine the Incentive Wharfage Rate for that Calendar Year pursuant to Section 5.2 and the Incentive Franchise Rate for that Calendar Year pursuant to Section 5.3.

## ARTICLE 5 INCENTIVE RATES

5.1 **Application of Incentive Rates.** During the Term, CITGO shall make Wharfage Payments and Franchise Rental Payments to PCCA based on the Incentive Rates, instead of the Normal Rates, for CITGO LBP moved across PCCA's Public Oil Docks and CITGO's Private Oil Docks. If, however, CITGO fails to satisfy the Minimum LBP Throughput Test for any Calendar Year, it shall also be required to pay to PCCA a Normalizing Payment for that year in accordance with Section 7.1.

5.2 **Incentive Wharfage Rates.** For purposes of this Agreement, the Incentive Wharfage Rate for CITGO LBP moved across PCCA's Public Oil Docks during any Calendar Year shall be determined as follows:

(a) For the first Calendar Year, the Incentive Wharfage Rate shall be ninety-eight percent (98%) of the Base Rate for the first Calendar Year (rounded to the nearest hundredth of one cent). Therefore, the Incentive Wharfage Rate for the first Calendar Year shall be \$0.0865 (8.65 cents) per BBL of LBP [8.83 cents x 98%].

(b) For the second Calendar Year, the Incentive Wharfage Rate shall be ninety-six percent (96%) of the Base Rate for the second Calendar Year (rounded to the nearest hundredth of one cent). Therefore, the Incentive Wharfage Rate for the second Calendar Year shall be \$0.0848 (8.48 cents) per BBL of LBP [8.83 cents x 96%].

(c) For the third Calendar Year and each Calendar Year thereafter, the Incentive Wharfage Rate for such Calendar Year shall be ninety-four percent (94%) of the Base Rate for such Calendar Year (rounded to the nearest hundredth of one cent).

5.3 **Incentive Franchise Rates.** For purposes of this Agreement, the Incentive Franchise Rate for CITGO LBP moved across CITGO's Private Oil Docks during any Calendar Year shall be determined as follows:

(a) For the first Calendar Year, the Incentive Franchise Rate shall be forty-five percent (45%) of the Base Rate for the first Calendar Year (rounded to the nearest hundredth of one cent). Therefore, the Incentive Franchise Rate for the first Calendar Year shall be \$0.0397 (3.97 cents) per BBL of LBP [8.83 cents x 45%].

(b) For the second Calendar Year, the Incentive Franchise Rate shall be forty-two and one-half percent (42.5%) of the Base Rate for the second Calendar Year (rounded to the nearest hundredth of one cent). Therefore, the Incentive Franchise Rate for the second Calendar Year shall be \$0.0375 (3.75 cents) per BBL of LBP [8.83 cents x 42.5%].

(c) For the third Calendar Year and each Calendar Year thereafter, the Incentive Franchise Rate for such Calendar Year shall be forty-one percent (41%) of the Base Rate for such Calendar Year (rounded to the nearest hundredth of one cent).

## **ARTICLE 6 WHARFAGE AND FRANCHISE RENTAL PAYMENTS**

6.1 **Wharfage Payments.** For each Calendar Year during the Term, CITGO shall make Wharfage Payments to PCCA in an amount equal to the product of (1) actual number of Barrels of CITGO LBP that CITGO loads on and/or discharges from Vessels at PCCA's Public Oil Docks during that Calendar Year, multiplied by (2) the Incentive Wharfage Rate for that Calendar Year. CITGO shall make these Wharfage Payments to PCCA at the same time and place and in the same manner as CITGO has historically made Wharfage Payments to PCCA under the Tariff.

6.2 **Franchise Rental Payments.** For each Calendar Year during the Term, CITGO shall make Franchise Rental Payments to PCCA in an amount equal to the product of (1) the actual number of Barrels of CITGO LBP that CITGO loads on and/or discharges from Vessels at CITGO's Private Oil Docks during that Calendar Year, multiplied by (2) the Incentive Franchise Rate for that Calendar Year. CITGO shall make these Franchise Rental Payments to PCCA at the same time and place and in the same manner as CITGO has historically made Franchise Rental Payments to PCCA under CITGO's Franchises.

## **ARTICLE 7 NORMALIZING PAYMENTS**

7.1 **Payment of Normalizing Payments.** If CITGO fails to satisfy the Minimum LBP Throughput Test for any Calendar Year, under either the One-Year Test in Section 3.2 or the Three-Year Test in Section 3.3, it shall also be required to pay to PCCA, as soon as practicable after the end of such Calendar Year, an amount equal to the sum of the following amounts (collectively, a "**Normalizing Payment**"):

(X) the product of (1) the actual number of Barrels of CITGO LBP that CITGO loads on and/or discharges from Vessels at PCCA's Public Oil Docks during that Calendar Year, multiplied by (2) the positive difference between the Normal Wharfage Rate for that Calendar Year and the Incentive Wharfage Rate for that Calendar Year; and

(Y) the product of (1) the actual number of Barrels of CITGO LBP that CITGO loads on and/or discharges from Vessels at CITGO's Private Oil Docks during that Calendar Year, multiplied by (2) the positive difference between the Maximum Franchise Rate for that Calendar Year and the Incentive Franchise Rate for that Calendar Year.

CITGO understands and agrees that the Normalizing Payment for any Calendar Year shall be in addition to the payments CITGO is required to make to PCCA pursuant to Article 6 for that Calendar Year.

7.2 **Exception for the Tenth Calendar Year.** Notwithstanding anything to the contrary in Section 7.1, if CITGO fails to satisfy the Minimum LBP Throughput Test for the tenth Calendar Year, but it is evident the Actual LBP Throughput for the entire Term will exceed the Grand Total, then CITGO will not be required to make a Normalizing Payment with respect to the tenth Calendar Year.

7.3 **Rebate.** If the Actual LBP Throughput for the entire Term equals or exceeds the Grand Total, then PCCA shall rebate to CITGO any Normalizing Payments which CITGO has made to PCCA during the Term. PCCA shall rebate the Normalizing Payments, if any, to CITGO as soon as practicable after it determines whether the Actual LBP Throughput for the entire Term equals or exceeds the Grand Total, but in any event no later than March 31, 2022.

## ARTICLE 8 CYCLER BARGES

8.1 **Generally.** CITGO regularly transfers Delayed Coker feedstock ("DCF") from its Corpus Christi east plant to its Corpus Christi west plant via two barges (currently Kirby Barges #28700 and #29700) which are used exclusively by CITGO for shipping DCF between CITGO's east and west plants (the two existing barges and any replacement barges being referred to herein individually as a "**Cycler Barge**" and collectively as the "**Cycler Barges**"). Specifically, CITGO loads DCF onto the Cycler Barges at CITGO's Private Oil Dock No. 7 and unloads DCF from the Cycler Barges at CITGO's Private Oil Dock No. 6 (these two private oil docks being referred to herein as "**CITGO's Cycler Barge Docks**"). CITGO anticipates loading and unloading at least twenty-five million, nine hundred eighty-three thousand, one hundred thirty-two Barrels (25,983,132 BBLs) of DCF at CITGO's Cycler Barge Docks each Calendar Year during the Term, except in Calendar Years in which there is a turnaround project.

8.2 **Minimum DCF Throughput Test.** CITGO shall satisfy the "**Minimum DCF Throughput Test**" for a Calendar Year (i) if the total number of Barrels of DCF loaded onto and unloaded from the Cycler Barges at CITGO's Cycler Barge Docks during that Calendar Year equals or exceeds twenty-five million, nine hundred eighty-three thousand, one hundred thirty-two Barrels (25,983,132 BBLs) of DCF, or (ii) if CITGO has a turnaround project which limits CITGO's ability to produce or process DCF that Calendar Year and CITGO gives PCCA Notice of such turnaround project (each such Notice being referred to herein as a "**Turnaround Notice**"); provided, however, that CITGO may not give PCCA more than one Turnaround Notice every four Calendar Years. For example, if CITGO gives PCCA a Turnaround Notice in the second Calendar Year, CITGO may not give PCCA another Turnaround Notice until the sixth Calendar Year.

8.3 **Cycler Barge Rebate.** If CITGO satisfies the Minimum LBP Throughput Test and the Minimum DCF Throughput Test for any Calendar Year, PCCA shall rebate to CITGO, as soon as practicable after the end of such Calendar Year, an amount equal to the sum of the following amounts:

(X) ten percent (10%) of the product of (1) the actual number of Barrels of DCF loaded onto and/or unloaded from the Cycler Barges at CITGO's Cycler Barge

Docks during that Calendar Year, multiplied by (2) the Incentive Franchise Rate for that Calendar Year (the "**DCF Rebate**"); and

(Y) the product of (1) the DCF Rebate for that Calendar Year, multiplied by (2) the percentage stated in PCCA's Tariff as the Security Surcharge for that Calendar Year.

See Exhibit A for example DCF Rebate calculations for the first Calendar Year through the fourth Calendar Year.

## **ARTICLE 9 OTHER PCCA FEES AND CHARGES**

9.1 **Security Surcharge.** PCCA assesses a Security Surcharge in its Tariff equal to a stated percentage of all Wharfage and Dockage charges. CITGO agrees and understands that it is required to pay to PCCA the Security Surcharge on all amounts paid to PCCA pursuant to this Agreement.

9.2 **Harbor Safety Fee and Dockage Rates.** The Parties agree that, beginning with the first calendar month following the month in which the Effective Date occurs and thereafter during the remainder of the Term of this Agreement, CITGO shall pay PCCA a monthly Harbor Safety Fee on each Cyclo Barge equal to four times PCCA's published Harbor Safety Fee for barges for that month. Except as provided in the preceding sentence, neither PCCA's Harbor Safety Fee nor PCCA's Dockage rates are addressed by this Agreement and are, therefore, not altered by any of its terms.

9.3 **No New Surcharges or Special Assessments without Consent.** No new surcharges or special assessments will be implemented by PCCA on Liquid Bulk Petroleum without CITGO's consent, which shall not be unreasonably withheld if the new surcharges or special assessments are for the benefit of or directly relate to the liquid petroleum business in the Port of Corpus Christi.

9.4 **Most Favored Nations Agreement.** If after the Effective Date, PCCA agrees to charge any Lower Volume Customer (i) a lower Wharfage rate on LBP it moves across PCCA's Public Oil Docks than the Incentive Wharfage Rates described in Section 5.2 or (ii) a lower rental rate per Barrel for LBP it moves across its private oil docks than the Incentive Franchise Rates described in Section 5.3, then CITGO shall be charged such lower rate or rates for the remainder of the Term. This Most Favored Nations Agreement shall not apply to (a) lower rates in any of PCCA's existing agreements or (b) lower rates which PCCA agrees to charge a Lower Volume Customer in a subsequent agreement in exchange for the Lower Volume Customer's promise to construct improvements at one or more of PCCA's Public Oil Docks with funds of or borrowed by the Lower Volume Customer.

## **ARTICLE 10 MISCELLANEOUS**

10.1 **Effect on CITGO's Franchises.** The Parties agree that this Agreement does not alter or amend any of CITGO's Franchises, which shall remain in full force and effect in

accordance with their respective terms; provided, however, that for CITGO LBP moving across CITGO's Private Oil Docks during the Term, CITGO Refining shall make the Franchise Rental Payments and, if need be, the Normalizing Payments specified in this Agreement in lieu of the rental payments that would have otherwise been required under CITGO's Franchises for CITGO LBP moving across CITGO's Private Oil Docks during the Term.

10.2 **Notices.** Any formal notices between the Parties regarding this Agreement (each a "**Notice**," and collectively, "**Notices**") shall be in writing and shall be given (a) by hand, (b) by United States registered or certified mail, postage prepaid, return receipt requested, (c) by overnight courier service guaranteeing next business day delivery, or (d) via telecopier or facsimile transmission to the facsimile number listed below, addressed to the Party for whom intended as follows:

If to CITGO:                   CITGO Refining and Chemicals Company L.P.  
  Attn: GM of Technical and Admin Services  
  1802 Nueces Bay Blvd  
  P.O. Box 9176  
  Corpus Christi, Texas 78469  
  Fax: 361-844-4853

If to PCCA:                     Port of Corpus Christi Authority  
  Attn: Executive Director  
  222 Power Street  
  P.O. Box 1541  
  Corpus Christi, Texas 78403  
  Fax: 361-881-5155

Either Party may designate by Notice given to the other Party a new address, facsimile number or person to which Notices hereunder shall thereafter be sent.

10.3 **Assignment.** This Agreement may not be assigned by either Party; provided, however, that CITGO Refining may assign its interest in this Agreement to any of CITGO Refining's Affiliates without PCCA's consent.

10.4 **Entire Agreement; Merger.** All understandings and agreements, oral or written, heretofore had between the Parties with respect to the subject matter hereof are hereby superseded by this Agreement, which alone fully and completely expresses their agreement. This Agreement is entered into after full investigation, and neither Party is relying upon any statement or representation not embodied in this Agreement made by the other Party. This Agreement may not be terminated, modified, or amended, nor any provision hereof waived, in whole or in part, except by a writing signed by the Party against whom enforcement of such termination, modification, amendment, or waiver is sought.

10.5 **Choice of Law; Binding Effect.** Enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict-of-laws principles that would require the application of any other law. The obligations of the Parties under this Agreement are performable in Nueces County, Texas. This Agreement

shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

10.6 **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument. This Agreement may be executed via facsimile followed by regular mail of the originals and shall be considered executed and binding upon receipt of the fax of the signature page of the last of the Parties to sign this Agreement.

10.7 **No Third Party Beneficiary.** The provisions of this Agreement are not intended to benefit any Person not a party hereto.

10.8 **Severability.** If any provision of this Agreement is or becomes invalid, illegal or incapable of being enforced or performed in the manner contemplated herein by a court of competent jurisdiction or by any applicable law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

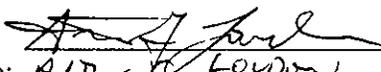
**PORT OF CORPUS CHRISTI AUTHORITY  
OF NUECES COUNTY, TEXAS**

By: \_\_\_\_\_

  
John P. LaRue  
Executive Director

**CITGO REFINING AND CHEMICALS  
COMPANY L.P.**

By: \_\_\_\_\_

  
Name: Arthur G. London  
Title: VP Corp. Christ. Refining

E.O.

## EXHIBIT A TO VOLUME INCENTIVE AGREEMENT

Minimum Yearly Volume: 125,402,173 barrels

*(Note: Assumes min. volume not met based on prior 2 years' volumes).*

	Year 1	Year 2
1. Public LBP Volume	67,500,000	50,000,000
2. Private LBP Volume	67,500,000 (w/30,000,000 DCF)	50,000,000 (w/20,000,000 DCF)
3. Total	135,000,000	100,000,000
4. Index Amount	n/a	140
5. Adjustment Amount	n/a	n/a
6. Base Rate	\$0.0883	\$0.0883
7. Incentive Wharfage Rate	\$0.0865 (Base Rate) x 98%	\$0.0848 (Base Rate) x 96%
8. Incentive Franchise Rate	\$0.0397 (Base Rate) x 45%	\$0.0375 (Base Rate) x 42.5%
9. Incentive Wharfage Payment	\$5,838,750	\$4,240,000
10. Incentive Franchise Payment	\$2,679,750	\$1,875,000
11. Total Incentive Payment	\$8,518,500	\$6,115,000
12. Normalizing Payment	0	\$510,000 *
13. Grand Total Payment	\$8,518,500	\$6,625,000
14. DCF Rebate	\$119,100 (10% of 30,000,000 x \$0.0397)	0

*(Note. First year index adjusts Base Rate.)*

*(Note: Decrease in index amount.)*

	Year 3	Year 4
1. Public LBP Volume	67,500,000	67,500,000
2. Private LBP Volume	67,500,000 (w/20,000,000 DCF)	67,500,000 (w/30,000,000 DCF)
3. Total	135,000,000	135,000,000
4. Index Amount	145	144
5. Adjustment Amount	\$0.0026	-\$0.0005
6. Base Rate	\$0.0909 (\$0.0883) ± Adjustment Amount	\$0.0904 (\$0.0909) ± Adjustment Amount
7. Incentive Wharfage Rate	\$0.0854 (Base Rate) x 94%	\$0.0850 (Base Rate) x 94%
8. Incentive Franchise Rate	\$0.0373 (Base Rate) x 41%	\$0.0371 (Base Rate) x 41%
9. Incentive Wharfage Payment	\$5,764,500	\$5,737,500
10. Incentive Franchise Payment	\$2,517,750	\$2,504,250
11. Total Incentive Payment	\$8,282,250	\$8,241,750
12. Normalizing Payment	0	0
13. Grand Total Payment	\$8,282,250	\$8,241,750
14. DCF Rebate	0	\$111,300 (10% of 30,000,000 x \$0.0371)

\*Calculation of "Normalizing Payment" in example utilizes "Base Rate" for Year 2 for purposes of calculating both the "Normal Wharfage Rate" and "Maximum Franchise Rate" as those terms are defined in Section 7.1 of the Agreement. Both parties understand that actual Normal (Published) Tariff Rate and the Base Rate as shown herein for such calendar year may vary.

### Sample Incentive and Normalizing Payment Schedule (Calendar Years 1 - 4)