HONORABLE MAYOR AND CITY COUNCIL
August 19, 2014
Harbor Department Appeal Hearing

Attachment 1

Proposed Resolution for City Council

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

RESOLUTION NO. C-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AFFIRMING THE DETERMINATION BY THE BOARD OF HARBOR COMMISSIONERS THAT THE APPROVALS OF THE OPERATING AGREEMENT WITH METROPOLITAN STEVEDORE COMPANY AND THE LEASE WITH OXBOW ENERGY SOLUTIONS LLC ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND FURTHER DO NOT TRIGGER THE NEED FOR ADDITIONAL ENVIRONMENTAL REVIEW PURSUANT TO PUBLIC RESOURCES CODE SECTION 21166 AND MAKING FINDINGS RELATING THERETO

WHEREAS, the Pier G dry bulk terminal (Terminal) within the Port of Long Beach has been in operation for the export of dry bulk commodities since the early 1960's, and Metropolitan Stevedore Company (Metro) has provided the terminal operating services at the Terminal since approximately 1962; and

WHEREAS, a large portion of the Terminal improvements and infrastructure were installed prior to the 1970 enactment of the California Environmental Quality Act (CEQA); and

WHEREAS, certain improvements were made to the Terminal following the enactment of CEQA, and those improvements were reviewed in accordance with CEQA, including the Pier G Bulk Facility Modification Project approved following the adoption of a Negative Declaration in 1982, which project increased the annual throughput capacity of the Terminal to 5 million metric tons of coal, 3.7 million metric tons of petroleum coke, and 370,000 metric tons of white bulk commodities; and

WHEREAS, Metro currently provides terminal operating services at the Terminal pursuant to a Preferential Assignment Agreement that originally became effective April 1, 1981 and which has been updated and amended from time to time; and

WHEREAS, in 1992 the City of Long Beach, acting by and through its Board of Harbor Commissioners (Board), adopted a Negative Declaration in accordance with CEQA for the construction and operation of a coal shed (Coal Shed) at the Terminal; and

WHEREAS, in anticipation of the construction of the Coal Shed and its proposed lease to Metro, the Board in 1992 entered into an Amended and Restated Preferential Assignment Agreement with Metro (Amended PAA) which included Guaranteed Minimum Tonnage (GMT) payment requirements that were increased by 12,380,000 metric tons for a five year period (or 2,476,000 metric tons annually) after the Coal Shed was completed; and

WHEREAS, the Harbor Department of the City of Long Beach has invested over $35 million in the initial construction of the Coal Shed and subsequent improvements thereto; and

WHEREAS, Oxbow Carbon & Minerals, LLC currently operates the Coal Shed pursuant to a subassignment with Metro that was approved most recently by the Board in 2010; and

WHEREAS, Oxbow Carbon & Minerals, LLC, and its affiliates, including without limitation Oxbow Energy Solutions LLC, are referred to hereinafter collectively as "Oxbow"; and

WHEREAS, Oxbow is currently the only dry bulk commodities exporter utilizing the Coal Shed, through which it exports primarily coal, along with a smaller amount of petroleum coke; and

WHEREAS, Oxbow's annual combined throughput for the Coal Shed, stated in metric tons, was 1,630,196 in 2012 and 1,569,644 in 2013; and

WHEREAS, based upon the first six months of 2014, the combined

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CHARLES PARKIN, City Attorney
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throughput for the Coal Shed for 2014 will be approximately 1,724,016 metric tons; and

WHEREAS, during the last four years of Oxbow's operation of the Coal Shed, the annual throughput of petroleum coke has been less than 100,000 metric tons; and

WHEREAS, the existing permits and agreements relating to the Terminal, including the Coal Shed, contain no cap or upper limit on the amount of coal that can be exported through the Terminal; and

WHEREAS, the annual coal throughput of the Coal Shed has varied over the years, but has been as high as approximately 2.35 million metric tons; and

WHEREAS, staff of the Harbor Department evaluated the current arrangements with Metro and Oxbow and determined that the existing agreements should be modified to increase the revenue to the Harbor Department and to require Metro to complete certain maintenance, repairs and replacements at the Terminal; and

WHEREAS, staff of the Harbor Department presented to the Board for consideration a new Operating Agreement with Metro and a new Lease with Oxbow that would extend the term of the existing occupancies, modify the rent and other financial terms of the agreements to increase the income to the Harbor Department, create a direct leasing relationship between the Harbor Department and Oxbow for the Coal Shed, and require Metro to complete certain specified maintenance, repairs and replacements at the Terminal; and

WHEREAS, the new agreements do not require changes in the operation of the Terminal or the Coal Shed and do not affect the capacity of the Terminal or the Coal Shed; and

WHEREAS, the Harbor Department Director of Environmental Planning determined that the Board's approvals of the Operating Agreement and the Lease were categorically exempt pursuant to Sections 15301 and 15302 of the CEQA Guidelines adopted by the Secretary of the California Natural Resources Agency and found at Title 14 of the California Code of Regulation Section 15000 and following, and that with

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Long Beach, CA 90802-4664

respect to the Lease there is no significant new information that would require additional environmental review pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, on May 27, 2014, the Board approved the first reading of Ordinance HD-2188 which approved the Operating Agreement with Metro and the first reading of Ordinance HD-2187 which approved the Lease with Oxbow and found the approvals of the agreements to be categorically exempt from CEQA and that the approval of the Lease did not trigger the need for additional environmental review under Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, on June 9, 2014, the Board approved the second reading of Ordinance HD-2188 which approved the Operating Agreement with Metro and the second reading of Ordinance HD-2187 which approved the Lease with Oxbow and made the same CEQA determinations and findings; and

WHEREAS, on June 23, 2014, Earthjustice on behalf of Communities for a Better Environment, the Natural Resources Defense Council and the Sierra Club (Appellants) appealed the Board's CEQA determinations for the Operating Agreement and Lease to the City Council pursuant to Long Beach Municipal Code Section 21.21.507; and

WHEREAS, on July 28, 2014, Appellants received notice that the appeal would come before the Long Beach City Council on August 19, 2014; and

WHEREAS, the appeal was placed upon the agenda of the City Council, and Appellants and other interested parties had notice and an opportunity to be heard in a public hearing held on August 19, 2014; and

WHEREAS, the City Council has carefully considered the documentation and testimony submitted in favor of and in opposition to the appeal.

NOW THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. The City Council hereby finds and determines that the

OFFICE OF THE CITY ATTORNEY
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approvals of the Operating Agreement and the Lease are categorically exempt from the provisions of CEQA in accordance with CEQA Guidelines Sections 15301 and 15302 for the reasons stated in the staff report to the City Council, the documents attached to the staff report, the Additional Reference Documents provided by compact disc, and the presentation by City staff during the hearing. The actions by the Board relating to the Operating Agreement and the Lease fit within CEQA Guidelines Sections 15301 and 15302, and Appellants' arguments to the contrary are without merit. In addition, none of the exceptions contained in CEQA Guidelines Section 15300.2 apply. Specifically, there is not a reasonable possibility of a significant effect on the environment due to unusual circumstances, nor will approval of the new Operating Agreement or the Lease result in any significant cumulative impacts. The Council finds this to be the case regardless of whether the "fair argument" or substantial evidence" standard applies. Appellants have not met their burden under either standard.

Sec. 2. The City Council further finds and determines that even if the Lease was not exempt from CEQA, the requirement for environmental review under Public Resources Section 21166 and CEQA Guidelines Section 15162 would not be triggered for the following reasons:

(a) There are no changes proposed to the Pier G Coal Shed or its operations which would result in any new or substantively more severe impacts compared to the Coal Shed as described in the 1992 Negative Declaration. The only changes proposed to the Terminal are minor maintenance, repairs and replacements to existing facilities. In addition, the "Environmental Covenants" that are attached as Exhibit B and made part of the Lease are all designed to improve the environmental impacts of the existing operation. While the Lease does contain a finance term relating to a GMT, the GMT is an economic term that guarantees the Port certain minimum wharfage and shiploading fees as part of the minimum annual compensation for the Coal Shed. During the first five years of the Lease, the GMT is based on an estimated throughput of 1.7 million metric tons of coal. This volume is consistent with recent throughput figures and

is substantially less than both the GMT originally imposed in connection with the Coal Shed and the highest annual throughput for the Coal Shed. A GMT provision is very commonly used in agreements with port tenants and throughout the industry generally. It is not a penalty clause and does not mandate or cause any level of throughput. It is only an economic term of the agreement. The referenced GMT is within the capacity of the existing facility and attaining that throughput requires no physical modification of the facility. Therefore, that level of throughput remains within the scope of the 1992 Negative Declaration.

(b) The circumstances under which the Coal Shed will continue to operate have not changed substantially compared to the circumstances that existed in 1992 such that any new or substantially more severe environmental impacts would result from the Lease. As a result of the Port's Clean Air Action Plan, emissions from activities at the Port have decreased substantially. Since 2005, there has been an 81% drop in particulate matter, a 54% drop in NOX emissions, an 88% drop in SOX emissions and a 24% drop in greenhouse gas (GHG) emissions. See Air Emissions Inventory – 2012 (Starcrest Consulting Group, LLC, July 2013), posted at www.polb.com/environment/airquality/emissions inventory documents.

(c) There is no "new information" that would trigger the "new information" prong of Section 21166. Such "new information" must be "of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous . . . negative declaration was adopted. . . ." (CEQA Guideline 15162(a)(3).) The City Council finds that no such new information has been presented. As referenced in the Harbor Department's detailed response to the appeal, there is substantial evidence that the information that Appellants allege is new, in fact, is not new and was reasonably available at the time the 1992 Negative Declaration was adopted.

Sec. 3. Based on the above findings and determinations, the City Council affirms the determinations of the Board that (1) the approvals of the Operating

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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Agreement and the Lease are categorically exempt from CEQA and do not require additional environmental review, and (2) the approval of the Lease does not result in the need for any subsequent environmental review pursuant to Public Resources Code Section 21166 or CEQA Guidelines Section 15162.

Sec. 4. The City Council further finds and determines that the ongoing use of the existing structures and facilities at the Terminal is also exempt from CEQA pursuant to CEQA Guideline 15261(a) since a large portion of the Terminal was developed prior to the enactment of CEQA. In addition, the City Council finds and determines that the improvements to the Terminal that have been made since then have been assessed pursuant to CEQA, and those assessments, which were not challenged in court and are final and conclusive, determined that the improvements did not create any new significant environmental impacts.

Sec. 5. The City Council further finds and determines that the appeal of the Board's CEQA determinations is without merit and is hereby rejected. All grounds raised in the appeal were adequately addressed in the documents provided to the City Council and in testimony during the public hearing in this matter.

Sec. 6. The Harbor Department Director of Environmental Planning, whose office is located at 4801 Airport Plaza Drive, Long Beach, California 90815, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (Cal. Government Code Sec. 6250 et seq.).

Sec. 7. The Harbor Department Director of Environmental Planning shall file a notice of exemption as to both the Operating Agreement and the Lease with the County Clerk of the County of Los Angeles and with the State Office of Planning and Research, and with regard to the Lease, shall further file a notice of determination relating to the findings under Public Resources Code Section 21166 and CEQA

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Guidelines Section 15162. These notices shall lift the stay imposed on the prior notices issued for the Operating Agreement and the Lease by reason of the filing of the appeal in accordance with Long Beach Municipal Code Section 21.21.507.F.

Sec.8. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

I hereby certify that the foregoing Resolution was adopted by the City Council of the city of Long Beach at its meeting of August 19, 2014 by the following vote:

Ayes: Councilmembers: _____

_____

_____

_____

Noes: Councilmembers: _____

_____

Absent: Councilmembers: _____

_____

_____

City Clerk

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

BJM:cao A14-00217 (07/30/14)
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HONORABLE MAYOR AND CITY COUNCIL
August 19, 2014
Harbor Department Appeal Hearing

Attachment 2

Harbor Commission
Ordinance No. HD-2188
for
Metro Operating Agreement

ORDINANCE NO. HD- 2188

AN ORDINANCE OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN OPERATING AGREEMENT BETWEEN THE CITY OF LONG BEACH, ACTING BY AND THROUGH ITS BOARD OF HARBOR COMMISSIONERS, AND METROPOLITAN STEVEDORE COMPANY FOR THE USE OF CERTAIN PREMISES, AND MAKING DETERMINATIONS RELATING THERETO

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WHEREAS, the Board of Harbor Commissioners of the City of Long Beach ("Board") desires to enter into an Operating Agreement with Metropolitan Stevedore Company, a California corporation, for the use of certain premises; and

WHEREAS, guidelines adopted by the Secretary of the California Resources Agency and by the Board, pursuant to Sections 21082-21084 of the California Public Resources Code, provide that certain classes of projects listed therein have been determined not to have a significant effect on the environment and are categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Director of Environmental Planning of the Long Beach Harbor Department has determined that, in accordance with the guidelines, the Operating Agreement is categorically exempt for the reasons set forth in the "Categorical Exemption Determination" pertaining to the Operating Agreement; and

WHEREAS, the Director of Environmental Planning of the Long Beach Harbor Department has determined that, in addition to being categorically exempt from the California Environmental Quality Act, the proposed agreement provisions as they relate to the Pier G Coal Shed and related or appurtenant facilities do not trigger the need

for further environmental review beyond what was previously completed for those facilities for the reasons stated in the "Alternative Findings Relating to the Pier G Coal Shed – Public Resources Code Section 21166 and CEQA Guideline 15162" ("Alternative Finding").

NOW, THEREFORE, the Board of Harbor Commissioners of the City of Long Beach ordains as follows:

Section 1. The Board hereby finds and determines that the Operating Agreement, between the City of Long Beach, acting by and through its Board, and Metropolitan Stevedore Company, for the use of certain premises, a copy of which is available for inspection in the office of the Executive Secretary of the Board and by this reference made a part hereof, is categorically exempt from the provisions of the California Environmental Quality Act for, among others, the reasons stated in the Categorical Exemption Determination. The Board herby further finds and determines that as to the Pier G Coal Shed component of the Operating Agreement, that even if the Operating Agreement was not exempt from CEQA as stated, the requirement for further environmental review under Public Resources Code Section 21166 would not be triggered for the reasons stated in the Alternative Finding, which Alternative Finding is hereby adopted by the Board.

Sec. 2. The Executive Director of the Harbor Department of the City of Long Beach is hereby authorized to execute the Operating Agreement referred to in Section 1, which is hereby approved.

Sec. 3. This ordinance shall be signed by the President or Vice President of the Board of Harbor Commissioners and attested to by the Secretary. The Secretary shall certify to the passage of this ordinance by the Board of Harbor Commissioners of the City of Long Beach, shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and shall cause a certified copy of this ordinance to be

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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filed forthwith with the City Clerk of the City of Long Beach. This ordinance shall take effect on the 31st day after its final passage.

Douglas Drummond C
President

ATTEST: Lori Ann Daniel
Secretary

I hereby certify that the foregoing ordinance was adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of June 9, 2014 by the following vote:

Ayes: Commissioners: _____

_____

Noes: Commissioners: _____

Absent: Commissioners: _____

Not Voting: Commissioners: _____

Lori Ann Daniel
Secretary

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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Attachment 3

Metro Operating Agreement approved by the Harbor Commission on June 9, 2014

OPERATING AGREEMENT

METROPOLITAN STEVEDORE COMPANY
720 EAST E STREET
WILMINGTON, CALIFORNIA 90744
TELEPHONE NO. (310) 816-6500
FAX NO. (310) 816-6519

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of _____, 2014, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to Ordinance No. HD-_____, adopted by the Board at its meeting of _____, 2014, and METROPOLITAN STEVEDORE COMPANY, a California corporation ("Operator").

1. Recitals. This Agreement is made with reference to the following facts and objectives:

1.1 Pursuant to the Second Amended and Restated Preferential Assignment Agreement between Operator and City dated November 1, 2002 (Harbor Department Doc. No. HD-6655) which was amended on August 9, 2006 (HD-6655A), January 3, 2008 (HD-6655B), and September 28, 2011 (HD-6655C) (collectively, "PAA"), City had granted Operator a preferential assignment of certain marine terminal facilities at Pier G, Berths 212 to 215.

1.2 As a result of negotiations, Operator has agreed to terminate the PAA and enter into this Agreement.

2. Preferential Right to Operate Shiploader Facilities. In consideration for the right to use the Area of Responsibility, the Common Use Area and Berths 212 to 215 inclusive as shown in Exhibit A, attached hereto and incorporated herein by this reference (the Area of Responsibility, Common Use Area, and Berths 212 to 215 inclusive are collectively referred to herein as the "Pier G Area"), Operator shall operate the Shiploader Facilities as generally described in Exhibit B, attached hereto and

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

incorporated herein by this reference, provide and operate the personal property as generally described in Exhibit C, attached hereto and incorporated herein by this reference, and make, install and/or construct such repairs and capital improvements set forth in Exhibit D attached hereto and incorporated herein by this reference, all in accordance with the schedule set forth in Exhibit D. The personal property set forth in Exhibit C is a current and illustrative listing and is not intended to set forth a static and exhaustive listing of the personal property used to operate the Shiploader Facilities. Rather, Operator shall provide and operate during the term of this agreement all such personal property as is necessary or appropriate to operate the Shiploader Facilities. However, Exhibit C itself shall not be amended or modified except by a written amendment to this Agreement executed by Operator and City and agreed to by both parties in their sole and absolute discretion.

2.1 Grant of Preferential Operating Rights. City grants to Operator preferential operating rights of the Shiploader Facilities for the Area of Responsibility. Further, City and Operator recognize that certain parts of the operation of the facilities on Parcels F1 and F10 such as the receiving of cargo from rail or truck, monitoring of cargo level and conditions, and the reclaiming of cargo from the facilities therein located are controlled and performed within the master control center and administrative building center under Operator's previously existing preferential rights. Operator's preferential operating rights under this Agreement shall continue to include such operations, controls, and monitoring systems for Parcels F1 and F10.

2.2 Reconfiguration of Pier G Area. City reserves the right to reconfigure the Pier G Area upon 120 days written notice to Operator, including, without limitation, the right to increase and/or decrease the amount of such area and/or to change its use of certain portions thereof, to the extent that such reconfiguration, increase, decrease, and/or change of use: (a) does not unreasonably interfere with the conduct of Operator's business; and (b) Operator

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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continues to be the preferential Operator with respect to the delivery of bulk commodities as they are delivered to the end of the spout over the vessel to be loaded. Notwithstanding any other provision in this Agreement, such reconfiguration, increase, decrease, or change in use in the Pier G Area shall not reduce the compensation required to be paid by Operator hereunder and Operator shall not receive any compensation in connection with or as a result of such reconfiguration, increase, decrease, and/or change in use in the Pier G Area. In the event of a reconfiguration, increase, decrease, and/or change in use in the Pier G Area, Exhibit A shall be revised accordingly and attached to this Agreement. By way of a specific example of a future change in the use of a portion of the Area of Responsibility and not as a modification of the foregoing, the parties contemplate that the areas shown as Parcels F9 and F10 on Exhibit A shall initially be maintained, operated, and otherwise managed by Operator, but that at some point during the term of this Agreement, City expects to give the above-referenced 120-day written notice to Operator that City will withdraw Parcel F9 and/or Parcel F10, as reconfigured after design, and such additional area as is needed for related infrastructure, for use and occupancy by a tenant of City. Operator agrees now to such future withdrawal, further agrees to cooperate in connection with the development by City or its tenant of such reconfigured parcel, including any requested incorporation into the appropriate Shiploader Facilities, and further agrees that Operator shall neither receive any compensation from the withdrawal of reconfigured Parcel F9 and/or Parcel F10 and related area from City for Operator's maintenance, operations and management thereof nor from the development of such reconfigured Parcel F9 and/or Parcel F10 and related infrastructure and shall not share in any of the compensation to be received by City pursuant to City's expected lease of the reconfigured Parcel F9 and/or Parcel F10 and related area.

2.3 Stevedoring Services. Operator's function as Operator of the

Shiploader Facilities is to receive the bulk commodities as they are delivered to the Area of Responsibility and/or Common Use Area by truck, rail or otherwise, to stockpile them and/or to deliver them to the end of the spout over the vessel to be loaded. Operator has completed delivery when the commodities flow out of the spout. All functions in stowing the bulk commodities aboard the vessel, including the trimming of the cargo by use of mechanical trimmers, are those of the stevedore. Operator, in its role as Operator of the Shiploader Facilities, shall perform no function on the vessels. It is recognized that Operator is also engaged in the business of a stevedore at the Port of Long Beach, and that Operator may, in its capacity as stevedore and not in its capacity as Operator of the Shiploader Facilities, be requested to, and will, perform stevedoring functions in connection with the loading of bulk commodities aboard vessels. However, it is further understood and agreed that Operator shall not have the exclusive right to perform stevedoring services upon the Pier G Area, and that any responsible person, firm or corporation may come upon the Pier G Area for the purpose of performing stevedoring operations when both requested to do so by any steamship operator, master, agent, charterer or by any person legally responsible for the loading or unloading of a vessel berthed at Berths 212 to 215, inclusive, and when properly approved by the Executive Director of the Long Beach Harbor Department ("Executive Director").

2.4 Reservations of Rights. Operator's right to use the Pier G Area is not exclusive and is subject to the rights now or hereafter existing of current and future occupants of the parcels labeled F1 through F10 (the "F parcels") shown on Exhibit A. Any future grant of rights by City to either current or future occupants of one or more of the F parcels must not be permitted to unreasonably interfere with the conduct of Operator's business. Notwithstanding any other provision in this Agreement, such future grant of rights shall not reduce the compensation required to be paid by Operator hereunder and Operator shall

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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not receive any compensation from City in connection with or as a result of such future grant of rights.

2.5 Mineral Rights. There are excepted and reserved from the Pier G Area all minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limitation, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals or any part thereof, from the Pier G Area, without, however, the right of surface on the Area of Responsibility except as permitted under the Memorandum of Understanding ("MOU") dated August 31, 1992 by and between the Harbor Department of the City of Long Beach and the Department of Oil Properties of the City of Long Beach in effect as of the date hereof (including any modifications to date) and as it may be modified from time to time in the future.

2.6 Tideland Reservations. This Agreement, and all rights granted to Operator hereunder, are subject to restrictions, reservations, conditions and encumbrances of record, including, without limitation, the trusts and limitations set forth in Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 138, Statutes of 1964, First Extraordinary Session, the Charter of the City of Long Beach ("the Charter"); and the Federal navigational servitude.

2.7 Access. Operator, its agents, employees and third parties using the Pier G Area with the express or implied consent of Operator shall have access to the Pier G Area over the street system owned or controlled by City. The Pier G Area shall be subject to rights of way and rights of entry for the installation, relocation, removal, operation and maintenance of such sewers, storm drains, pipelines, conduits and for such telephone, telecommunications, light, heat, power or water lines whether underground or overhead as may from time to time be determined by the Board of Harbor Commissioners, as provided in Section

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1207(a) of the Charter. City shall give reasonable notice to Operator of any such entry upon the Pier G Area and such entry must not be permitted to unreasonably interfere with the conduct of Operator's business on the Pier G Area. City also reserves the right to make such changes, additions and alterations to the Shiploader Facilities, including without limitation, the bulkloading machinery and equipment, as it deems necessary to accommodate the movement of merchandise in bulk through the Port of Long Beach.

2.8 Special Right of Access. City's authorized representatives shall have access to the Pier G Area at any and all reasonable times, for the purpose of determining whether or not Operator is complying with the terms and conditions hereof, for fire and police purposes, to investigate any incidents involving personal injury or property damage, or for any other purposes incidental to the rights or duties of City. The right of inspection hereby reserved to City shall impose no obligation on City to make inspections to ascertain the condition of the Pier G Area, and shall impose no liability upon City for failure to make such inspection.

2.9 General Right of Access. City reserves for itself, its grantees and assignees, and their successors and assigns the right of access over, through and across the Pier G Area to all areas in the Harbor District which are within or outside the Pier G Area to the extent such access does not unreasonably interfere with the conduct of Operator's business.

2.10 Ownership of Improvements. As between City and Operator, all building, improvements, structures, and fixtures now existing, or hereafter constructed or installed within the Pier G Area shall be owned by City. Operator shall own the personal property identified in Exhibit C, as such personal property is replaced or supplemented from time to time.

2.11 Wharfinger. Operator shall furnish City with work space, furniture and telephone service reasonably satisfactory to City to be used by the

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wharfinger assigned to the Pier G Area.

2.12 Oil Recovery Operations. Operator acknowledges that drilling, repressuring and oil recovery operations are conducted in, under and in the immediate vicinity of the Pier G Area. City reserves on behalf of itself, its agents, contractors, subcontractors and duly authorized representatives, for use in connection with said drilling, repressuring and oil recovery operations (including, but not limited to, the redrilling, deepening, repairing, plugging and abandoning of wells as oil wells, water source wells or water injection wells): (a) the right to construct, install, use, operate, maintain, repair, and renew underground wells, underground conduits and underground pipelines for the transmission of water, electricity, oil, gas and other hydrocarbon substances under the Pier G Area, and (b) the right of reasonable vehicular and pedestrian access in connection with said use over and across the Pier G Area, at any and all times. City or its agents, contractors, subcontractors and duly authorized representatives shall give reasonable notice, to Operator of its intent to enter and work upon the Pier G Area for the purposes set out in this subparagraph. City shall conduct all such work on the Pier G Area, and at the point of access to the Pier G Area, so as not to interfere unreasonably with the conduct of Operator's business on the Pier G Area, or its right of ingress to and egress from the Pier G Area. The surface of the Pier G Area shall be restored upon completion of such work.

3. Term. The term of this Agreement shall be for a period of twenty (20) years commencing upon the date this Agreement is executed by the Executive Director, ("Commencement Date"), and ending on the date that is twenty (20) years from the Commencement Date. The term may be extended by City pursuant to the exercise of City's option set forth in paragraph 33 below.

4. Use of Pier G Area. Operator is authorized to use the Area of Responsibility for operating the Shiploader Facilities, for the scheduling of vessels at Berths 212 to 215 inclusive consistent with Long Beach Tariff No. 4 or any renumbering,

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333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

amendments, modifications or restatements thereof ("Tariff No. 4") related and incident to operating the Shiploader Facilities, the assembling, stockpiling, handling, loading and unloading of dry bulk commodities and other commodities and cargo into and from such vessels over, through and upon the Area of Responsibility and from and upon other vessels, barges and lighters provided Operator shall notify City in writing before handling any commodity or cargo other than dry bulk commodities at the Area of Responsibility. Operator is authorized to use the Common Use Area to support rail services to the Area of Responsibility. The Pier G Area shall not be used for any other purpose without the prior consent in writing of the Executive Director, which consent may be withheld in City's sole and absolute discretion. The Pier G Area shall not be used for any purpose which shall interfere with commerce, navigation or fisheries or be inconsistent with the trusts and limitations upon which the Pier G Area is now or may hereafter be held by the City of Long Beach. The right granted to use the Pier G Area shall not be exclusive. Further, and for the avoidance of doubt, City, through the Executive Director, shall have the right, after consulting with Operator, to allow docking and mooring of vessels at Berths 212 to 215, whether pursuant to a temporary assignment or otherwise so long as such docking and mooring does not unreasonably interfere with Operator's business and is subject to Operator's rights under this Agreement. Any direct charges accruing against Operator due to the use of Pier G Area by a temporary assignee or user, and the allocated costs of utilities which Operator furnishes to such temporary assignee or user, shall be paid by such temporary assignee or user. The parties agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments or other use, including appropriate indemnification.

4.1 No Insurance Increase. Operator shall not do, bring or keep anything in or about the Pier G Area that will cause a cancellation of or increase the rate of any insurance covering the Pier G Area and the improvements thereon. Upon receipt of notice from City that cancellation of insurance or increased rates is threatened or has occurred, Operator shall immediately take appropriate steps to

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ensure that City is not adversely affected. At City's exclusive discretion, such steps may include Operator: correcting the condition; providing any necessary insurance; paying the increased cost of City's insurance; and/or indemnifying City against any uninsured loss or claim.

4.2 No Unlawful Use. Operator shall not use the Pier G Area in any manner that is unlawful, damages the Pier G Area or that will constitute waste or a nuisance.

4.3 Use of Necessary Materials. The limitation on use set forth in subparagraphs 4.1 and 4.2 shall not prevent Operator from bringing, keeping or using, on or about the Pier G Area such materials, supplies, equipment and machinery as are necessary or customary in the operation of the permitted uses; provided however Operator, in handling hazardous substances or wastes, shall fully comply with all laws, rules, regulations and orders of governmental agencies having jurisdiction.

4.4 Environmental Compliance. In its use and occupancy of the Pier G Area, Operator shall comply with all applicable environmental standards set by federal, state or local laws, rules, regulations or orders, including but not limited to any laws regulating the use, storage, generation or disposal of hazardous materials, substances or wastes ("Environmental Standards"). In addition, Operator agrees to comply with the emission reduction measures set forth in Exhibit E and incorporated herein by this reference ("Environmental Covenants"). Operator shall monitor its compliance with Environmental Standards and Environmental Covenants and immediately halt and correct any incident of noncompliance.

4.4.1 Hazardous Material Spill. In the event of any spill or discharge of hazardous materials, substances or wastes within the Pier G Area, or any other incident of noncompliance with the Environmental Standards or the Environmental Covenants, Operator, at its cost, shall: (i)

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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give the Executive Director immediate notice of the incident in person, by telephone or by facsimile, followed by written notice in accordance with paragraph 26, providing as much detail as possible; (ii) as soon as possible, but no later than seventy-two (72) hours after discovery of an incident of noncompliance, submit a written report to City, identifying the source or cause of the noncompliance and the method or action required to correct the problem; (iii) cooperate with City or its designated agents or contractors with respect to the investigation of such problem; (iv) at its cost, promptly commence investigation, removal, and remediation of the problem in accordance with a plan approved by City and all governmental agencies having jurisdiction and diligently prosecute the approved plan to completion; and (v) provide City with copies of all records, including hazardous waste manifests indicating that the generator is not the City of Long Beach or any subdivision thereof. The obligations set forth in subparagraphs (iv) and (v) above shall not apply to Operator if Operator establishes that such incident is caused solely by City, a temporary assignee or other third party not connected with Operator's business at the Pier G Area.

4.4.2 Cost of Cleanup. Operator shall be liable for all costs, expenses, losses, damages, actions, claims, cleanup costs, penalties, assessments or fines arising from Operator's failure to comply with the Environmental Standards and Environmental Covenants ("Environmental Losses") including a failure to comply with any reporting requirements. Operator shall not be liable for any losses that Operator establishes is caused solely by City, a temporary assignee or other third party not connected with Operator's business at the Pier G Area.

4.4.3 Environmental Audit. City shall have the right to conduct, at its cost, periodic audits of Operator's management of hazardous materials, substances and wastes at the Area of Responsibility and/or

Common Use Area and/or Berths 212 to 215 inclusive. City shall provide Operator with copies of any written reports or results of such audits promptly upon completion of such documents. In the event City's audit discloses any noncompliance by Operator, or any third party connected with Operator's business at the Pier G Area, with the Environmental Standards or Environmental Covenants, Operator shall reimburse the City for City's cost in performing the audit.

4.4.4 Maintenance Compliance. Operator shall not conduct or permit any maintenance of mobile or portable equipment on the Pier G Area except in full compliance with best management practices as defined in the Port of Long Beach Storm Water Pollution Prevention Program.

4.5 Pier G Yard Rules. Operator shall comply with the Pier G Yard Rules set forth in the Long Beach Rail Operating Agreement by and between City and Pacific Harbor Lines, Inc. dated January 1, 1998 (HD-6053), as amended on April 10, 2002 (HD-6580A), November 1, 2005 (HD-6580B), and June 18, 2010 (HD-6580C), as the same may be amended, modified or superseded from time to time (collectively, the "Rail Agreement").

4.6 Load Limits. No loading in excess of Eight Hundred (800) pounds per square foot or any vehicular loading in excess of an H20-S16 Highway Loading (the H20 indicating a maximum of twenty [20] tons per truck, which does not include tractor trailer and semi-trailer combinations, and the S16 indicating a maximum of sixteen [16] tons per axle of semi-trailer) shall be allowed on that portion of the Area of Responsibility extending inboard from face of wharf seventy-five (75) feet. No railroad loading shall exceed thirty-two and one-half (32.5) tons per axle with minimum 5 feet 6 inches axle spacing. No loading in the remainder of the Pier G Area shall be such as to damage paving or underground utilities. In the event City finds that overloading by Operator exists, Operator, upon receipt of notice thereof from City, shall immediately take appropriate steps to correct the

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CHARLES PARKIN, City Attorney
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condition, and irrespective of such notice, shall be responsible for any damage arising therefrom. It is understood and agreed that the foregoing load limits refer to area loads. Operator shall conduct its operations on or about the Pier G Area in such a manner as will, in the judgment of the Executive Director, in no way weaken, damage or destroy, or tend to weaken, damage or destroy, the Pier G Area, or the Shiploader Facilities, including without limitation, the bulkloading facilities located thereon; and in the event Operator at any time contemplates or performs an act which, in the judgment of the Executive Director, does or will so weaken, damage or destroy, or tend to weaken, damage or destroy them, then upon written notice from the Executive Director, Operator shall forthwith and without delay desist from performance of such act or acts.

4.7 Risk of Loss. As between City and Operator, any property of any kind belonging to or in the care, custody or control of Operator that may be upon the Pier G Area during the term of this Agreement shall be there at the sole risk of Operator and Operator hereby waives all claims against City with respect to such property.

4.8 Traffic Management. As a condition precedent to the effectiveness of this Agreement, Operator shall submit to the Executive Director for approval, a traffic management plan with respect to truck traffic into or out of the Area of Responsibility and/or the Common Use Area under the control of Operator containing such elements and information as may reasonably be required by the Executive Director or his designee. The reasonableness of any elements and/or information required by the Executive Director or his designee shall take into consideration the extent of Operator's control over the applicable traffic. If it becomes necessary for City to control and direct truck traffic into or out of the Area of Responsibility and/or Common Use Area to preserve traffic safety and flow, Operator shall reimburse City for all reasonable costs incurred in providing such services within thirty (30) days after receipt of City's invoice

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333 West Ocean Boulevard, 11th Floor
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therefor.

4.9 No City Obligation to Provide Gear. City shall have no duty to provide tackle, gear or labor for the docking or mooring of vessels at or adjacent to the Area of Responsibility or for the handling of cargo.

4.10 Ship Loader Related Gear. Operator shall furnish and be responsible for, the telescoping chutes, trimmers and related gear on the boom of the ship bulkloader. Operator agrees to make such gear available to third parties to whom City may temporarily assign the ship bulkloader and Area of Responsibility and/or Common Use Area and/or Berths 212 to 215 inclusive, at reasonable rental rates and other terms, including appropriate indemnification, subject to the approval of the Executive Director.

4.11 Service Availability Rate. Operator shall meet a service availability rate of at least 95% meaning that the Shiploader Facilities must be available for use at least 95% of the time. Service availability rate means, with respect to the Shiploader Facilities over a period of time, a percentage calculated by dividing (i) the portion of that period of time the Shiploader Facilities are in service for operations (uptime) by (ii) the sum of uptime and the portion of that period of time the Shiploader Facilities are not in service for operations (downtime); provided that any planned outages are excluded from downtime when City and Operator's customers are provided sufficient advanced notice, not to exceed thirty (30) days.

4.12 Safety Performance. Operator shall maintain an OSHA incidence rate of 8.00 or less. OSHA incidence rate is calculated as follows: total number of OSHA recordable injuries/illnesses x 200,000/number of hours worked by all employees. All OSHA recordable injuries/illnesses are posted on the OSHA 300 log summary located at Operator's administrative office on the Pier G Area.

5. Operator Payment of Tariff Charges. Operator shall pay, or cause to be paid, to City as consideration for this Agreement all tariff charges accruing under Port

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333 West Ocean Boulevard, 11th Floor
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of Long Beach Tariff No. 4 or any renumbering, amendments, modifications, or restatements thereof ("Tariff No. 4) in connection with Operator's use of the Pier G Area, whether in servicing tenants of City or other users of the Pier G Area. Operator's obligation to pay all such tariff charges shall be joint and several with such tenants or users. Operator shall maintain and operate the Area of Responsibility and/or Common Use Area and/or Berths 212 to 215 inclusive for the uses described in paragraph 4.

5.1 Shipping Act Compliance. Operator shall not discriminate in its use of the Pier G Area in a manner unlawful under the Shipping Act of 1984, as amended from time to time ("Shipping Act'), or the Tidelands Restrictions set forth in subparagraph 2.5. Operator shall provide Shiploader Facilities services and other terminal services to cargo customers at rates that are reasonable and non-discriminatory under the Shipping Act for the Pier G Area ensuring that the rates being charged are equivalent to rates that could be charged for a service in an open and unrestricted market between a cargo services provider and a willing customer, both of whom are knowledgeable, informed, prudent, and acting independent of each other. Such rates shall include, but not be limited to, the cost of all union and/or non-union workers as deemed necessary by Operator for the loading, unloading, and handling of cargo, including wages, fringe benefits, payroll taxes and insurance, wharfage, supervision and associated equipment necessary to handle the cargo (including any rental fees associated with any such equipment, if any). Additionally, rates shall be reasonable and non-discriminatory under the Shipping Act between customers for the provision of equivalent services, without reference to temporary untypical conditions, with due regard to changes to Port regulations and external cost mandates, such as governmental regulations, labor cost pass-thrus and taxes.

5.2 Assessment of Tariff Charges. Operator shall assess applicable tariff charges at all times during the term of this Agreement.

5.3 Equipment Rental Charges. For the avoidance of doubt,

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Operator shall pay to City an equipment rental charge in the amount prescribed in Item 515 (as it may be renumbered, modified, amended, or superseded from time to time) of Tariff No. 4 for all merchandise in bulk handled by the Shiploader Facilities by Operator during the preceding calendar month. Merchandise in bulk shall be deemed "handled" only where (1) it is loaded aboard a vessel or (2) having been received at or by the Shiploader Facilities, it is removed from the Area of Responsibility and/or the Common Use Area other than by loading aboard a vessel, with the use of said Shiploader Facilities. Said equipment rental charge shall be paid to City at the same time Operator's payments under paragraph 5.5 are made.

5.4 No Exclusive Right to Operate Terminal. Operator understands and agrees that City is not granting to Operator the sole and exclusive right to operate a marine terminal (or any specific type of marine terminal) in the Port of Long Beach. Subject to paragraphs 2 and 4 above, City reserves the right to grant, at its sole discretion, leases, permits and assignments of City-owned or controlled land and facilities (with the exception of an agreement for operation of the Shiploader Facilities for the Area of Responsibility) to other persons, firms and corporations for the conduct of a marine terminal (or any specific type of marine terminal), public, proprietary, contract or otherwise.

5.5 Vessel Charges. On or before the tenth (10^{th}) day following the departures of each vessel docking at Berths 212 to 215, inclusive, Operator shall file with the Executive Director, on forms approved by City, a statement verified by the oath of Operator's manager or other duly authorized representative, showing all wharfage and other applicable charges which shall have been assessed in accordance with the provisions of Tariff No. 4 with respect to each such vessel. Within thirty (30) days (or such other period of time as may be prescribed in Tariff No. 4, Item 714) after the departure of a vessel docking at Berths 212 to 215 inclusive, Operator shall pay City all such wharfage and other

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applicable tariff charges.

5.6 Non-Vessel Charges. On or before the tenth (10^{th}) day of each month, Operator shall file with the Executive Director, on forms approved by City, a statement verified by the oath of Operator's manager or other duly authorized representative, showing all wharfage charges which shall have been assessed where the departure of such a vessel is not involved and or all wharf demurrage, storage and other charges, if any, during the preceding calendar month. Operator shall pay to City all such tariff charges at the same time payments under paragraph 5.5 are made.

5.7 Delinquent Payments. Any sums due the City remaining unpaid after the period of time specified (as it may be renumbered, modified, amended, or superseded from time to time) of Tariff No. 4, Item 714 are delinquent. All delinquent payments due City shall bear interest on the unpaid balance from date of delinquency until paid. Said interest charge shall be the charge then in effect in Tariff No. 4 for delinquent payments and shall be subject to the penalty provisions of Tariff No. 4.

5.8 ACTA Reporting. Operator agrees to provide City, the Alameda Corridor Transportation Authority ("ACTA"), or their agents, any information reasonably required to compile accurate statistical information relating to the Alameda Corridor, and to enable ACTA to generate timely and accurate invoices for Alameda Corridor use fees and container charges payable by the railroads. Operator shall use its best efforts to provide such information in the format requested.

5.9 Accident Reports. Operator shall report in writing to the Executive Director within fifteen (15) days from any accident or occurrence that is required to be reported to Cal/OSHA or damage to property in excess of $50,000, occurring on the Area of Responsibility and/or the Common Use Area or within the Harbor District if Operator's officers, agents or employees are involved in such an

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accident or occurrence.

5.10 Operations Reports. Operator shall furnish such operational reports relating to its use of the Area of Responsibility and/or Common Use Area as may be requested by the Executive Director. Such operational reports shall include, without limitation, the reports set forth in Exhibit F attached hereto and incorporated herein by this reference.

5.11 Customer Reports. Operator shall pay City each year for the costs of an independent third party annual customer survey and report ("Customer Report"), which costs to Operator shall not exceed $20,000 in 2014 (this limit of $20,000 shall be increased by $2,500 per year), from a vendor selected by City to include feedback on the level of service provided by Operator (including asset management as well as the reporting requirements set forth in Exhibit F) and, overall customer support facilitating the transfer of cargo to vessels at Berths 212 to 215 inclusive. The Customer Report shall be delivered to City and Operator on or about October 1st of each year.

5.12 Physical Condition Reports. Every two years starting in the third quarter of 2015, Operator shall pay City for the costs of an independent third party physical condition report of the Shiploader Facilities ("Physical Condition Report") by a vendor selected by City, addressing, inter alia, maintenance issues. The cost of the Physical Condition Report chargeable to Operator shall not exceed $100,000 in 2015 (this limit of $100,000 shall be increased by $7,500 per year for every year beyond 2015).

5.13 Management Discussion. On or before October 15th of each year, Operator shall prepare and submit to City a written management discussion of its operations, including without limitation customer support, performance trends, forecasted performance, operational challenges, and the reporting requirement described in Exhibit F ("Management Discussion"). On or before November 1 of each year, City and Operator shall meet to discuss the

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Management Discussion, customer support, the reporting requirements described in Exhibit F, performance trends, forecasted performance, the Customer Report and the Physical Condition Report ("Operational Meeting"). The Maintenance Meeting (described below in paragraph 9.1) shall be held at the same date, time, and place as the Operational Meeting.

5.14 Operator Responsibilities. Operator shall supervise and direct the operation of the Shiploader Facilities, using Operator's best skill and attention. Except as expressly set forth in this Agreement, Operator shall be responsible for and have control over means, methods, techniques, sequences, and procedures for coordinating all portions of the operations under this Agreement. Operator shall be fully responsible for jobsite safety within the Pier G Area relating to Operator's use, operations or occupancy. Operator shall assure that the Pier G Area relating to Operator's use, operations or occupancy is safe and shall erect barricades and warning signs to assure that workers and the public are protected from any unsafe conditions. Neither City nor any of its employees shall have any control over the conduct of Operator, or employees of Operator, except as expressly set forth in this Agreement, and Operator and employees of Operator shall not, at any time or in any manner, represent that Operator or employees of Operator, or any of them, are the officers, agents, or employees of City. It is expressly understood and agreed that Operator is, and shall at all times remain, as to City a wholly independent contractor, and each party's obligations to the other party are solely such as are set forth in this Agreement.

5.15 Storage Charges. For any bulk commodities stored by Operator on the Area of Responsibility and/or the Common Use Area and which may thereafter be removed without passing over the wharf at Berths 212 to 215, inclusive, Operator shall pay to City a sum equal to the wharfage charges applicable thereto as prescribed by Tariff No. 4, as if the bulk commodity had passed over the wharf. Operator shall pay to City all such tariff charges as of the

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same time payments under paragraph 5.5 are made.

5.16 City Invoicing. As an accommodation and without relieving Operator of its obligation to pay all tariff charges, City agrees to invoice each vessel, its owners, charterers or agents for tariff charges other than wharfage and equipment rental and to accept payment from the vessel, its owners, charterers or agents. In the event Operator shall be unable to effect collection of tariff charges invoiced to the vessel, its owners, charterers or agents within thirty (30) days after the date of City's invoice, Operator shall pay to the City within fifteen (15) days after demand the amount of the tariff charges so invoiced without interest or late charges; provided, however, if Operator shall fail or refuse to pay upon demand the amount of tariff charges so invoiced, the invoice shall be deemed delinquent and shall bear interest as provided in Tariff No. 4 for delinquent payments and shall be subject to the penalty provisions of Tariff No. 4. Nothing herein shall obligate Operator to collect tariff charges from a temporary assignee selected by City.

6. Books and Records. Operator shall keep full and accurate books, records and accounts relating to its operations on the Pier G Area, including, without limitation, the volume of cargo handled. City shall have the right and privilege, through its representatives at all reasonable times and on reasonable notice, to inspect and audit such books, records and accounts (including without limitation financial books, records and accounts) in order to verify the accuracy of the sums due, owing and paid to City hereunder and to ascertain Operator's compliance with this Agreement, including without limitation ascertainment by City of the rates charged by Operator in connection with Shiploader Facilities services and other terminal services to cargo customers and as to whether such charges are reasonable and nondiscriminatory. City shall advise Operator whether such audit is directed at: (a) the payment of tariff charges (pursuant to paragraphs 5, 5.2, 5.3, 5.5, 5.6, 5.7, 5.15 and/or 5.16); (b) issues relating to or arising out of paragraph 5.1; (c) issues relating to or arising out of paragraph 7; and/or (d) issues

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333 West Ocean Boulevard, 11th Floor
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relating to other provisions of this Agreement, such as paragraphs 4.11 and 4.12. Operator agrees that such books, records and accounts shall be made available to City at Operator's office in the City of Long Beach. City shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected and/or audited.

6.1 Annual Financial Statements. Within one hundred twenty (120) days after the end of Operator's fiscal year, Operator shall prepare and deliver or cause to be prepared and delivered to City a complete set of annual financial statements prepared in accordance with generally accepted accounting principles, including a consolidated balance sheet, a statement of operations showing profit and loss, and a statement of cash flows. All financial statements shall be certified by an independent certified public accountant and shall provide detailed annual financial statements of the specific operations and finances of Operator as regards the Shiploader Facilities (as distinct from, inter alia, consolidated financial statements, whether of a parent company or otherwise).

6.2. Return of Documents. City may retain any documents obtained from or provided by Operator for a period of thirty (30) days, subject to extension with Operator's approval, which may not be unreasonably withheld or delayed, upon request of City for City's review thereof, and after such 30-day or extended period of time, shall return such documents to Operator with the understanding that Operator shall promptly deliver such documents to City upon City's request therefor from time to time subject to this subparagraph 6.2. This subparagraph 6.2 shall not apply to matters in dispute, whether pursuant to subparagraph 7.6 or otherwise, until the dispute is resolved.

7. Renegotiation of Compensation. As required by the provisions of Long Beach City Charter Section 1207(d) and as agreed to by the parties, the parties shall renegotiate the compensation set forth in paragraph 5, which may thereafter, but is not required to, include non Tariff compensation which augments or supplements the

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amount charged under Tariff No. 4 for wharfage or storage on a per ton or other similar per item basis and equipment use charges, performance measures, whether as set forth in subparagraphs 4.11 and 4.12 above or new, additional performance measures that either party may propose, and the insurance coverages and limits set forth in paragraph 15 for each five-year segment of the term. The parties shall commence negotiations at least one hundred eighty (180) days prior to the beginning of the second five-year segment and any applicable option period. The adjusted compensation (whether negotiated pursuant to subparagraph 7.1 or determined by arbitration pursuant to subparagraph 7.2) shall be effective as of the beginning of the applicable five-year segment of the term regardless of when determined. If the adjusted compensation is not determined prior to the commencement of a five-year segment, Operator shall continue to pay compensation in accordance with the compensation provisions in force during the preceding five-year segment. Upon determination of the adjusted compensation, Operator shall promptly pay any difference due City in the event of an increase in compensation or Operator shall be entitled to a credit against compensation payable under this Agreement in the event of a decrease.

7.1 Renegotiation Factors. In any negotiation or arbitration to establish the compensation in subsequent five-year segments of the term, the parties or arbitrators shall take into consideration the character of the Shiploader Facilities, the capital expenditures made by Operator, the wharfage and other tariff charges received by City from Operator and customers to which Operator provides services under this Agreement, increases in charges under Tariff No. 4, the compensation paid on similar facilities devoted to similar use, the return on investment to City, and any other facts and data necessary for the proper determination of such compensation.

7.2 Arbitration. If the parties do not reach agreement with respect to the compensation for subsequent five-year segments of the term thirty (30) days prior to the beginning of the next segment, the matter may at the discretion of

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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either party be submitted to binding arbitration. Each party, at its cost, shall appoint a neutral, independent and impartial arbitrator experienced in matters relating to commercial and/or industrial disputes in United States ports or harbors. If a party does not appoint an arbitrator within twenty (20) business days after the other party has given notice of the name of its arbitrator, the single arbitrator appointed shall be the sole arbitrator and shall determine the compensation within sixty (60) days after his or her appointment. If two (2) arbitrators are appointed, each within sixty (60) days after the selection of the second arbitrator shall state his or her opinion as provided in subparagraph 7.2.2 as to the compensation payable by Operator to the City.

7.2.1 Party Submittals. Once the arbitrators are selected pursuant to paragraph 7.2, each party has thirty (30) days in which to submit to the arbitrators and the other party its final position on compensation and other matters being submitted to arbitration and the renegotiation factors supporting its position.

7.2.2 Initial Arbitrator Reports. On or before the expiration of the sixty (60)-day period, the arbitrator or arbitrators shall prepare and furnish both parties with a report setting forth the compensation payable by Operator with supporting data and his or her reasons supporting the conclusions. The parties shall have ten (10) business days after the exchange of the reports to further negotiate the compensation payable by Operator.

7.2.3 Third Arbitrator Report. If the parties cannot agree as to the compensation payable by Operator, City and Operator shall promptly notify their designated arbitrator of that fact and the two arbitrators shall promptly select a third arbitrator meeting the qualifications stated in subparagraph 7.2. If they are unable to agree on the third arbitrator, either of the parties, by giving ten (10) business days' notice to the other party,

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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may apply to the Presiding Judge or Assistant Presiding Judge of the Superior Court of the County of Los Angeles, or the Presiding Judge of the South District of said Court, who shall select and appoint the third appraiser. Each of the parties shall bear one-half of the cost of appointing the third arbitrator and of paying the third arbitrator's fee. The third arbitrator shall (i) promptly meet and confer with the two arbitrators appointed by the parties; (ii) review the reports of the two arbitrators, the parties' submittals, and the supporting data and reasons supporting the respective conclusions; (iii) determine the compensation payable by Operator; and (iv) notify the parties of his or her determination within ten (10) business days after his or her appointment; provided however that said determination shall not result in Operator paying compensation in an amount lower than nor higher than the determinations of the two arbitrators appointed by the parties.

7.3 Memorialization of Compensation. After the compensation has been determined (whether by negotiation or arbitration), the parties shall promptly execute a memorandum setting forth the adjusted compensation. If either party fails or refuses to execute the memorandum within ten (10) days after the compensation has been determined and the memorandum prepared, the other party shall execute the memorandum on behalf of the party refusing as that party's special attorney-in-fact. The memorandum shall be effective immediately and retroactive to the first day of the applicable five-year segment.

7.4 Arbitration for Other Matters. For adjustment of performance measures or insurance coverages and limits and any other matter which may be submitted for determination by binding arbitration, the arbitration shall be conducted in accordance with the provisions of Title 9 (Arbitration) of Part 3 of California Code of Civil Procedure except as otherwise provided in this subparagraph 7.4. The party desiring arbitration shall select an arbitrator and give

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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written notice to the other party, who shall select an arbitrator within ten (10) business days after receipt of such notice. If the other party fails to name such second arbitrator within said ten (10) business days, the arbitrator named by the first party shall decide the matter. The two (2) arbitrators chosen shall, within ten (10) business days after the appointment of the second, select a third. If the two (2) cannot agree upon a third, the third arbitrator shall be appointed by the Presiding Judge or Assistant Presiding Judge of the Superior Court of the County of Los Angeles, California, or the Presiding Judge of the South District of said Court, upon application made therefor by either party, upon ten (10) business days' written notice to the other which notice shall be given in accordance with the provisions of paragraph 26 of this Agreement. The parties shall each pay one-half of the costs of appointment of the third arbitrator and of his fees and expenses. Upon their appointment, the three (3) arbitrators shall enter immediately upon the discharge of their duties. In adjusting performance measures, the arbitrator or arbitrators shall consider the reporting requirements set forth in Exhibit F, the Customer Report, and any other facts and data necessary for the proper determination of performance measures. In adjusting insurance requirements, the arbitrator or arbitrators shall consider the risks inherent in Operator's operations, the number and type of claims made during the preceding five (5) year period, the disposition of such claims and such other data as may be deemed by the arbitrator or arbitrators to be relevant. The arbitrator's or arbitrators' determination on any issue shall be made and the parties notified of that determination within thirty (30) days after the appointment of the last arbitrator.

7.5 No Modification of Tariff Charges. Nothing contained in this paragraph 7 shall be deemed to modify or limit the provisions of subparagraphs 5.2 or 5.3 of this Agreement.

7.6 Dispute Resolution Procedure. The parties agree to attempt to resolve disputes where specified in this Agreement using the following dispute

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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resolution process.

7.6.1 The parties agree first to attempt to resolve all disputes at the lowest possible level, i.e., between the lowest level personnel within each organization with authority to decide the issue in question.

7.6.2 If a particular dispute cannot be resolved at the lowest level, despite best efforts, the parties agree to attempt to resolve the issue at the local managerial level.

7.6.3 If a particular dispute cannot be resolved at the managerial level, the parties shall use best efforts to settle the dispute through a non-binding mediation before a neutral mediator selected by the parties. The parties shall share equally in the costs of mediation which shall be held in Long Beach unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court with jurisdiction.

7.6.4 The parties agree that they will not resort to litigation or the arbitration process set forth in paragraphs 7.2 or 7.4 above to resolve disputes subject to dispute resolution until the process set forth in this subparagraph 7.6 has been followed in good faith. However, and notwithstanding any other provisions in this paragraph 7.6, either party may seek injunctive relief in the courts, whether on an expedited basis or otherwise, to the extent injunctive relief is necessary or appropriate.

8. Construction of Improvements and Alterations. Operator shall not construct or make any improvements or alterations to the Pier G Area without City's prior written consent. Any improvement or alteration shall be constructed, erected and installed at no cost to City in accordance with plans and specifications approved in writing by the Executive Director or his designee and shall be subject to such conditions and limitations as may be set forth in a Harbor Development Permit issued by the Board of Harbor Commissioners in accordance with provisions of Section 1215 of the Long Beach

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City Charter.

9. Maintenance. Operator, at its cost, shall keep and maintain those portions of the Area of Responsibility and/or Common Use Area relating to its operations, use or occupancy, including without limitation all bulk loading machinery, equipment, buildings, structures, other improvements, rail trackage, and surface paving (but excluding the water area, the wharf structure and fender systems and those portions of the F1 through F8 parcels which are not Shiploader Facilities) in good and substantial repair and operating condition and shall make all necessary repairs thereto and shall replace all worn or unfit parts and equipment of a standard quality not less than the original equipment as of the commencement of the term of this Agreement, perform all necessary maintenance, including preventative maintenance, and including but not limited to maintaining and repairing pavement and rail trackage, and cleaning and maintaining storm drains and catch basins. Notwithstanding the forgoing, Operator shall not be required to replace either of the two currently existing rail-mounted shiploaders located on the wharves; however, Operator shall engage in such maintenance and repair of those two rail-mounted shiploaders, including without limitation, the replacement of worn or unfit parts, equipment and components thereon to keep such rail-mounted shiploaders in good and substantial repair and operating condition during the term of this Agreement. In the event that Operator disagrees with one or more of the current or future tenants or occupants of the F1 through F10 parcels as to whether the Operator or such tenant or occupant should maintain, repair, and/or replace certain equipment or improvements that are part of or related to Shiploader Facilities, i.e., conveyors that relate to Operator's operations, use, or occupancy, then, as between City and Operator, to the extent that such equipment or improvements are not expressly excluded from the Shiploader Facilities, Operator shall be responsible to keep, maintain, repair and/or replace such equipment or improvements consistent with the previous sentence irrespective of whether City or Operator may have rights against such tenant or occupant for maintenance, repair and/or replacements. With respect to pavement, rutting of the

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333 West Ocean Boulevard, 11th Floor
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asphalt layer(s) is highly dependent on the rate of loading. Maintenance activities may include joint and crack sealing, slurry sealing, localized full-depth repairs, and milling/overlays of graveled or rutted areas. The frequency of pavement maintenance is a function of the utilization of the Area of Responsibility.

9.1 Annual Maintenance Plan. On or before October 15th of each year, Operator shall prepare and submit to City a proposed annual maintenance plan and budget for the period January 1st through December 31st. Such proposed plan and budget shall (i) be based on specified levels of labor costs and fringe benefits, material and equipment costs, purchased services and other out-of-pocket costs; and (ii) specify the assumptions used in developing such plan and budget. On or before November 1st of each year Operator shall meet to discuss this proposed annual maintenance plan and budget as well as the Physical Condition Report ("Maintenance Meeting"). Within twenty (20) days of the Maintenance Meeting, the Executive Director of the City or his or her designee shall approve, conditionally approve, or disapprove such plan and budget. City's review, approval, conditional approval and/or disapproval of such proposed plan and budget shall be based solely on the benefit or detriment to City. City shall not be responsible for reviewing any plan or budget for safety or conformance with laws. Further, such review, approval, conditional approval, and/or disapproval by City shall not alter Operator's duty to comply with each and every provision of this Agreement, as amended from time to time, and all applicable laws. If City disapproves any proposed plan and budget, Operator shall submit a corrected plan and budget within fifteen (15) days of such disapproval. Operator shall timely implement each approved or conditionally approved annual maintenance plan and budget. The Maintenance Meeting shall be held at the same date, time, and place as the Operational Meeting.

9.2 City Right to Perform Maintenance. Should Operator fail to commence to prosecute and diligently make any repairs or perform required

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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maintenance, repair or rehabilitation, within 30 days after receipt of notice from City to do so, City may, but shall not be obligated to, make such repairs or perform such maintenance. For maintenance, repairs, or rehabilitation that City deems is necessary to address an imminent threat to personal injury or property damage, such period is shortened to twenty-four (24) hours. Operator agrees to reimburse City for the cost thereof within thirty (30) days after receipt of City's invoice therefor. City's cost shall include, but not be limited to, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, supervision, supplies, tools, taxes, transportation, administrative and general expense and other indirect or overhead expenses. In the event Operator shall commence to prosecute and diligently make such repairs or shall begin to perform the required maintenance within the thirty (30) day period (or in the case of an imminent threat to personal injury or property damage, the twenty-four (24) hour period), City shall refrain from making such repairs or performing required maintenance and from making demand for such payment until the work has been completed by Operator, and then only for such portion thereof as shall have been made or performed by City. The making of any repair or the performance or maintenance by City, which repair or maintenance is the responsibility of Operator, shall in no event be construed as a waiver of Operator's duty or obligation to make future repairs or perform required maintenance as provided in this Agreement.

9.3 Trash and Debris. Operator, at no cost to City, shall provide proper containers for trash and keep those portions of the Area of Responsibility and/or Common Use Area relating to its operations, use or occupancy free and clear of rubbish, debris and litter at all times. Operator, at no cost to City, further agrees to keep and maintain those portions of the Pier G Area relating to its operations, use or occupancy in a safe, clean, wholesome and sanitary condition under all applicable federal, state, local and other laws, rules, regulations and orders. No offensive refuse, matter, nor any

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health shall be permitted to be or remain on those portions of the Pier G Area relating to Operator's operations, use or occupancy and Operator shall prevent such material or matter from being or accumulating upon those portions of the Pier G Area relating to its operations, use or occupancy.

9.4 Fire Protection Systems. All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems or appliances which may be installed in those portions of the Area of Responsibility and/or Common Use Area relating to Operators operations, use, or occupancy shall be maintained by Operator, at no cost to City, in an operative condition at all times. All repairs and servicing shall be made in accordance with the provisions of the Long Beach Municipal Code, Chapter 18.48 and all revisions thereto.

9.5 Accompany Inspectors. Operator shall provide personnel to accompany City's representatives on periodic inspections of the Area of Responsibility and/or Common Use Area to determine Operator's compliance with the provisions of this Agreement.

9.6 Piers, Wharves and Bulkheads. City, at its cost, shall be responsible for maintaining the pier, wharves and bulkheads, and the fender system on the premises, and shall make all necessary repairs thereto, including any and all repairs occasioned by reasonable wear and tear and action of the elements except where damage is caused by the negligent or intentional acts, whether such acts be acts of commission or omission, of Operator, its officers, agents or employees or of vessels for which Operator furnished services at Berths 212 to 215 inclusive, in which case City may make all necessary repairs, and Operator shall reimburse City for the cost thereof. Except for replacements due to reasonable wear and tear and action of the elements, any required replacement of sound wharf piling or elements of the fender system arising from operations

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involving vessels calling at Berths 212 to 215 inclusive will be presumed to have resulted from or be caused by the negligent or improper handling or berthing of such vessels. If requested by Operator, City shall at no cost to City cooperate with Operator in Operator's subrogation action as regards such damage caused by a third party.

9.7 Condition. Operator shall at all times keep and maintain the Area of Responsibility and/or Common Use Area relating to its operations, use, or occupancy, including machinery, equipment, structures, trackage, paving and improvements in a safe, clean, wholesome, sanitary and sightly condition under all applicable federal, state, municipal and other laws, ordinances, rules and regulations and to the satisfaction of the Executive Director.

9.8 Section 1941 and 1942 Waiver. Operator waives the right to make repairs at the expense of the City and waives, to the extent applicable, the benefits of the provisions of Section 1941 and 1942 of the California Civil Code relating thereto.

9.9 Operator Responsibility. Operator's operations, use or occupancy includes without limitation any act, omission or neglect of Operator, its officers, agents, employees, contractors, subcontractors, licensees, permittees, and invitees.

9.10 PHL Maintenance Obligations. Under the Rail Agreement (see paragraph 4.5 above), Pacific Harbor Lines, Inc. (PHL) has certain obligations to the City, including, inter alia, the obligation to perform certain maintenance duties and make certain capital improvements. While Operator is not a third party beneficiary of the Rail Agreement, such agreement is likely as a practical matter to lessen Operator's maintenance obligations in the Common Use Area under this Agreement. That said, Operator's obligations pursuant to paragraph 9 shall remain in full force and effect and shall not be legally diminished by the Rail Agreement. Further, because PHL's maintenance obligations under the Rail

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Agreement are sometimes limited, i.e., section 8.1(b) of the Rail Agreement requires PHL to conduct "weed and rubbish removal and abatement on the Port Rail Facilities and on the Rail Property to the extent necessary to prevent interference with rail operations," Operator's obligations in the Common Use Area, including without limitation, its duty to properly maintain the Common Use Area will in some instances be greater than that of PHL, i.e., see paragraph 9.3 above.

10. Compliance with Laws. At all times in its use of the Pier G Area and in the conduct of its operations thereon, Operator, at its cost, shall comply with all applicable federal, state, regional and municipal laws, ordinances and regulations (including but not limited to the City Charter, the Long Beach Municipal Code and Tariff No. 4) and obtain all requisite permits for the construction of improvements on the Pier G Area and for the conduct of its operations thereon.

10.1 SCAQMD Rule 1158. Without limiting the foregoing, Operator shall ensure that the Shiploader Facilities and Operator's operations, use, or occupancy of the Pier G Area fully comply with Rule 1158 of the South Coast Air Quality Management District, as such rule now exists or may in the future be amended, or any similar rule.

10.2 Americans with Disabilities Act. Without limiting the foregoing, Operator shall comply with applicable provisions of the Americans with Disabilities Act (42 USCS Sections 12101, et seq.) ("Act") and regulations promulgated pursuant thereto in Operator's operations, use or occupancy of the Pier G Area. Additionally, as between City and Operator, Operator shall be solely responsible for assuring that those portions of the Pier G Area relating to Operator's operations, use or occupancy are in compliance with applicable provisions of said Act and related regulations and shall hold City harmless from and against any claims of failure of such portions of the Pier G Area to comply with the Act and/or related regulations.

10.3 Storm Water Program. Operator shall participate in the Port

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of Long Beach Master Storm Water Program ("Program"). As part of the Program, Operator is responsible for preparing a facility specific storm water pollution prevention plan ("SWPPP") and implementing best management practices ("BMP's") where appropriate.

11. Utilities. With the exception of paying for the utility installation for a Land-based AMECS system (as defined in Exhibit G attached hereto and incorporated herein by this reference), Operator, at its cost, shall make arrangements for and pay for all utility installations and services furnished to or used by it, including without limitation gas, electricity, water, telephone service and trash collection and for all connection charges.

12. Payment of Taxes. Except where contested in good faith, Operator shall pay, prior to delinquency, all lawful taxes, assessments and other governmental or district charges that may be levied upon its property located on the Pier G Area and upon the interest granted under this Agreement. Operator recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Operator may be subject to the payment of property taxes and assessments levied on such interest. Payment of any such possessory interest tax or assessment shall not reduce any compensation due City hereunder.

13. Construction Costs. Operator shall pay all costs for construction done by it or caused by it to be done on the Pier G Area. Operator shall keep the Pier G Area free and clear of all mechanics' liens resulting from construction done by or for Operator. Operator shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by City, Operator procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half times the amount of the claim of lien. The bond shall meet the requirements of Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if claimant recovers in the action). Operator agrees that it will at all times save City free and

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harmless and indemnify City against all claims for labor or materials in connection with the construction, erection or installation of Operator's improvements made upon the Area of Responsibility, or from additions or alterations made thereto, or the repair of the same, by or for Operator, and the costs of defending against any such claim, including reasonable attorneys' fees.

14. Indemnity.

(a) Operator Indemnity. Operator shall indemnify, protect and hold harmless City, the Board of Harbor Commissioners and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with:

(1) Use of the Pier G Area or any equipment or materials which are part of or relate to the Shiploader Facilities, or from operations conducted thereon, when such use or conduct is by Operator, its officers, agents, employees, licensees, contractors, subcontractors, or invitees (including, without limitation, any party who provides stevedoring services to Berths 212 to 215 inclusive), or by vessels for which Operator furnishes services at Berths 212 to 215, inclusive, or by any person or persons acting on behalf of Operator and with Operator's knowledge and consent, express or implied;

(2) The condition or state of repair and maintenance on those portions of the Pier G Area relating to Operator's operations, use or occupancy;

(3) The construction, improvement or repair of the improvements and facilities on those portions of the Pier G Area relating to

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Operator's operations, use or occupancy by Operator, its officers, employees, contractors, subcontractors, agents or invitees, or by any person or persons acting on behalf of Operator and with Operator's knowledge and consent, express or implied;

(4) Operator's failure or refusal to comply with the Environmental Standards or the Environmental Covenants; or

(5) Operator's failure or refusal to comply with the provisions of Section 6300 et seq. of the California Labor Code or any federal, state or local regulations or laws pertaining to the safety of the Shiploader Facilities, or of equipment located upon the Pier G Area relating to Operator's operations, use, or occupancy (collectively "Claims" or individually "Claim").

(b) Duty to Defend. In addition to Operator's duty to indemnify, Operator shall have a separate and wholly independent duty to defend Indemnified Parties at Operator's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Operator shall be required for the duty to defend to arise. City shall notify Operator of any Claim, shall tender the defense of the Claim to Operator, and shall assist Operator, as may be reasonably requested, in the defense.

(c) Limitation on Indemnity. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Operator's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

(d) Survival. The provisions of this paragraph shall survive the

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expiration or termination of this Agreement.

15. Insurance. As a condition precedent to the effectiveness of the Agreement, Operator shall procure and maintain in full force and effect during the term of the Agreement, the policies of insurance set forth in Exhibit H attached hereto and incorporated herein by this reference.

16. Signage. No signs or placards of any type or design, except safety or regulatory signs prescribed by law, shall be painted, inscribed or placed in or on the Pier G Area without the prior written consent of the Executive Director, which consent shall not be unreasonably withheld. Upon the expiration or termination of this Agreement, Operator, at its cost, shall remove promptly and to the satisfaction of the Executive Director any and all signs and placards placed by it upon the Area of Responsibility.

17. Continued Operations. If Operator fails or ceases to use the Shiploader Facilities for the purposes and in the manner prescribed in paragraphs 4 and 5 for a period of more than forty-five (45) consecutive days without the consent of City, City may terminate this Agreement in accordance with the provisions of paragraph 26. In the event of a contingency described in paragraph 19, if Operator notified the City in writing within ten (10) days from the date of the occurrence of the contingency causing Operator to cease or fail to use the Shiploader Facilities, the period of nonuse resulting from such contingency shall not be included in computing said forty-five (45) day period.

18. Defaults. The occurrence of any of the following shall constitute a default:

(i) Failure by Operator to pay tariff charges or other compensation when due, if the failure continues for ten (10) days after notice has been given by City to Operator.

(ii) Failure by either party to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after notice has been given by the other party; provided, if the default cannot reasonably be

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cured within thirty (30) days, the party obligated to perform shall not be in default if such party commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

18.1 Notices of Default. Notices given under this paragraph shall specify the alleged default and the applicable Agreement provisions and shall demand that the defaulting party perform the provisions of this Agreement or pay the tariff charges or other compensation that is in arrears, as the case may be, within the applicable period of time or, in the case of a default by Operator, that Operator quit the Pier G Area. No such notice shall be deemed a forfeiture or a termination of this Agreement unless City so elects in its notice to Operator.

18.2 Ownership of Property Upon Termination. Upon any such termination by City, all improvements of whatsoever character constructed, erected or installed upon the Pier G Area by Operator shall remain the property of City, except those set forth in Exhibit C.

18.3 Cumulative Remedies. The remedies of each party shall be cumulative and in addition to any other remedies available.

18.4 Designation of Covenants. For the purpose of this paragraph, each of the covenants, conditions and agreements imposed upon or to be performed by one party shall, at the option of the other party, be deemed to be either covenants or conditions, regardless of how designated in this Agreement.

19. Force Majeure. Neither party to this Agreement shall be deemed to be in default in the performance of the terms, covenants or conditions of this Agreement, if such party is prevented from performing said terms, covenants or conditions hereunder by causes beyond its control, including, without limitation, earthquake, flood, fire, explosion or similar catastrophe, war, insurrection, riot or other civil disturbance, failure or delay in performance by suppliers or contractors, or any other cause reasonably beyond the control of the defaulting party, but excluding strikes or other labor disputes, lockouts or work stoppages. In the event of the happening of any of such contingencies, the party

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delayed from performance shall immediately give the other party written notice of such contingency, specifying the cause for delay or failure. The party so delayed shall use reasonable diligence to remove the cause of delay, and if and when the occurrence or condition which delayed or prevented the performance shall cease or be removed, the party delayed shall notify the other party immediately, and the delayed party shall recommence its performance of the terms, covenants and conditions of this Agreement.

19.1 Termination for Non-Useability. If the Pier G Area relating to Operator's operations, use, or occupancy are not reasonably useable in whole or in part for the uses delineated in paragraph 4 by reason of any cause contemplated by this paragraph, for a period of six (6) months or longer, Operator or City shall have the option of terminating this Agreement in its entirety by giving the other party written notice.

19.2 No Payment Relief. During any period in which the Pier G Area is not reasonably useable in whole or in part for the uses delineated in paragraph 4 by reason of any cause contemplated by this paragraph, Operator shall not be relieved of its obligation to pay any sum already due to City at the time of the occurrence.

19.3 Government Approvals Excluded. Notwithstanding the foregoing, the occurrence of any cause contemplated by this paragraph shall not excuse or otherwise delay performance by Operator of its obligation to obtain all required permits, licenses, approvals and consents from governmental agencies having jurisdiction for the operation and conduct of permitted activities.

20. Condemnation. In the event the United States of America, the State of California, or any agency or instrumentality of said governments other than the City of Long Beach shall, by condemnation or otherwise, take title, possession or the right to possession of the Pier G Area, or any part thereof, or deny Operator the right to use the Pier G Area as contemplated by this Agreement, or if any court shall render a decision which has become final and which will prevent the performance by City of any of its

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333 West Ocean Boulevard, 11th Floor
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obligations under this Agreement, and if such taking, denial or decision substantially impairs the utility of the Pier G Area to Operator, then either party may, at its option, terminate this Agreement as of the date of such taking, denial or decision, and all further obligations of the parties shall end, except as to:

(i) any award to which Operator may be entitled from the condemning authority for loss or damage suffered by Operator, including but not limited to relocation benefits:

(ii) obligations of indemnity which arise under the provisions of paragraph 14; or

(iii) any obligations or liabilities which shall have accrued prior to the date of taking.

21. Restoration Upon Termination. Upon the termination of this Agreement (whether by lapse of time or otherwise), Operator, at no cost to City, shall restore those portions of the Pier G Area relating to its operations, use or occupancy to as good a state and condition as the same were upon the date Operator originally took possession thereof (as improved by those repairs and capital improvements set forth in Exhibit D and such other changes which are made or agreed upon in accordance with the terms of this Agreement), excepting the existence of those improvements or alterations authorized by City pursuant to paragraph 8 above, and also excepting reasonable wear and tear and damage by the elements, and shall thereafter peaceably surrender possession.

21.1 Improvements. All improvements of any kind constructed, erected or installed upon the Pier G Area by Operator shall be and remain the property of City, except as set forth in Exhibit C or otherwise agreed to in writing by the parties with specific reference to this Agreement.

21.2 Removal of Property. Except as to property owned by City, or property in which City may have an interest, upon termination of this Agreement (whether by lapse of time or otherwise), Operator shall cause all other property

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333 West Ocean Boulevard, 11th Floor
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upon those portions of the Pier G Area relating to its operations, use, or occupancy, whether or not such property be owned by Operator or by third parties, to be removed from such portion of the Pier G Area prior to the termination date and shall cause to be repaired any damage occasioned by such removal; provided, however, that if any of such property is not with due diligence susceptible of removal prior to the termination date, Operator's obligation hereunder shall be to remove it in the most expeditious manner and as rapidly as possible following the termination date. If the property is not so removed from such portions of the Pier G Area, City shall have the right to remove and/or sell and/or destroy the same (subject to the interest of any person other than Operator therein) at Operator's expense, and Operator agrees to pay the reasonable cost of any such removal, sale, or destruction.

22. No Assistance Payments. Operator understands and agrees that nothing contained in this Agreement shall create any right in Operator for relocation assistance or payment from City upon the termination of this Agreement or upon the termination of any holdover period. Operator acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the termination of this Agreement as a result of the lapse of time or Operator's default or upon the termination of any holdover period.

23. No Assignment. The qualifications and identity of Operator are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with Operator. No voluntary or involuntary successor in interest shall acquire any rights or powers under this Agreement except pursuant to an assignment or subassignment made with City's consent, which consent may withhold in City's sole and absolute discretion.

23.1 No Restrictions on Consent. Operator acknowledges and

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understands that the legislative grants of tide and submerged lands referred to in subparagraph 2.6 impose certain limitations on use of the granted tide and submerged lands and, as a result thereof, City's discretion in consenting to assignments shall not be limited in any manner.

23.2 Transfers. Any sale, transfer, conversion, redemption or encumbrance ("Transfer") of any voting stock or ownership interest, directly or indirectly, in Operator which results in a change in Control of Operator, either separately or in the aggregate with other Transfers taking place after the effective date of this Agreement, shall constitute an assignment requiring City's Consent. Control refers to the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of Operator. The ownership, directly or indirectly, of more than fifty percent (50%) of the voting or ownership interests of, or the possession of the right to vote or direct the votes of more than fifty percent (50%) of the voting interest in any person or entity shall be presumed to constitute Control.

24. Air Quality Discussions. The parties agree to review and commence discussions regarding new air quality technological advancements at least one hundred eighty (180) days prior to the beginning of each five-year segment starting with the second five-year segment. Such review and discussions shall address operational, technical and financial feasibility as well as cost-effectiveness. Implementation of one or more of these technologies by either or both of the parties shall be determined by the parties in their sole and absolute discretion and shall not affect the compensation renegotiation set forth in paragraph 7 above.

25. Hazardous Substance Notice. Due to the nature of Operator's previous use of the Pier G Area this paragraph constitutes written notice pursuant to Section 25359.7 of Health & Safety Code that hazardous substance may have come to be located on or beneath the Pier G Area.

26. Notices. Any notice, demand, request, consent, approval or

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333 West Ocean Boulevard, 11th Floor
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communication that either party desires or is required to give to the other party or to any other person shall be in writing and either served personally or sent by prepaid, first-class mail. The address of Operator is that shown on the first page of the Agreement and the address of City is: Executive Director, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801, with a copy to the Director of Real Estate, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801. Either party may change its address by notifying the other party in writing of such change. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this subparagraph and as of the time of receipt if personally served.

27. Prevailing Wages. Pursuant to Chapter 1, Part 7, Division 2 of the Labor Code of the State of California, the Director of Public Works of the City of Long Beach by and on behalf of the City Council has obtained from the Director of the Department of Industrial Relations of the State of California the general prevailing rate of per diem wages, and the general prevailing rate of holiday and overtime work in the locality in which the public work is to be performed for each craft, classification or type of workers needed to execute this contract, and the same is on file in the office of the Director of Program Management. It shall be mandatory upon Operator to pay not less than the said prevailing rate of wages to all workers employed by Operator in the execution of this agreement and to post a copy of said determination of prevailing rate or per diem wages at the job site. Operator agrees to comply with all provisions of the Labor Code of the State of California in the performance of this agreement.

28. No Discrimination. Operator agrees, subject to applicable laws, rules and regulations, that no person shall be subject to discrimination in the performance of this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, AIDS, HIV status, age, disability, handicap, or veteran status. Operator shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any of these bases, including but not limited to employment, upgrading, demotion, transfer, recruitment,

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recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Operator agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by City setting out the provisions of this nondiscrimination clause. Operator shall in all solicitations or advertisements for employees state that all qualified applicants will receive consideration for employment without regard to these bases.

29. Third Party Damages Waiver. The parties hereby waive all claims against the other for damage or loss caused by any suit or proceeding commenced by a third party, directly or indirectly attacking the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out.

30. Headings. The use of paragraph headings or captions in this Agreement is solely for the purpose of convenience, and the same shall be entirely disregarded in construing any part or portion of this Agreement.

31. Choice of Law. This Agreement shall be governed by the laws of the State of California, both as to interpretation and performance.

32. Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained nor of the strict and prompt performance thereof by the party obligated to perform. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default nor subsequent acceptance of compensation then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No option, right, power, remedy or privilege of either party hereto shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the parties by this Agreement are cumulative, and no one of them shall be

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Long Beach, CA 90802-4664

exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by a party shall not impair its rights to any other right, power, option or remedy.

33. Option to Extend. City shall have one five-year option to extend the term of this Agreement ("Extension Option"). In connection with the exercise of its option, City in its sole and absolute discretion has the right to reconfigure the Pier G Area including, without limitation, the right to increase and/or decrease the amount of such area and/or to change its use of certain portions thereof. City shall be required to give Operator written notice of its election to exercise the Extension Option (and of any reconfiguration, increase, decrease, or change of use in the Pier G Area at least nine (9) months (but not earlier than one year) prior to the commencement of the term of the Extension Option. In the event City elects to exercise the Extension Option, the parties, shall renegotiate the compensation set forth in paragraph 5, any performance measures and the insurance coverages and limits set forth in paragraph 15, all in accordance with paragraph 7. The Extension Option shall be personal to City and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than City, nor shall the Extension Option be assignable separate from this Agreement. The Extension Option shall be terminated during any period in which City is in default under any provisions of this Agreement until said default has been cured. Time is of the essence. If City fails to exercise its Extension Option in any instance when such rights may arise, in writing, prior to the expiration of the applicable time period for the exercise of such rights, City's rights in the instance in question shall thereafter be deemed null and void and of no further force or effect. The period of time within which the Extension Options may be exercised shall not be extended or enlarged by reason of City's inability to exercise such rights because of the foregoing provisions.

34. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of City and shall be binding upon and inure to the benefit of the permitted successors and assigns of Operator.

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35. Invalidity. Should any of the covenants, conditions or agreements of this Agreement be held by a court of competent jurisdiction to be illegal or in conflict with any applicable law, or with any provision of the Charter of the City of Long Beach, the validity of the remaining portions or provisions shall not be affected thereby.

36. No Compensation/No Cost. When in this Agreement City may take an action regarding which Operator shall receive no compensation from City (see, for example, paragraphs 2.2 or 2.4 above) or Operator shall take certain actions at no cost to City (see, for example, paragraphs 4.4.1, 8, 9, 9.3, 9.4, and 21 above) there shall be no inference that Operator must be compensated by a third party, whether as a condition precedent to such action or at all. To the extent that such action contributes to or increases the costs of Operator, such costs may impact the rates discussed at paragraph 5.1 above or may influence contracts between Operator and a third party.

37. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

38. Amendment by Mutual Agreement. This Agreement may be amended or terminated at any time by the written mutual agreement of the parties.

39. Termination of Existing Agreement. The execution of this Agreement shall constitute a termination of the PAA and all interests deriving therefrom including without limitation any and all leases, subleases, and assignments of rights, whether partial or otherwise. Notwithstanding the foregoing, any obligation of one party hereto to pay compensation or other sums due but unpaid to the other party and any obligation of one party to indemnify the other party under the provisions of the PAA, which obligation accrued or arose prior to the termination but remained undischarged or was incipient at the termination date, as well as any insurance coverages required by the PAA to be in place during the term of the PAA or as tail coverage, shall survive the termination of the PAA. As regards the payment made by Operator pursuant to paragraph 2(b) (ii) (B) of

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that Consent by and between Operator and City dated October 8, 2010 (Harbor Department Document No. HD-7666) in the amount of $1,250,000, the parties agree that such payment of $1,250,000 shall not be prorated and no portion of said payment of $1,250,0000 shall be returned to Operator.

40. City is currently negotiating a proposed Lease with Oxbow Energy Solutions LLC ("Oxbow") with regards to Parcel F1 (the "F1 Lease"). City has provided Operator with a copy of City's proposed F1 Lease with Oxbow, with the consent of Oxbow, and will provide Operator with a copy of the final F1 Lease once approved by the Board of Harbor Commissioners in its discretion. Upon receipt of the final F1 Lease, Operator will perform its obligations to comply with the rights granted by City to Oxbow, unless otherwise directed by City, including specifically Oxbow's preferential right as regards the rotary tipper/dump and truck dump No. 1 set forth in paragraph 2 of City's proposed F1 Lease with Oxbow. As between City and Operator, Operator has no objection to the City's proposed F1 Lease, Neither Oxbow nor any third party may enforce the provisions of this paragraph as a third party beneficiary or otherwise.

41. Entire Agreement. This document constitutes the whole agreement between City and Operator. There are no terms, obligations or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid

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333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

and effective, unless evidenced by a written agreement signed by the parties which make specific reference to this Agreement.

METROPOLITAN STEVEDORE COMPANY, a California corporation

_____, 2014 By: _____
Name: _____
Title: _____

_____, 2014 By: _____
Name: _____
Title: _____

OPERATOR

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

_____, 2014 By: _____
A. J. Moro, P.E.
Acting Executive Director
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

CHARLES PARKIN, City Attorney

_____, 2014 By: _____
Charles M. Gale, Senior Deputy

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CHARLES PARKIN, City Attorney
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Long Beach, CA 90802-4664

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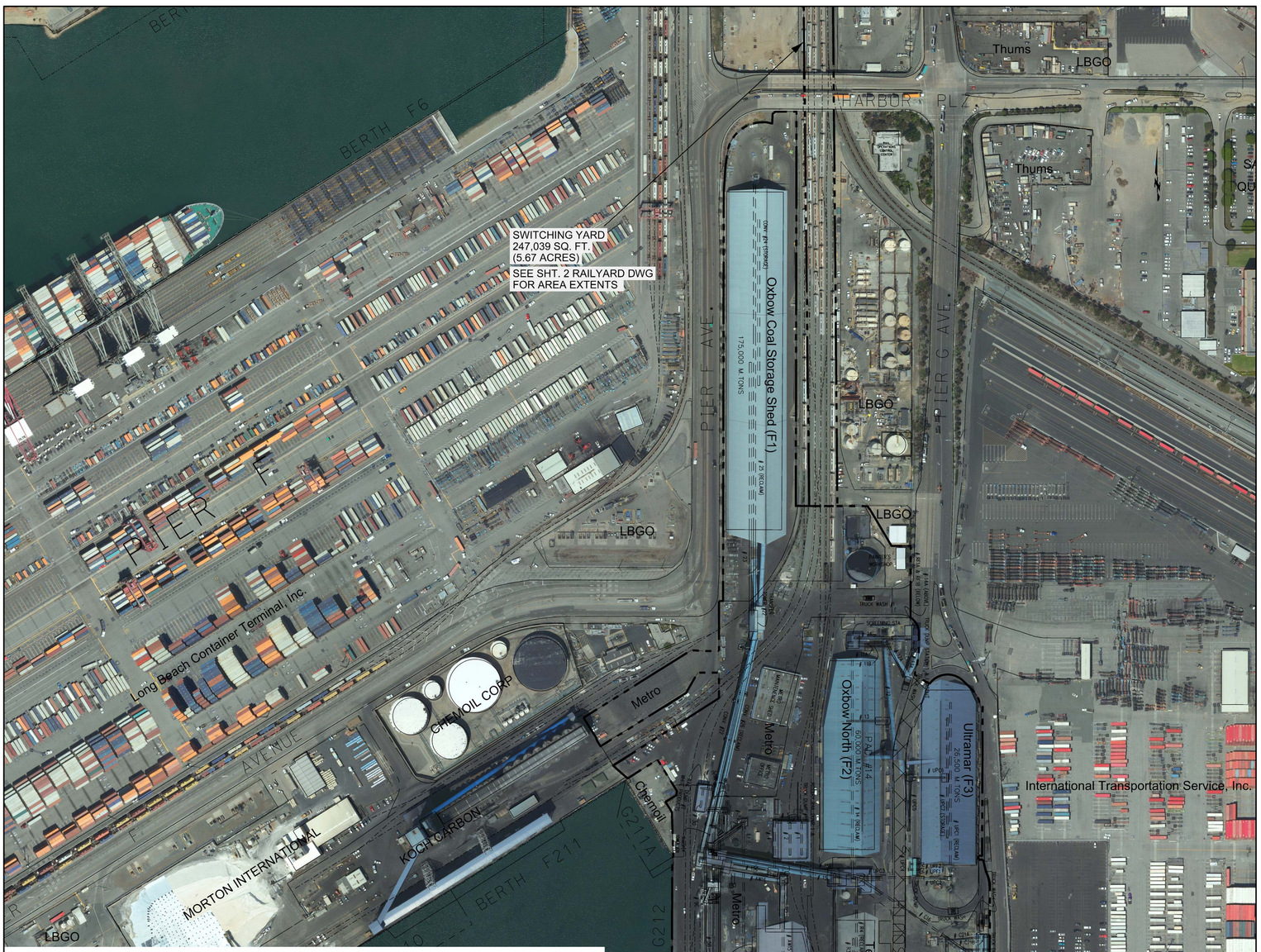

PRIVATE FACILITIES:

OXBOW

OXBOW COAL STORAGE SHED (F1)

STORAGE SYSTEM
CONVEYOR # 22
CONVEYOR # 23
CONVEYOR # 24

RECLAIM SYSTEM
CONVEYOR # 25
CONVEYOR # 26

OXBOW NORTH FACILITY (F2)
(INCLUDES PAD #14)

TRUCK DUMP STATION
FEEDER CONVEYOR # RF1A
FEEDER CONVEYOR # RF1B
CONVEYOR #2A TO SCREENING STATION

SCREENING STATION
CONVEYOR # F2 TO SCREEN # 2
2 - 8'-0 X 20'-0 SCREENS
SCREEN RECLAIM CONVEYOR # 11A
SCREEN RECLAIM CONVEYOR # 11B

STACKER SYSTEM
STACKER TRIPPER CONVEYOR # 12
STACKER BOOM CONVEYOR # 13

TRUCK LOADOUT SYSTEM
TRUCK LOADOUT FEED CONVEYOR # 12A
TRUCK LOADOUT FEED CONVEYOR # 13A
TRUCK LOADOUT BIN DISTRIBUTION CONVEYOR # 14A
TRUCK LOADOUT SURGE BINS
TRUCK LOADOUT WEIGH HOPPERS
TRUCK WASH SYSTEM

COKE STORAGE AND RECLAIM SYSTEM
CONCRETE WALL SYSTEM
DUST CONTROL SPRINKLER SYSTEM
RECLAIM QUADRANT GATES
RECLAIM CONVEYOR # 14

OXBOW WEST FACILITY (F4)

TRUCK DUMP STATION
FEEDER CONVEYOR # AW1
INCLINE CONVEYOR # AW2 (TO CRUSHING & SCREENING)

SCREENING & CRUSHING STATION
2 - 8'-0 X 20'-0 SCREENS
CRUSHER RECLAIM CONVEYOR # AW3
SCREEN RECLAIM CONVEYOR # AW4
SCREEN RECLAIM CONVEYOR # AW5
SCREEN RECLAIM CONVEYOR # AW6
SCREEN RECLAIM CONVEYOR # AW7
SCREEN RECYCLE CONVEYOR # AW11
CONVEYOR # AW12 (TO SCREENS OR TO STORAGE)
CRUSHER FEED CONVEYOR # AW8
CRUSHER

STORAGE SYSTEM
CONVEYOR # AW13
SHUTTLE CONVEYOR # AW14
RECLAIM TUNNEL CONVEYOR # AW15
RECLAIM CONVEYOR # AW16

TRUCK LOADOUT SYSTEM
CONVEYOR # AW9 TO TRUCK LOADOUT
CONVEYOR # AW10 FOR BIN DISTRIBUTION

TRUCK WASH SYSTEM

OXBOW EAST FACILITY (F6)

TRUCK DUMP STATION 4
INCLINE CONVEYOR # C20 (TO # C19)
INCLINE CONVEYOR # C19 (TO STORAGE BUILDING)
RECLAIM CONVEYOR # C21B
RECLAIM CONVEYOR # C21D

STORAGE BUILDING
RECLAIM CONVEYOR # C17
SHUTTLE CONVEYOR # C18

TRUCK WASH SYSTEM

OXBOW SOUTH FACILITY (F7)

TRUCK DUMP STATION 3
FEEDER CONVEYOR # F1
CONVEYOR # R1
CONVEYOR # R2 TO TRANSFER
CONVEYOR # R3 TO STORAGE BUILDING

STORAGE BUILDING
SHUTTLE CONVEYOR # R4

RECLAIM SYSTEM
RECYCLE CONVEYOR # RC1
RECYCLE CONVEYOR # RC2
RECLAIM CONVEYOR # S1
RECLAIM CONVEYOR # S2
RECLAIM CONVEYOR # S3

CRUSHER SYSTEM
CRUSHER FEED CONVEYOR # C1
CRUSHER RECLAIM CONVEYOR # C2

TRUCK WASH SYSTEM

TESORO

TESORO NORTH FACILITY (F5)

TRUCK DUMP STATION
FEEDER CONVEYOR # R1
FEEDER CONVEYOR # R2A
INCLINE CONVEYOR # R2B (TO STORAGE BUILDING)

BUILDING
TRIPPER CONVEYOR # R3
TRIPPER CROSS CONVEYOR # R3A
RECLAIM CONVEYOR # R4

TRUCK WASH SYSTEM

TESORO SOUTH FACILITY (F8)

TRUCK DUMP STATION
FEEDER CONVEYOR # G1
FEEDER CONVEYOR # G2
INCLINE CONVEYOR # G3
INCLINE CONVEYOR # G4

BUILDING
SHUTTLE CONVEYOR # G5
RECLAIM CONVEYOR # G6
CONVEYOR # G7
CONVEYOR # G8

DUST CONTROL BAGHOUSE

TRUCK WASH SYSTEM

ULTRAMAR (F3)

TRUCK DUMP STATION
FEEDER CONVEYOR # UPF1
FEEDER CONVEYOR # UPF2
RECLAIM CONVEYOR # UPC4
RECLAIM CONVEYOR # UPC5
RECLAIM CONVEYOR # UPC6

BUILDING
SHUTTLE CONVEYOR # UPC7
RECLAIM CONVEYOR # UPC1
CONVEYOR # UPC2
CONVEYOR # UPC3

TRUCK WASH SYSTEM

VACANT PORT PROPERTY (F9)

CONVEYOR # S7
TRUCK DUMP

COMMON:

ROTARY RAIL DUMP # 1
& BOTTOM TRUCK DUMP # 1
CONVEYOR # 1
CONVEYOR # 2
CONVEYOR # 3
CONVEYOR # 4

WHITE PRODUCTS RAIL DUMP # 2
FEEDER CONVEYOR # 3D
CONVEYOR # 9C
CONVEYOR # 9B
CONVEYOR # 9G

#7 STOCKPILE (F10)
CONVEYOR # 7
CONVEYOR # 7A

RECLAIM SYSTEMS
CONVEYOR # 15
CONVEYOR # 15B
CONVEYOR # 15C

SHIPLOADER # 1
CONVEYOR # 5
CONVEYOR # 5A
CONVEYOR # 6
CONVEYOR # 6A

SHIPLOADER # 2
CONVEYOR # 5B
CONVEYOR # 6B

TRUCK WASH SYSTEM
TRUCK DUMP STATION #3
CONVEYOR # C21A
CONVEYOR # C21C

SHARED FACILITIES:

OXBOW EAST FACILITY (F6)
CONVEYOR # C16

TESORO SOUTH FACILITY (F8)
CONVEYOR # G9

FACILITIES AND CROSSHATCHED ROADWAY SEGMENT (PIER G AVE. SOUTH) EXCLUDED (CROSSHATCHED)

LOCATION	ADDRESS	SQ. FT.	ACRES
F1	949 PIER G AVE.	235,138	5.40
F2	1029 PIER G AVE.	135,300	3.11
F3	1090 PIER G AVE.	123,320	2.83
F4	1165 PIER G AVE.	125,561	2.88
F5	1155 PIER G AVE.	82,594	1.90
F6	1140 PIER G AVE.	177,820	4.08
F7	1235 PIER G AVE.	136,238	3.13
F8	1241 PIER G AVE.	96,180	2.21
F9	1237 PIER G AVE.	63,001	1.45
ROAD	N/A	57,065	1.31
TOTAL		1,232,217	28.29

OPERATIONS AREA 2,166,100 (49.73 ACRES)
M2 AREA + 1,937 (.04 ACRES)
+2,168,037 (49.77 ACRES)
TOTAL EXCLUSIONS - 1,232,217 (28.30 ACRES)
= 935,820 SQ. FT. (21.48 ACRES)

AREA OF RESPONSIBILITY
= ±935,820 SQ. FT.
(±21.48 ACRES)

REFERENCE DRAWING: NONE

AERIAL IMAGE VIEW

HD08-00447
SHEET 1 OF 4

DRAWING SCALE
1" = 150'

DOCUMENT NUMBER:
DRAWN BY: PEM
DATE: 04-09-2014
CHECKED BY:
DATE:

PIER G

METROPOLITAN STEVEDORE COMPANY

AREA OF RESPONSIBILITY

EXHIBIT "A"

Port of LONG BEACH
The Green Port

BY	CHK'D	DATE	REMARKS

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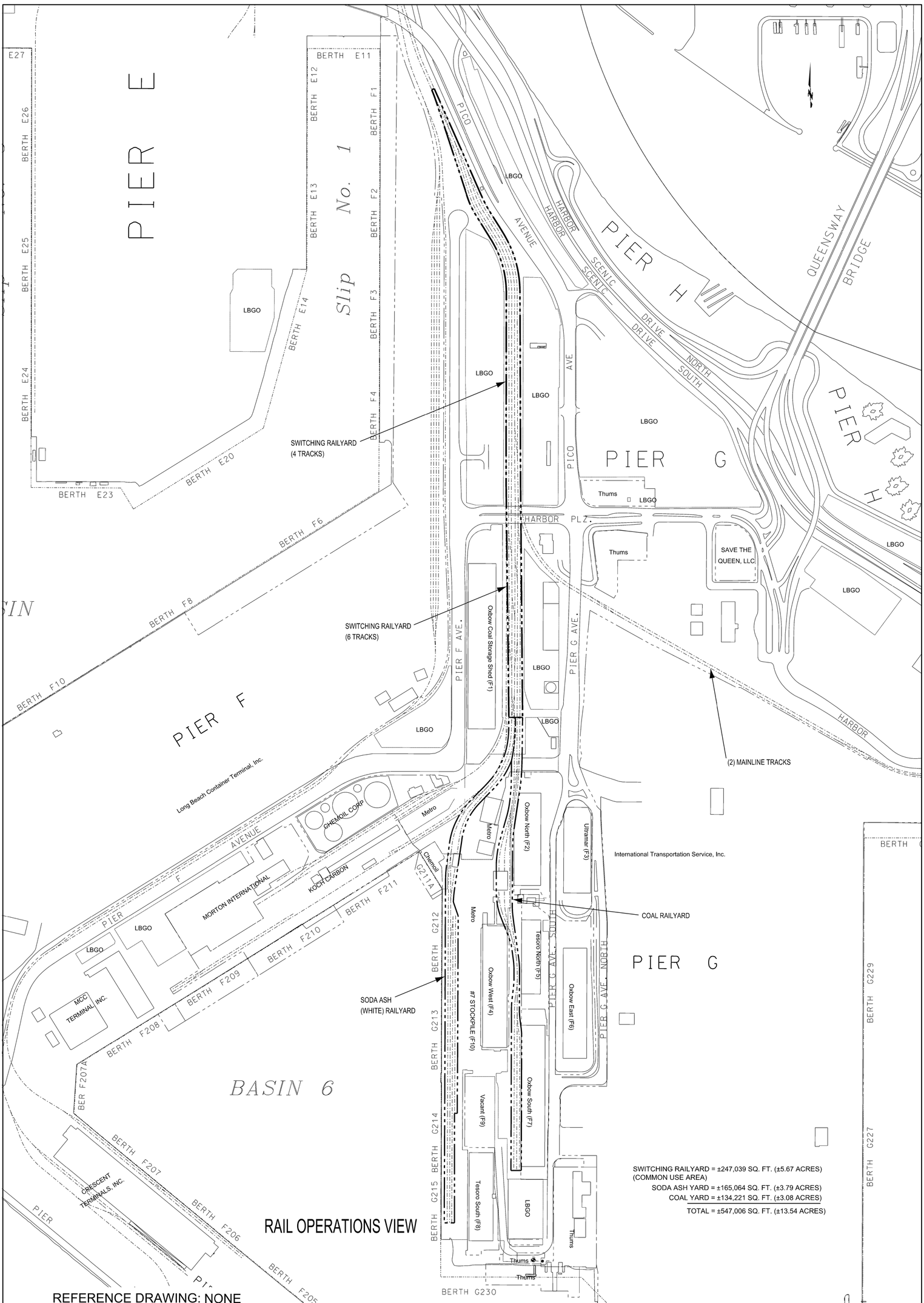
DSR1401



REFERENCE DRAWING: NONE

DRAWING SCALE 1"=200'	DOCUMENT NUMBER:	
	DRAWN BY: PEM	DATE: 04-09-2014
	CHECKED BY:	DATE:

PIER G

METROPOLITAN STEVEDORE COMPANY

AREA OF RESPONSIBILITY

EXHIBIT "B"

Port of LONG BEACH
The Green Port

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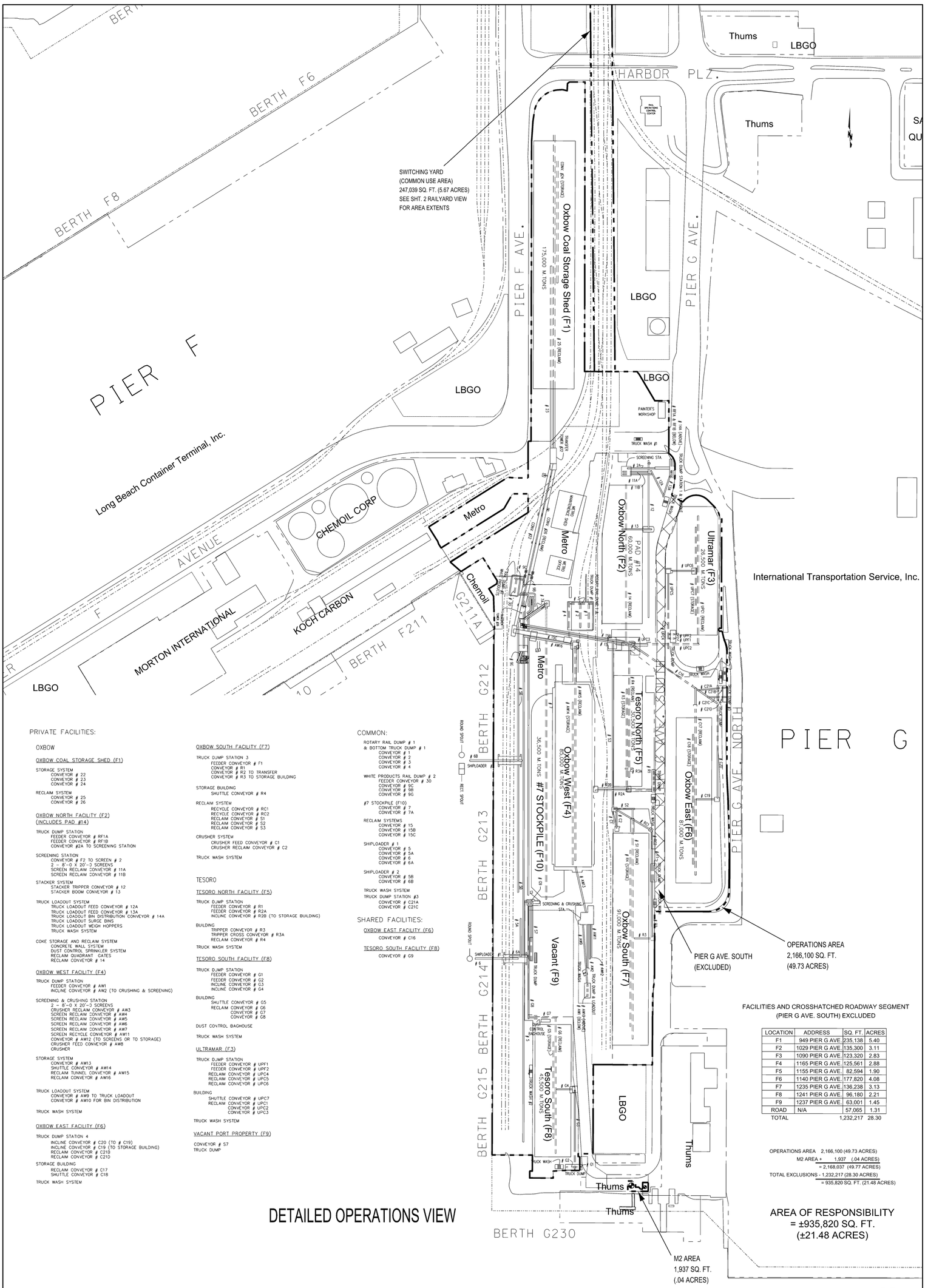
HD08-00447
SHEET 2 OF 4

DSR1401



PRIVATE FACILITIES:

OXBOW

OXBOW COAL STORAGE SHED (F1)

STORAGE SYSTEM
CONVEYOR # 22
CONVEYOR # 23
CONVEYOR # 24

RECLAIM SYSTEM
CONVEYOR # 25
CONVEYOR # 26

OXBOW NORTH FACILITY (F2)
(INCLUDES PAD #14)

TRUCK DUMP STATION
FEEDER CONVEYOR # RF1A
FEEDER CONVEYOR # RF1B
CONVEYOR #2A TO SCREENING STATION

SCREENING STATION
CONVEYOR # F2 TO SCREEN # 2
2 – 8'-0 X 20'-0 SCREENS
SCREEN RECLAIM CONVEYOR # 11A
SCREEN RECLAIM CONVEYOR # 11B

STACKER SYSTEM
STACKER TRIPPER CONVEYOR # 12
STACKER BOOM CONVEYOR # 13

TRUCK LOADOUT SYSTEM
TRUCK LOADOUT FEED CONVEYOR # 12A
TRUCK LOADOUT FEED CONVEYOR # 13A
TRUCK LOADOUT BIN DISTRIBUTION CONVEYOR # 14A
TRUCK LOADOUT SURGE BINS
TRUCK LOADOUT WEIGH HOPPERS
TRUCK WASH SYSTEM

COKE STORAGE AND RECLAIM SYSTEM
CONCRETE WALL SYSTEM
DUST CONTROL SPRINKLER SYSTEM
RECLAIM QUADRANT GATES
RECLAIM CONVEYOR # 14

OXBOW WEST FACILITY (F4)

TRUCK DUMP STATION
FEEDER CONVEYOR # AW1
INCLINE CONVEYOR # AW2 (TO CRUSHING & SCREENING)

SCREENING & CRUSHING STATION
2 – 8'-0 X 20'-0 SCREENS
CRUSHER RECLAIM CONVEYOR # AW3
SCREEN RECLAIM CONVEYOR # AW4
SCREEN RECLAIM CONVEYOR # AW5
SCREEN RECLAIM CONVEYOR # AW6
SCREEN RECLAIM CONVEYOR # AW7
SCREEN RECYCLE CONVEYOR # AW11
CONVEYOR # AW12 (TO SCREENS OR TO STORAGE)
CRUSHER FEED CONVEYOR # AW8
CRUSHER

STORAGE SYSTEM
CONVEYOR # AW13
SHUTTLE CONVEYOR # AW14
RECLAIM TUNNEL CONVEYOR # AW15
RECLAIM CONVEYOR # AW16

TRUCK LOADOUT SYSTEM
CONVEYOR # AW9 TO TRUCK LOADOUT
CONVEYOR # AW10 FOR BIN DISTRIBUTION

TRUCK WASH SYSTEM

OXBOW EAST FACILITY (F6)

TRUCK DUMP STATION 4
INCLINE CONVEYOR # C20 (TO # C19)
INCLINE CONVEYOR # C19 (TO STORAGE BUILDING)
RECLAIM CONVEYOR # C21B
RECLAIM CONVEYOR # C21D

STORAGE BUILDING
RECLAIM CONVEYOR # C17
SHUTTLE CONVEYOR # C18

TRUCK WASH SYSTEM

OXBOW SOUTH FACILITY (F7)

TRUCK DUMP STATION 3
FEEDER CONVEYOR # F1
CONVEYOR # R1
CONVEYOR # R2 TO TRANSFER
CONVEYOR # R3 TO STORAGE BUILDING

STORAGE BUILDING
SHUTTLE CONVEYOR # R4

RECLAIM SYSTEM
RECYCLE CONVEYOR # RC1
RECYCLE CONVEYOR # RC2
RECLAIM CONVEYOR # S1
RECLAIM CONVEYOR # S2
RECLAIM CONVEYOR # S3

CRUSHER SYSTEM
CRUSHER FEED CONVEYOR # C1
CRUSHER RECLAIM CONVEYOR # C2

TRUCK WASH SYSTEM

TESORO

TESORO NORTH FACILITY (F5)

TRUCK DUMP STATION
FEEDER CONVEYOR # R1
FEEDER CONVEYOR # R2A
INCLINE CONVEYOR # R2B (TO STORAGE BUILDING)

BUILDING
TRIPPER CONVEYOR # R3
TRIPPER CROSS CONVEYOR # R3A
RECLAIM CONVEYOR # R4

TRUCK WASH SYSTEM

TESORO SOUTH FACILITY (F8)

TRUCK DUMP STATION
FEEDER CONVEYOR # G1
FEEDER CONVEYOR # G2
INCLINE CONVEYOR # G3
INCLINE CONVEYOR # G4

BUILDING
SHUTTLE CONVEYOR # G5
RECLAIM CONVEYOR # G6
CONVEYOR # G7
CONVEYOR # G8

DUST CONTROL BAGHOUSE

TRUCK WASH SYSTEM

ULTRAMAR (F3)

TRUCK DUMP STATION
FEEDER CONVEYOR # UPF1
FEEDER CONVEYOR # UPF2
RECLAIM CONVEYOR # UPC4
RECLAIM CONVEYOR # UPC5
RECLAIM CONVEYOR # UPC6

BUILDING
SHUTTLE CONVEYOR # UPC7
RECLAIM CONVEYOR # UPC1
CONVEYOR # UPC2
CONVEYOR # UPC3

TRUCK WASH SYSTEM

VACANT PORT PROPERTY (F9)

CONVEYOR # S7
TRUCK DUMP

COMMON:

ROTARY RAIL DUMP # 1
& BOTTOM TRUCK DUMP # 1
CONVEYOR # 1
CONVEYOR # 2
CONVEYOR # 3
CONVEYOR # 4

WHITE PRODUCTS RAIL DUMP # 2
FEEDER CONVEYOR # 5D
CONVEYOR # 5C
CONVEYOR # 5B
CONVEYOR # 5G

#7 STOCKPILE (F10)
CONVEYOR # 7
CONVEYOR # 7A

RECLAIM SYSTEMS
CONVEYOR # 15
CONVEYOR # 15B
CONVEYOR # 15C

SHIPLOADER # 1
CONVEYOR # 5
CONVEYOR # 5A
CONVEYOR # 6
CONVEYOR # 6A

SHIPLOADER # 2
CONVEYOR # 5B
CONVEYOR # 6B

TRUCK WASH SYSTEM
TRUCK DUMP STATION #3
CONVEYOR # C21A
CONVEYOR # C21C

SHARED FACILITIES:

OXBOW EAST FACILITY (F6)
CONVEYOR # C16

TESORO SOUTH FACILITY (F8)
CONVEYOR # G9

FACILITIES AND CROSSHATCHED ROADWAY SEGMENT
(PIER G AVE. SOUTH) EXCLUDED

LOCATION	ADDRESS	SQ. FT.	ACRES
F1	949 PIER G AVE.	235,138	5.40
F2	1029 PIER G AVE.	135,300	3.11
F3	1090 PIER G AVE.	123,320	2.83
F4	1165 PIER G AVE.	125,561	2.88
F5	1155 PIER G AVE.	82,594	1.90
F6	1140 PIER G AVE.	177,820	4.08
F7	1235 PIER G AVE.	136,238	3.13
F8	1241 PIER G AVE.	96,180	2.21
F9	1237 PIER G AVE.	63,001	1.45
ROAD	N/A	57,065	1.31
TOTAL		1,232,217	28.30

OPERATIONS AREA 2,166,100 (49.73 ACRES)
M2 AREA + 1,937 (.04 ACRES)
= 2,168,037 (49.77 ACRES)
TOTAL EXCLUSIONS - 1,232,217 (28.30 ACRES)
= 935,820 SQ. FT. (21.48 ACRES)

AREA OF RESPONSIBILITY
= ±935,820 SQ. FT.
(±21.48 ACRES)

DETAILED OPERATIONS VIEW

REFERENCE DRAWING: NONE

HD08-00447
SHEET 3 OF 4

DRAWING SCALE
1" = 150'

DOCUMENT NUMBER:
DRAWN BY: PEM | DATE: 04-09-2014
CHECKED BY: | DATE:

PIER G

METROPOLITAN STEVEDORE COMPANY

AREA OF RESPONSIBILITY

EXHIBIT "C"

Port of LONG BEACH
The Green Port

BY	CHK'D	DATE	REMARKS

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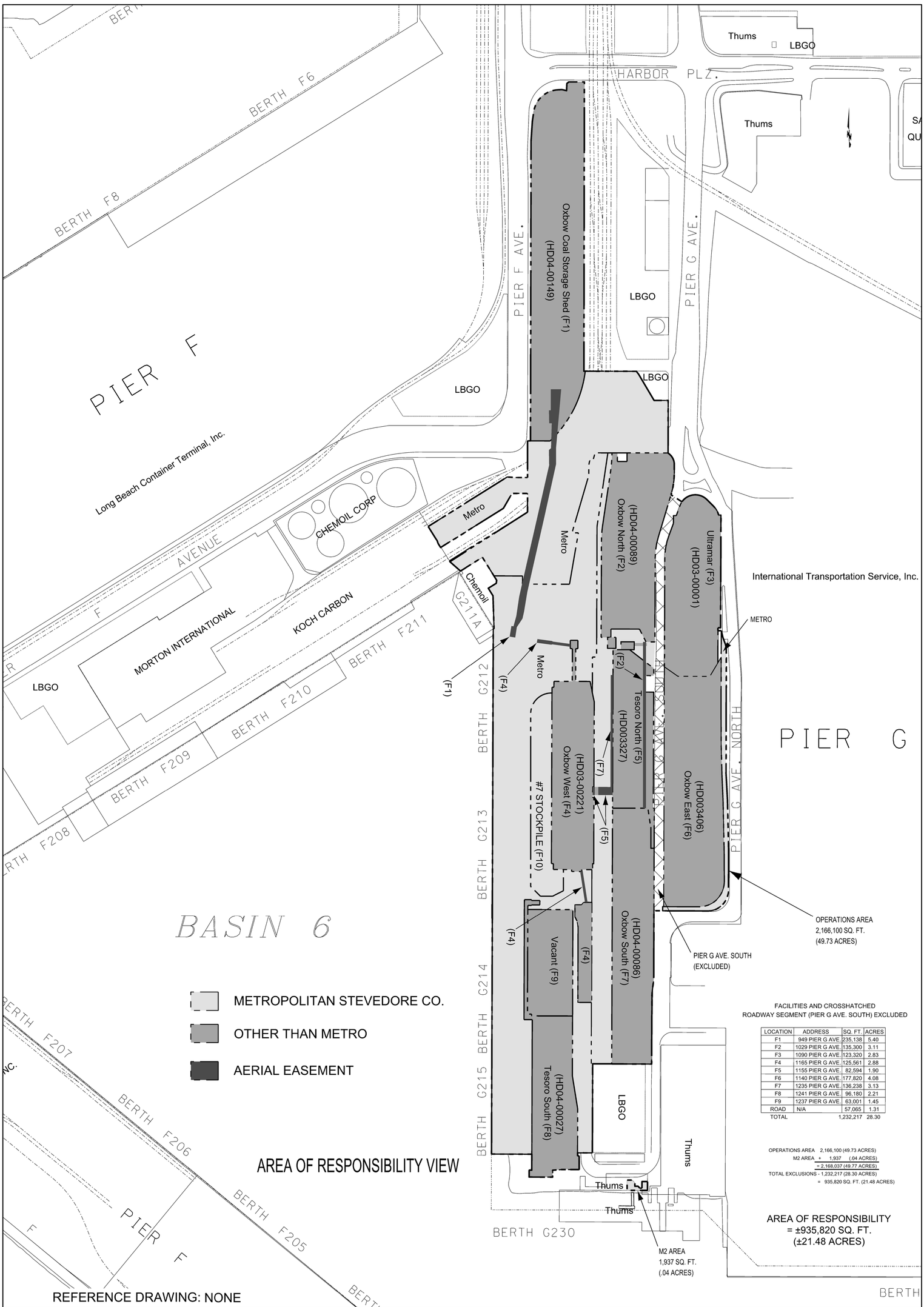
DSR1401



FACILITIES AND CROSSHATCHED
ROADWAY SEGMENT (PIER G AVE. SOUTH) EXCLUDED

LOCATION	ADDRESS	SQ. FT.	ACRES
F1	949 PIER G AVE.	235,138	5.40
F2	1029 PIER G AVE.	135,300	3.11
F3	1090 PIER G AVE.	123,320	2.83
F4	1165 PIER G AVE.	125,561	2.88
F5	1155 PIER G AVE.	82,594	1.90
F6	1140 PIER G AVE.	177,820	4.08
F7	1235 PIER G AVE.	136,238	3.13
F8	1241 PIER G AVE.	96,180	2.21
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TOTAL EXCLUSIONS - 1,232,217 (28.30 ACRES)
= 935,820 SQ. FT. (21.48 ACRES)

REFERENCE DRAWING: NONE

HD08-00447
SHEET 4 OF 4

DRAWING SCALE
1" = 150'

DOCUMENT NUMBER:	
DRAWN BY: PEM	DATE: 04-09-2014
CHECKED BY:	DATE:

PIER G
METROPOLITAN STEVEDORE COMPANY
AREA OF RESPONSIBILITY

EXHIBIT "D"

Port of LONG BEACH
The Green Port

BY	CHK'D	DATE	REMARKS

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DSR1401

Exhibit B

Description of the Pier G Dry Bulk Loading Export Facility

The property's primary purpose is to facilitate the storage and shiploading of dry bulk commodities such as coal, petcoke, sulfur and soda ash for both Port tenant and non-tenant customers. The dry bulk goods are delivered to the site by truck or rail and then transferred to privately or Port owned offsite storage facilities for later shipment, or loaded directly onto vessels for transport to destinations worldwide.

For descriptive purposes the property is delineated as three separate areas:

- The Area of Responsibility
- The Common Use Area
- The Wharf Area

Each area is described in detail as follows:

The Area of Responsibility

This is a 21.48+- acre site located on the west side of Pier G.

The site is improved with multiple structures, loading equipment, and rail yards/spurs.

There are four occupied buildings in use:

- An administration building, which is comprised of finished office space.
- A vehicle maintenance building, which is used to house all the equipment necessary to keep the various vehicles used on site in proper working order.
- A motor control center, which houses all of the necessary electrical equipment required to operate the loading and conveyor system throughout the site. This building is also used as the control center for the system.
- A painters maintenance building which contains a storage area and washrooms.

Additionally, there are two buildings on-site that are not occupied and are integral parts of the conveyor and loading system. They contain the pits where the bulk products are dumped.

The facility operates as a connected system of dump pits, conveyors, transfer towers and shiploaders that move bulk products from initial delivery to offsite storage facilities or directly to vessels.

The dump pits are openings in the ground designed to receive the bulk material from rail cars. From the pits, the product can be moved to multiple locations on or off the site.

The conveyors are mostly enclosed in large diameter tubes to reduce the amount of product that escapes into the environment, protection from the elements, and aesthetics.

The transfer towers are used as a control point for the material. This is the point at which material is redirected in order to reach its destination at the site.

At the final stage of the system, there are two rail mounted ship loaders, both of which are located on the wharf and are each capable of loading a vessel. The loaders can load two vessels at a time with two different products.

The other major component of the facility is the rail system. The bulk product is brought in primarily on rail cars and deposited into the dump pits. Each dump pit requires a dedicated rail line which results in multiple rail spurs throughout the facility. Within the Area of Responsibility there is a waterside railyard (spur tracks) and an interior railrard (spur tracks). These tracks are used for the storage of unloaded railcars.

Also, an extensive stormwater maintenance system with a one million gallon storage tank serves the storm and washwater needs of the facility.

The Common Use Area

This is a 5.4+- acre site that is improved as a railyard. The tracks are used for both the receiving of trains with loaded railcars, and for the assembling of empty railcars for departing trains.

The Wharf Area

The area is improved with Berths G212-G215.

EXHIBIT C

METROPOLITAN STEVEDORE COMPANY
PORT OF LONG BEACH ASSET LISTING

ASSETS - MECHANICAL

Item	Asset Description	Quantity
1	Pick-up Trucks-transportation (Superintendent, Foreman, Mchanics, Electricians)	11
2	Maintenance service trucks with Welders	3
3	Electrical vehicles	8
4	Forklifts	6
5	Wet Vacuum Trucks	2
6	Man lifts	1
7	Pay loaders	6
8	Welders (portable)	4
9	Tow tractors (Grease Buggies, Maintenance Buggies)	5
10	Air compressors	13
11	Water truck	1
12	Diesel truck	1
13	Propane truck	1
14	Bobcats	1
15	Locomotives	2
16	Sump pumps (Portable)	17
17	Drill press	2
18	Parts Washers	2
19	Steam Cleaner	1
20	Parts High Temp Degreaser/cleaner	1
21	Cabinet Sand Blaster (Bead Blaster)	1
22	Bridge Crane (Mechanic, White Pit, Truck Dump, Rotary Dump)	4
23	Lorain Mobile Crane	1
24	PEBCO Chute (White Product) **	1
25	Portable Gangways	2
26	Equipment Spares (Motors, Gearboxes, Pulleys, Rollers, Belts, etc.)	N/A

** Metropolitan Stevedore Company ("Metro") agrees that a PEBCO Chute used specifically for White Product shall upon termination of the Operating Agreement become the property of the City of Long Beach ("City") with the understanding that Metro may remove the existing PEBCO Chute in a manner satisfactory to City and upon delivery and such requisite installation as may be requested by City, provide a replacement chute of equal or better quality.

ASSETS - ELECTRICAL CONTROL SYSTEMS

Item	Asset Description	Quantity
1	PLC Processors (SL1, SL2, Main Shore, Water Treatment)	5
2	PLC Remote Racks	18
3	PLC Programs	4
4	Electrical Asset Management (EAM) System	1
5	HMI Work Stations	5
6	HMI Servers	3
7	Metro Servers	4
8	Printers, Copiers, and Fax Machines	5
9	Plotter (42 " wide)	1
10	Back-up Generator	1
11	Wireless radios for Communication	4
12	Motorola Hand held Radios	50
13	Office Computers (Managers, Superintendents, etc.)	10
14	TWIC Cameras	8
15	Security Access System	1
16	Universal Power Supply	1

Updated as of 03/26/2014

EXHIBIT D

METROPOLITAN STEVEDORE COMPANY
PIER G BULK EXPORT FACILITY

NO	*CATEGORY*	*DESCRIPTION OF DEFICIENCY*	*LOCATION*	**COMPLETION**
Structures				
1	Maintenance	Repair of damaged door frame / stair support beam	West side of rotary dump building	*Within 6 months*
Site Civil				
2	Upgrade	126,560 square feet of Asphalt removal	Berths G212 and G213, parking lot near berth G211A, and area south of coal storage shed	*See Notes Below*
3	Upgrade	126,560 square feet of Asphalt concrete replacement	Berths G212 and G213, parking lot near berth G211A, and area south of coal storage shed	*See Notes Below*
4	Upgrade	Site drainage improvements (drains, pipes, collection basin, pumps, and other required components to collect all runoff water)	Berths G212 thru G215 and access road parallel to wharf, east of conveyor	*See Notes Below*
Buildings (Non-Structural Elements)				
5	Maintenance	Roof replacement at the MCC building	MCC building	*Within 6 months*
6	Maintenance	Exterior hollow metal door and hardware replacement	MCC building, rotary dump building, administration building, and vehicle maintenance building	*Within 6 months*
7	Maintenance	Repair metal siding along bottom 3 feet	All buildings with sheet metal siding	*Within 6 months*
8	Maintenance	Replace existing metal windows	MCC building	*Within 6 months*
Electrical (Buildings Only)				
9	Upgrade	Replacement / upgrade of lighting	Administration building	*Within 2 years*
Mechanical (Water Reclamation System Only)				
10	N/A	No Deficiencies observed		

NO	CATEGORY	DESCRIPTION OF DEFICIENCY	LOCATION	COMPLETION
Conveyors, Ship Loaders, and Related Assets				
11	Upgrade	Have Southern California Edison perform maintenance on the main service substation and remove equipment no longer in use		*Within 6 months*
12	Upgrade	Relocate control station for Operators to new space outside of MCC-1 building This can be a new building or existing building but shall not be shared with a space containing MCCs (motor control center - a type of electrical equipment) or switchboards. Secure MCC-1 building to allow access only to qualified electricians.		*Within 2 years*
13	Upgrade	Secure MCC-2 building to allow access only to qualified electricians.		*Immediately*
14	Upgrade	Remove abandoned wiring devices and ensure no exposed wiring exists throughout facility.		*Within 2 years*
15	Upgrade	Replace conduit and wiring devices damaged by corrosion. Consider fiberglass conduit as an option to PVC-coated RGS conduit in heavy corrosion areas.		*Within 2 years*
16	Upgrade	Ensure emergency stops are labeled.		*Within 6 months*
17	Upgrade	Upgrade the terminal control systems so that all the monitoring and control points are on the Wonderware HMI Interface.		*Within 2 years*
18	Upgrade	Replace MCC-1 & MCC-2 with new equipment. The new equipment locations shall be protected from the environment with a building enclosure.		*Within 10 years*
19	Upgrade	Coordinate with Edison to provide new main service switchboard protected from the environment near the incoming utility service		*Within 5 years*
		Ship Loader #1		
20	Maintenance	Replace / paint gantry level bolts with corrosion	Seaside and Landside Gantry Area	*Within 6 months*
21	Maintenance	Repair corroded hydraulic spill pans and accessories	Seaside and Landside Gantry Area	*Within 6 months*
22	Maintenance	Check and adjust limit switches	Boom belt tensioning forward end of travel	*Within 6 months*
23	Maintenance	Move electrical components mounted on handrails	Left hand backreach walkway	*Within 6 months*
24	Maintenance	Repair boom cladding system	Boom cladding	*Within 6 months*
25	Maintenance	Fully lubricate the bulk loading machine	Entire Machine	*Within 6 months*
		Ship Loader #2		
26	Maintenance	Corrosion abatement for loader and dust suppression system	Entire Machine	*Within 6 months*
27	Upgrade	Remove seaside control cab	Seaside Control Cab	*Within 2 years*
32	Maintenance	Repair / replace broken hydraulic system	Belt Tension Area	*Within 6 months*
33	Maintenance	Replace backreach overhead hoist	Back Reach of Ship Loader	*Within 6 months*
34	Maintenance	Replace wooden doors and frames	Ship Loader Electrical House	*Within 6 months*

NO	CATEGORY	DESCRIPTION OF DEFICIENCY	LOCATION	COMPLETION
35	Maintenance	Replace electrical house flooring	Ship Loader Electrical House	*Within 6 months*
36	Maintenance	Re-label unrecognizable switches	Ship Loader Gantry Area and Dust Suppression Machine	*Within 6 months*
37	Upgrade	Install new two-way communication system	Ship Loader Waterside Gantry Area	*Within 2 years*
38	Maintenance	Replace illegible buttons, weatherproof controls, and faulty outlets	Ship Loader Gantry Area and Dust Suppression Machine	*Within 6 months*
39	Upgrade	Install guards for belts and pulleys on suppression system	Gantry Area Dust Suppression Machine	*Within 2 years*
40	Maintenance	Repair, tighten, and replace loose bolts	Boom Shuttle Rails, (J-Bolts)	*Within 6 months*
41	Maintenance	Replace worn conveyor rollers and replace broken bolts	Impact Rollers on Ship Loader in Tripper Area	*Within 6 months*
42	Maintenance	Replace and lubricate all wire ropes	Boom Shuttle and Chute Up/Down Control	*Within 6 months*
43	Upgrade	Install gantry warning lights and alarms	Seaside and Landside Gantry Area and Dust Suppression	*Within 2 years*
44	Maintenance	Install gantry bump guards	Seaside and Landside Gantry Area and Dust Suppression	*Within 6 months*
45	Maintenance	Replace wind skirting on belt BC 5B tripper assembly	BC 5B Tripper Assembly	*Within 6 months*
46	Maintenance	Fully lubricate ship loader	Ship Loader #2	*Within 6 months*
		White Products Bottom Dump Hall		
47	Maintenance	Rebuild frame and hydraulic package, move hydraulic cylinders	Rail Car Index Machine, North of White Products Hall	*Within 6 months*
48	Maintenance	Repair damaged grating in bottom dump area	White Products Bottom Dump Hall, Ground Level	*Within 6 months*
49	Maintenance	Repair overhead hoist, including new wire ropes and general maintenance	White Products Bottom Dump Hall, Ground Level	*Within 6 months*
50	Maintenance	Repair guarding, clean motor, and repair convenience outlets	White Products Bottom Dump Hall, Lower Level	*Within 6 months*
51	Maintenance	Repair foundation damage due to water leak	White Products Bottom Dump Hall, Lower Level, East Wall	*Within 6 months*
52	Maintenance	General maintenance to building, repair corrosion to building and doors	Ground Level, Building Roll Up Doors and Skirting	*Within 6 months*
		Rail Car Rotating Machine		
53	Upgrade	Engineer and repair train rail splice detail	South End of Rotator, or the Rail Car Exit	*Within 2 years*
54	Upgrade	Engineer and install coupling guards	Under the Rail Car Rotator, East Side	*Within 2 years*
55	Upgrade	Remove abandoned control room	South West Corner, just outside of the Rotator Hall	*Within 2 years*
		Conveyor System		
56	Maintenance	Repair and install all guards	Throughout Terminal	*Within 6 months*
57	Maintenance	Adjust, replace, and test all belt misalignment switch	Throughout Terminal	*Within 6 months*
58	Maintenance	Adjust, replace, and test pull cord switches	Throughout Terminal	*Within 6 months*
59	Maintenance	Replace belt 5B	Belt 5B	*Within 6 months*
60	Maintenance	Repair all electrical conduits and j-boxes along BC 5B	Belt 5B	*Within 6 months*
61	Maintenance	Install all covers on conveyors	Belts in C-16 Transfer Tower	*Within 6 months*
		Truck Wash Systems Repairs		
62	Maintenance	Replace missing sprayers and adjust the north gate system	North Gate Truck Wash Area	*Within 6 months*
		Terminal and Equipment Improvements		
63	Upgrade	Collection pan under ship loaders to force runoff to collection area	Ship Loader #1 and #2	*Within 2 years*
64	Upgrade	Engineer and install a ship loader anti-collision (loader-to-ship) system	Ship Loader #1 and #2	*Within 2 years*
65	Upgrade	Replacement of single car rotary dumper complete with rails, front and rear girders, counterwieght, shifting platen, blocking and mechanical car clamps	Rotary Car Dumper Hall	*Within 5 years*

NO	CATEGORY	DESCRIPTION OF DEFICIENCY	LOCATION	COMPLETION
66	Upgrade	Rotary upgrade to accommodate aluminum cars	Rotary Car Dumper Hall	*Within 6 months*

Asphalt and Drainage Work (Civil Work - Items 2- 4)

City intends to incorporate the requirements for Operator's asphalt and drainage work (see nos. 2, 3, and 4 above) into City's Pier G Track Improvement Project, as it may be modified or renamed from time to time, or such other track improvement project on Pier G as City shall construct ("Project"). The cost for Operator's portion of the Project is estimated to be $5,790,000. The parties recognize that the actual cost for Operator's portion of the Project will almost certainly vary from such estimate but agree to use such estimate as the basis for Operator's payments to City in full satisfaction of Operator's obligations as regards items 2, 3, and 4 above. Operator shall make five equal installments of $1,158,000. Operator shall pay the first installment to City within 30 working days of written notification to Operator that City has awarded a contract for the Project. City shall provide Operator with the date of such notice to proceed. Operator shall pay the second installment to City within 180 days of the first notice to proceed in connection with the Project. Operator shall pay the third installment to City within 360 days of the first notice to proceed in connection with the Project. Operator shall pay the fourth installment to City within 540 days of the first notice to proceed in connection with the Project. Operator shall pay the fifth installment to City within 720 days of the first notice to proceed in connection with the Project

Footnotes

For items 11 through 19 reference is made to a letter from P2S Engineering to the Port of Long Beach, dated April 4, 2014, entitled Pier G Metro Ports Electrical evaluation.
For all other items, except items 11 though 19, 66 and 67, reference is made to a report from AECOM to the Port of Long Beach, dated February 28, 2014, entitled Final Assessment Report for Bulk Loading Facility at Pier G.

Metro.Exhibit D. 4-16-14

Exhibit E

Metro Operating Agreement - Environmental Covenants

Storm Water Pollution Prevention Program
Operator shall participate in the Port of Long Beach Master Storm Water Program ("Program"). As part of the Program, Operator is responsible for preparing and maintaining a facility specific storm water pollution prevention plan ("SWPPP") and implementing best management practices ("BMPs") where appropriate.

Litter and Debris
In addition to the items listed in Section 9.3 of the Operating Agreement, Operator, at its cost, shall provide proper covered containers for trash and shall keep the Area of Responsibility and Common Use Area free and clear of rubbish, debris and litter at all times, including maintaining the submerged land underlying the water berthing area adjacent to the Area of Responsibility free and clear of debris from the wharf and from vessels and cargo loading and unloading operations of vessels berthed at said berths in connection with Operator's operations.

Hazardous Substances, Materials or Wastes
Prior to the termination date, City, at Operator's cost, shall have the Area of Responsibility and Common Use Area inspected by qualified environmental professionals for any evidence of hazardous substances, materials or wastes relating to or arising out of Operator's operations, use, and/or occupancy. If any such evidence is found, Operator, at its cost, shall (i) at the request of the Executive Director or his designee, initiate chemical and/or physical analyses of the suspected contaminated material; (ii) promptly submit all laboratory or other test results upon receipt thereof to the Executive Director; (iii) develop and submit for approval by the Executive Director or his designee a remediation plan providing for the disposal and/or treatment of the contaminated material; (iv) treat and dispose of or remove such material in accordance with regulations and orders of governmental agencies having jurisdiction; (v) if material is removed, replace all such contaminated material with clean fill material structurally suitable and cause the fill material to be filled and compacted; and (vi) promptly submit copies of all waste manifests to the Executive Director.

Vessel At-Berth Emissions Controls
The Operator agrees to cooperate with and assist in facilitating at-berth emission control testing that may occur at the Operator's leased wharf area. Cooperation shall also include allowing access at no cost to the City or a third party who will be carrying out the demonstration.

Reporting:
Consistent with the format provided by City, Operator shall submit annual reports to the Director of Environmental Planning, on or before January 10 of each year, demonstrating compliance with off-road and material handling equipment requirements.

Consistent with a format provided by City, Operator shall provide City an annual inventory of all equipment activity, including fuel type used, hours of operation, and equipment characteristics (e.g., engine model, engine horsepower, etc.).

Off-road Equipment:
Any new diesel-powered, non-road terminal equipment purchased, or after December 31, 2014, any existing diesel-powered, non-road terminal equipment used within the Area of Responsibility and/or the Common Use Area, whether new or repowered or retrofitted, shall comply with Environmental Protection Agency's (EPA) standards in (1) "Control of Emissions of Air Pollution from Non-Road Diesel Engines and Fuel," dated June 29, 2004 (the "Off-Road Standards"); or (2) "Control of Air Pollution From New Motor Vehicles: Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements" dated January 18, 2001.

Efficiency Improvements and Emission Reductions
The Operator shall minimize the release of greenhouse gas (GHG) emissions through measures that improve efficiency and reduce emissions at the facility. Measures to reduce GHG emissions shall include, but are not limited to: (1) the installation of low-energy demand lighting (e.g., fluorescent or light-emitting diode) in the existing office building, other facility buildings, and the existing and new exterior lighting, except where compatible energy efficient lighting is not available or its installation could compromise safety; and (2) replacement of existing light-duty facility vehicles with zero-emission vehicles. Within six months of the effective date of this Operating Agreement, the Operator shall submit to the Port a proposed plan and schedule for implementing the two measures. The low-energy demand lighting and vehicle replacement shall be completed within three years from the effective date of the Operating Agreement. The proposed plan shall include a list of all vehicles used within the Area of Responsibility and/or Common Use Area. All light-duty, non-specialized vehicles used on the terminal shall be replaced with zero-emission vehicles within three years. All other vehicles used by the Operator within the Area of Responsibility and/or Common Use Area shall be replaced with zero-emission vehicles upon availability of such replacements. If no replacement is available within the next three years, Operator shall document this in the report. Once the vehicle replacements and the light installations have been completed, the Operator shall prepare a report detailing the number and type of vehicles replaced, including the VIN number, make, and model of the replaced vehicle, as well as the make, model, and name/identification number of the zero-emission vehicles. The report shall also include the number of existing lights replaced and the number of new low-energy demand lighting installed. The report shall be submitted to the City and also include a quantitative assessment of the amount of greenhouse gas emissions reduced from each of the two measures. Subsequent reports on the success of the zero-emission vehicles shall be completed and provided to the City on an annual basis for the next two years, terminating five years after the effective date of the Operating Agreement.

Indirect GHG Emission Avoidance and Mitigation
The Operator shall be required to use green commodities, such as those available from the California Climate Action Registry's Climate Action Reserve or other third-party broker of verified/certified carbon offsets, to offset carbon emissions associated with the facility's electricity consumption subject to the limitation specified below. This measure applies to all electricity consumed at the terminal. The terminal-related carbon emissions from electricity consumption will be calculated each year based on the local utility's carbon intensity for that year as recognized by the State of California. The Operator may adjust the carbon intensity value to wholly reflect any carbon offsets provided by the electricity deliverer (i.e., point of generation or point of importation) under applicable California and/or federal cap-and-trade regulations (i.e., no double offsetting). The Port is limiting the potential cost of this measure. The maximum expenditure for purchased

offsets required under this measure shall not exceed 15 percent of the terminal electricity costs for any given year (i.e., cost of offsets shall not exceed 15 percent of terminal electricity costs).

Locomotive Reporting

Consistent with a format provided by City, Operator shall provide City an annual inventory of locomotive hours of operation to the Director of Environmental Planning on or before January 10 of each year. This inventory shall also include locomotive make and model, engine type and equipment characteristics. The inventory shall be completed for all on-site locomotives.

EXHIBIT F

METROPOLITAN STEVEDORE COMPANY
ASSET MAINTENANCE AND PERFORMANCE REPORTING REQUIREMENTS

ASSET MAINTENANCE REPORTING:

Third party asset inspections of equipment, building, infrastructure (frequency to be determined based on outstanding facility inspection, per Condition Assessment recommendations (AECOM 2014) and manufacturer recommendations) demonstrating compliance with the Pier G Maintenance Standards Guidelines (MSG).

Inspection and maintenance documentation to be provided per MSG requirements.

PERFORMANCE REPORTING:

Vessel Loading Performance Reporting

Quarterly review of vessel loading performance tracked on a cargo specific basis, i.e. petcoke (fines, lump), coal, sulfur, soda ash, etc. Metro to provide operating performance achievements in a standard written report, inclusive of:

Overall Terminal Performance:	Volume (GMT) loaded and vessel time at berth(s) (HRS) for the quarter and cumulative year-to-date.
Gross Ship Loader Rate:	Volume of cargo moved per loader per elapsed hour of operations. Calculated on the basis of the total time over which a ship is worked, measured from first labor aboard to last labor ashore.
Net Ship Loader Rate:	Volume of cargo moved per loader per net hour of operations. A net hour is calculated on the basis of elapsed time minus the following items, but not limited to: time unable to work the ship due to labor shift start times and breaks, ship's faults, inclement weather, awaiting cargo, holidays or shifts not worked at the ship operator's request.

Train Unloading and Rail Yard Performance Reporting

All Measures are to be tracked on a cargo specific basis, i.e. petcoke (fines, lump), coal, sulfur, soda ash, etc. Metro to provide quarterly operating performance achievements in a standard written report, inclusive of:

Total Carloads Processed:	Weekly carloads unloaded at the terminal
Total Trains:	Weekly trains processed, including cars per train
Gross Train Turn Time:	Total elapsed time (hours/minutes) from loaded train arrival (switched into Pier G tracks ready for unloading) to empty train release (note: time ends when train released by Metro; not actual train departure)
Net Train Turn Time:	Total elapsed time (hours/minutes) from loaded train arrival (switched into Pier G tracks ready for unloading) to empty train release (note: time ends when train released by Metro; not actual train departure) minus time unavailable to work the train due to labor shift start times and breaks, railcar failure, lack of storage space, etc.
Carload Processing Performance:	Total carloads processed per train divided by net train turn time (carloads per hour)
Outbound Train Performance*:	Total elapsed time (hours/minutes) between train release by Metro and train departure to Class 1 Railroad
Inbound Train Performance*:	Total elapsed time (hours/minutes) from train commitment (from mainline staging to Pier G track switching) to first car unloaded.

*allows joint Port/Metro Port Tenant discussion with Class 1 Railroad to support overall rail yard performance (as necessary)

Exhibit G

Definition of Land Based AMECS system

The land based Advanced Maritime Emissions Control System (AMECS) was developed to reduce airborne emissions from auxiliary engines and auxiliary boilers of ocean-going vessels at berth in the port. The technology was developed by Advanced Cleanup Technologies, Inc. (ACTI) and captures and removes air pollutants from vessel engines and boilers. No modification of the vessel is required and there is no interference with loading or offloading operations. AMECS consists of the following two patented systems: The crane-mounted Exhaust Capture System (ECS) and the wharf-mounted Emissions Treatment System (ETS).

Exhibit H

PORT OF LONG BEACH

Metropolitan Stevedore Company

INSURANCE

The required insurance and the documents provided as evidence thereof shall be in the name of the Operator. If policies are written with aggregate limits, the aggregate limit shall be at least twice the occurrence limits or as specified below. Excess or umbrella policies, if used, shall be following form and shall provide coverage that is equal to or broader than the underlying coverage.

Marine General Liability:

Commercial General and Railroad Liability insurance shall be provided including provisions for defense of additional insureds and defense costs in addition to limits. Policy limits shall be no less than twenty five million dollars ($25,000,000) per occurrence for all coverage provided and fifty million dollars ($50,000,000) general aggregate. Coverage for fire legal liability shall be included with limits no less than twenty five million dollars ($25,000,000).

The policy shall not limit coverage for the additional insured to "ongoing operations" or in any way exclude coverage for completed operations. Coverage shall be included on behalf of the insured for claims arising out of the actions of independent operators. The policy shall contain no provisions or endorsements limiting coverage for contractual liability or third party over action claims, and defense costs shall be excess of limits. If the Operator is using Subcontractors the policy must include work performed "by or on behalf" of the Operator. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall not exclude contractual

liability, third party over action claims or restrict coverage to the sole liability of the Operator or contain any other exclusion contrary to the Contract.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Contract with the Port and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Coverage shall contain no operators' limitation or other endorsement limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured using ISO Forms CG 20 10 (2004) and CG 20 37 (2004) or their equivalent. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the operator, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day advance written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Business Automobile Insurance:

Automobile Liability Insurance shall be written on ISO Business Auto Coverage Form CA 00 01 or the equivalent, including symbol (1) (any Auto). Limit shall be no less than five million dollars ($5,000,000) combined single limit per accident. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance,

primary or excess, available to City or any employee or agent of City. If Operator does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies provided that a separate policy limit is provided for this coverage as required by this contract.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the operator, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day advance written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Environmental Impairment Liability Insurance:

Environmental Impairment Liability insurance shall be provided on an Environmental Impairment Liability policy form or other policy form acceptable to City providing coverage for liability caused by pollution conditions arising out of the operations of Operator. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy limit shall be no less than ten million dollars ($10,000,000) per claim and ten million dollars ($10,000,000) general aggregate. All activities contemplated in the Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent operators. If the insured is using Subcontractors the policy must include work performed "by or on behalf" of the insured. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Contract with the Port and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Contract.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the operator, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day advance written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Workers' Compensation:

Workers' Compensation Insurance, as required by the State of California, and Employer's Liability Insurance with a limit of not less than one million dollars ($1,000,000) per accident for bodily injury and disease, plus coverage under the U.S. Long shore and Harbor Workers' Act (USL&H). The policy of insurance required above shall be endorsed, as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its Board of Harbor Commissioners, employees and agents.

Cancellation: The policy shall not be cancelled or the coverage reduced until a thirty (30) day advance written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Deductible/Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the City, its Board of Harbor Commissioners, agents and employees in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. Any deductible or self-insured retention must be approved in writing in accordance with City insurance guidelines.

Evidence of Insurance

The Operator, concurrently with the execution of the Contract, and as a condition precedent to the effectiveness thereof, shall deliver either endorsements on forms approved by the City of Long Beach acting by and through the Board of Harbor Commissioners ("Evidence of Insurance") or certified copies of the required policies containing the terms and conditions required by this contract to the Executive Director for approval as to sufficiency and to the City Attorney for approval as to form.

At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance has been renewed or extended shall be filed with the Executive Director. If such coverage is cancelled or reduced, Operator shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Executive Director evidence of insurance showing that the required

insurance has been reinstated or has been provided through another insurance company or companies.

Failure to Maintain Coverage

Operator agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City. The City shall have the right to withhold any payment due Operator until Operator has fully complied with the insurance provisions of this Contract. In the event that the Operator's operations are suspended for failure to maintain required insurance coverage, the Operator shall not be entitled to an extension of time for completion of the Work or delay damages resulting from the suspension.

Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A-:VII, and authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City insurance guidelines.

Contractual Liability

The coverage provided shall apply to the obligations assumed by the Operator under the indemnity provisions of this Contract but this insurance provision in no way limits the indemnity provisions and the indemnity provisions in no way limits this insurance provision.

HONORABLE MAYOR AND CITY COUNCIL
August 19, 2014
Harbor Department Appeal Hearing

Attachment 4

Harbor Commission Ordinance No. HD-2187 for Oxbow Coal Shed Lease

ORDINANCE NO. HD-2187

AN ORDINANCE OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASE BETWEEN THE CITY OF LONG BEACH, ACTING BY AND THROUGH ITS BOARD OF HARBOR COMMISSIONERS, AND OXBOW ENERGY SOLUTIONS LLC FOR THE USE OF CERTAIN PREMISES, AND MAKING DETERMINATIONS RELATING THERETO

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WHEREAS, the Board of Harbor Commissioners of the City of Long Beach ("Board") desires to enter into a Lease with Oxbow Energy Solutions LLC, a Delaware limited liability company, for the use of certain premises; and

WHEREAS, guidelines adopted by the Secretary of the California Resources Agency and by the Board, pursuant to Sections 21082-21084 of the California Public Resources Code, provide that certain classes of projects listed therein have been determined not to have a significant effect on the environment and are categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Director of Environmental Planning of the Long Beach Harbor Department has determined that, in accordance with the guidelines, the Lease is categorically exempt for the reasons set forth in the "Categorical Exemption Determination" pertaining to the Lease; and

WHEREAS, the Director of Environmental Planning of the Long Beach Harbor Department has determined that, in addition to being categorically exempt from the California Environmental Quality Act, the Lease does not trigger the need for further environmental review beyond what was previously completed for the Pier G Coal Shed and related or appurtenant facilities for the reasons stated in the "Alternative Findings

Relating to the Pier G Coal Shed – Public Resources Code Section 21166 and CEQA Guideline 15162" ("Alternative Finding").

NOW, THEREFORE, the Board of Harbor Commissioners of the City of Long Beach ordains as follows:

Section 1. The Board hereby finds and determines that the Lease, between the City of Long Beach, acting by and through its Board, and Oxbow Energy Solutions LLC, for the use of certain premises, a copy of which is available for inspection in the office of the Executive Secretary of the Board and by this reference made a part hereof, is categorically exempt from the provisions of the California Environmental Quality Act for, among others, the reasons stated in the Categorical Exemption Determination. The Board herby further finds and determines that even if the Lease was not exempt from CEQA as stated, the requirement for further environmental review under Public Resources Code Section 21166 would not be triggered for the reasons stated in the Alternative Finding, which Alternative Finding is hereby adopted by the Board.

Sec. 2. The Executive Director of the Harbor Department of the City of Long Beach is hereby authorized to execute the Lease referred to in Section 1, which is hereby approved.

Sec. 3. This ordinance shall be signed by the President or Vice President of the Board of Harbor Commissioners and attested to by the Secretary. The Secretary shall certify to the passage of this ordinance by the Board of Harbor Commissioners of the City of Long Beach, shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and shall cause a certified copy of this ordinance to be

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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filed forthwith with the City Clerk of the City of Long Beach. This ordinance shall take effect on the 31st day after its final passage.

Douglas Drummond
President

ATTEST:
Lori Ann Farrell
Secretary

I hereby certify that the foregoing ordinance was adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of June 9, , 2014 by the following vote:

Ayes: Commissioners: Bynum, Wise, Farrell, Dines, Drummond

Noes: Commissioners: _____

Absent: Commissioners: _____

Not Voting: Commissioners: _____

Lori Ann Farrell
Secretary

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
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BJM/cao 05/27/14 #A13-02411

Attachment 5

Oxbow Coal Shed Lease approved by the Harbor Commission on June 9, 2014

LEASE

OXBOW ENERGY SOLUTIONS LLC
1601 FORUM PLACE, SUITE 1400
WEST PALM BEACH, FLORIDA 33401
TELEPHONE NO. (561) 907-5400
FAX NO. (561) 640-8747

THIS LEASE is made and entered into as of _____, 2014, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to Ordinance No. HD-[_____], adopted by the Board at its meeting of _____, 2014, and OXBOW ENERGY SOLUTIONS LLC, a Delaware limited liability company ("Lessee").

1. This Lease is made with reference to the following facts and objectives:

1.1 City desires to lease to Lessee, and Lessee desires to lease from City, certain land and existing improvements located on Pier G in the Harbor District of the City of Long Beach for use as a coal storage facility.

1.2 As a result of negotiations, Lessee has agreed to lease the premises described in paragraph 2 from City upon the terms, covenants and conditions set forth in this Lease.

2. City leases to Lessee and Lessee accepts a lease of certain improved real property commonly known as 994 Pier F Avenue, Long Beach, California, 90802, consisting of approximately 5.931 acres of land and the coal shed and the associated conveyor and equipment situated thereon, as shown on the drawing attached hereto as Exhibit A and by this reference made a part hereof. The areas leased and the improvements thereon are collectively referred to in this Lease as the "Premises." In addition to the foregoing, for the first five years of the Lease, City hereby grants to Lessee the preferential right to use the rotary tipper/dump and truck dump No. 1 servicing the Premises. However, Lessee shall cooperate with the operator of the shiploader

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333 West Ocean Boulevard, 11th Floor
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facilities to facilitate such operator's secondary right to use such rotary tipper/dump and truck dump No. 1.

2.1 There are excepted and reserved from the Premises all minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limitation, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals from the Premises without, however, the right of surface entry upon the Premises for such purposes.

2.2 This Lease, and all rights granted to Lessee hereunder, are subject to restrictions, reservations, conditions and encumbrances of record, including, without limitation, the trusts and limitations set forth in Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 138, Statutes of 1964, First Extraordinary Session; and the Federal navigational servitude.

2.3 The Premises shall be subject to rights of way for such sewers, storm drains, pipelines, conduits and for such telephone, light, heat, power or water lines as may from time to time be determined by the Board of Harbor Commissioners, provided such rights of way shall not unreasonably interfere with Lessee's use and operation of the Premises.

3. The term of this Lease shall be for a period of fifteen (15) years commencing upon the date this Lease is executed by the Executive Director ("Commencement Date"). For purposes of renegotiation of compensation and insurance, the term shall be divided into five-year segments.

4. Lessee is authorized to use the Premises for the operation of a handling and storage facility for coal. The City further agrees that the Premises may also be used for the operation of a handling and storage facility for petroleum coke but only to the extent that the throughput for petroleum coke through the Premises shall be limited to 100,000 tons per year. For the first five years of the Lease, the Premises shall not be

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used for any other purposes and the limitation on petroleum coke throughput shall not be modified. For years six through fifteen of this Lease, the Premises shall not be used for any other purposes without the prior consent of the Executive Director of the Long Beach Harbor Department ("Executive Director"), who in his sole and absolute discretion, may approve in writing a greater amount per year of petroleum coke or any other commodity. Further, Lessee acknowledges that certain parts of the operation of the facilities on the Premises such as the receiving of cargo from rail or truck, monitoring of cargo level and conditions, and the reclaiming of cargo were controlled and performed within the motor control center and administrative building center under the control of Metropolitan Stevedore Company, the operator of the shiploader facilities. The operator of the shiploader facilities, whether that be Metropolitan Stevedore Company or some other entity that operates the shiploader facilities, shall continue to include such operations, controls, and monitoring systems for the Premises, as part of its Operating Agreement. The Premises shall not be used for any purpose which shall interfere with commerce, navigation or fisheries or be inconsistent with the trusts and limitations upon which the Premises are now or may hereafter be held by the City of Long Beach.

4.1 Lessee shall not do, bring or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises or increase the rate of any such insurance paid by any parties other than Lessee.

4.2 Lessee shall not use the Premises in any manner that is unlawful, damages the Premises (other than damage resulting from reasonable wear and tear or from the elements) or that will constitute waste or a nuisance.

4.3 The limitation on use set forth in subparagraphs 4.1 and 4.2 shall not prevent Lessee from bringing, keeping or using, on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in the operation of the permitted uses; provided however Lessee, in handling hazardous substances or wastes, shall fully comply with all laws, rules, regulations and orders of governmental agencies having jurisdiction.

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4.4 In its use and occupancy of the Premises, Lessee shall comply with all applicable environmental laws promulgated by federal, state or local laws, rules, regulations or orders, including but not limited to any laws regulating the use, storage, generation or disposal of hazardous materials, substances or wastes ("Environmental Standards"). In addition, with respect to the Premises, Lessee agrees to comply with the emission reduction measures set forth in Exhibit B and incorporated herein by this reference ("Environmental Covenants").

4.4.1 In the event of any spill, discharge, release or threatened release of hazardous materials or substances within, onto or from the Premises occurring on or after October 1, 2000, or any other incident of noncompliance with the Environmental Standards occurring on or after October 1, 2000, Lessee, at its cost, shall: (i) give the Executive Director and Port Security immediate notice of the incident in person, by telephone or by facsimile, followed by written notice in accordance with paragraph 26, providing as much detail as possible; (ii) as soon as possible, but no later than seventy-two (72) hours after discovery of an incident of noncompliance, submit a written report to City, identifying the source or cause of the noncompliance and the method or action required to correct the problem; (iii) cooperate with City or its designated agents or contractors with respect to the investigation of such problem; (iv) at its cost, promptly commence investigation, removal, remediation disposal and/or treatment of the problem and/or hazardous materials in accordance with a plan approved by City and all governmental agencies having jurisdiction and diligently prosecute the approved plan to completion; and (v) provide City with copies of all records, including hazardous waste manifests indicating that the generator is not the City of Long Beach or any subdivision thereof. The obligations set forth in subparagraphs (i) and (ii) above shall apply to

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spills, discharges, releases or threatened releases: (a) occurring on or after the Effective Date; or (b) discovered or known by Lessee on or after the Effective Date. Further Lessee's obligation to provide records pursuant to (v) above relating to spills, discharges, releases or threatened releases occurring prior to October 1, 2000, shall be limited to those records which are in Lessee's possession or control, or otherwise reasonably available to Lessee. The obligations set forth in subparagraphs (iv) and (v) above shall not apply to Lessee if Lessee establishes that such incident is caused solely by City or other third party not connected with Lessee's business at the Premises. As used herein, the term "hazardous materials" shall also include "hazardous wastes" and "extremely hazardous wastes" as those terms have been defined by the Administrator at the U.S. Environmental Protection Agency, the California Department of Toxic Substances Control, or any other person or agency having jurisdiction of the management of hazardous materials.

4.4.2 Lessee shall be liable for all costs, expenses, losses, damages, actions, claims, cleanup costs, penalties, assessments or fines arising from Lessee's failure to comply with the Environmental Standards ("Environmental Losses") including a failure to comply with any reporting requirements. Lessee shall not be liable for any losses that Lessee establishes is caused solely by City or other third party not connected with Lessee's business at the Premises.

4.4.3 City shall have the right to conduct, at its cost, periodic audits of Lessee's compliance with the Environmental Standards, Environmental Covenants, and management of hazardous materials, substances and wastes at the Premises. City shall provide Lessee with copies of any written reports or results of such audits promptly upon completion of such documents. In the event City's audit discloses any

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noncompliance by Lessee, or any third party connected with Lessee's business at the Premises, with the Environmental Standards or Environmental Covenants, Lessee shall reimburse the City for City's cost in performing the audit.

4.4.4 Lessee shall not conduct or permit any maintenance of mobile or portable equipment on the Premises except in full compliance with best management practices as defined in the Port of Long Beach Storm Water Pollution Prevention Program.

4.5 As between City and Lessee, any property of any kind belonging to or in the care, custody or control of Lessee that may be upon the Premises during the term of this Lease shall be there at the sole risk of Lessee and Lessee hereby waives all claims against City with respect to such property, unless any loss or damage to such property is caused by the willful misconduct of City or its employees or agents.

4.6 As a condition precedent to the effectiveness of this Lease, Lessee shall submit to the Executive Director for approval, a traffic management plan containing such elements and information as may reasonably be required by the Executive Director or his designee. If it becomes necessary for City to control and direct truck traffic into or out of the Premises to preserve traffic safety and flow, Lessee shall reimburse City for all reasonable costs incurred in providing such services within thirty (30) days after receipt of City's invoice therefor.

5. Subject to the provisions of subparagraph 5.1 and paragraph 7, Lessee shall pay to City, as rental for the use of the Premises, without deduction, setoff, prior notice or demand: (i) monthly rent for land and improvements; plus (ii) one hundred percent (100%) of all charges set forth in City's Port of Long Beach Tariff No. 4 ("Tariff"), as said tariff now exists or may in the future be renumbered, amended, modified and/or superseded from time to time, which are applicable to the storage and movement of bulk commodities through the Premises, subject to Lessee's obligation with respect to the

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Guaranteed Minimum Annual Throughput (as hereafter defined). For the avoidance of doubt, Lessee shall pay to or cause to pay in addition to the charges on the commodity itself to City an equipment rental charge in the amount prescribed in item 515 (as such item may be renumbered, modified, amended, or superseded from time to time) of Tariff No. 4 for all merchandise handled by the shiploader facilities relating to arising out of the Premises during the preceding calendar month. Subject to paragraph 5.1, for the first five-year segment of the term, the base monthly land rent shall be $484,458. Further, Lessee guarantees, during the first five-year segment of the Lease, that it will ship from the Premises, the following quantities of coal per lease year ("Guaranteed Minimum Annual Throughput"):

Year 1	1.7 million metric tons
Year 2	1.7 million metric tons
Year 3	1.7 million metric tons
Year 4	1.7 million metric tons
Year 5	1.7 million metric tons

If Lessee has not, by the end of a given lease year, shipped quantities of coal from the Premises at least equal to the applicable Guaranteed Minimum Annual Throughput for the lease year, Lessee shall pay to City, within thirty (30) days after the end of said lease year, a sum calculated by multiplying the difference in quantity between the applicable Guaranteed Minimum Annual Throughput and the actual quantity shipped for that lease year times the then-current applicable wharfage and shiploader charges established in Tariff No. 4, which sum would have been paid to City had such quantity of coal been shipped from the Premises during said year ("GMAT Payment"). For purposes of the Guaranteed Minimum Annual Throughput, only the tonnage of coal and any commodity approved by the Executive Director consistent with his discretion as delineated in paragraph 4 above shall be counted. For the avoidance of doubt, the tonnage of petroleum coke shall not at any time during the term of this Lease count towards the

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Guaranteed Minimum Annual Throughput. For the further avoidance of doubt, the reference to "any other commodity" in the preceding sentence shall not alter, modify, or amend paragraph 4 above. In the event the Commencement Date is a date other than the first day of a month, the rent shall be prorated on the basis of the actual number of days elapsed in such month, and the first rent payment shall be paid on or before the Commencement Date. Any rent not paid when due shall bear interest as set forth in subparagraph 5.2. Additionally, City acknowledges that Metropolitan Stevedore Company collects and pays to City some of the amounts described in this paragraph 5 through the rates it charges Lessee. Accordingly, City agrees to accept such amounts from Metropolitan Stevedore Company and to the extent paid by Metropolitan Stevedore Company, not to seek any such amounts from Lessee so that there is no "double payment."

5.1 The rent for land and improvements shall be adjusted for each year of the term. An annual adjustment ("CPI Adjustment") shall be made as of each anniversary of the Commencement Date ("Adjustment Date"). In the event the Adjustment Date is a date other than the first day of a month, the Adjustment Date shall be deemed to be the first day of the following month. CPI Adjustments shall be made by comparing the Consumer Price Index for All Urban Consumers (base year 1982-84=100) for Los Angeles-Riverside-Orange County, California, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month three months prior to the Adjustment Date ("Current Index"), with the Index published for the month three months prior to the Commencement Date ("Beginning Index"). If the Current Index has increased over the Beginning Index, the monthly rental payments for the then-current lease year shall be set by multiplying the monthly rental set forth above by a fraction, the numerator of which is the Current Index and the denominator of which is the Beginning Index; provided, in no event shall the monthly rental adjusted to reflect such CPI Adjustment be less than the most

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333 West Ocean Boulevard, 11th Floor
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recent monthly rental in effect for the Lease. If the Index is discontinued or revised during the term, such other government Index or computation shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised. Nothing contained in this subparagraph 5.1 shall be deemed to modify or limit the provisions of paragraph 7 of this Lease.

5.2 All delinquent installments of rental and other payments due the City shall bear interest at the rate then in effect in Tariff No. 4 for delinquent payments, and shall be subject to the penalty provisions of Tariff No. 4. Rental payments are delinquent if remaining unpaid on the tenth calendar day of the month for which due. Tariff charges are due as accrued and any deficiency in the Guaranteed Minimum Annual Throughput is due within thirty days after the conclusion of the lease year to which it is applicable. With the exception of rental payments, all invoices issued by City are due and payable upon presentation, and any such invoice remaining unpaid the thirtieth day after the date of issue shall be considered delinquent.

6. Lessee shall keep complete and accurate books, records and accounts relating to its operations on the Premises, including, without limitation, the volume of cargo handled. City shall have the right and privilege, through its representatives at all reasonable times and on reasonable notice, to inspect such books, records and accounts in order to verify the accuracy of the sums due, owing and paid to City hereunder. Lessee agrees that such books, records and accounts shall be made available to City at Lessee's office in the City of Long Beach. City shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected.

6.1 Annual Report. As soon as reasonably available, but no later than one hundred eighty (180) days after the close of each year during the term hereof, Lessee shall prepare and deliver or cause to be prepared and delivered to City a copy of Lessee's current balance sheet and a report of the aggregate tons

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of each type of cargo handled through the Premises and loaded onto vessels during the prior year, each certified by Lessee's chief financial officer to be true and correct.

6.2 Alameda Corridor Reports. Lessee agrees to provide City, the Alameda Corridor Transportation Authority ("ACTA"), or their agents, any information reasonably required to compile accurate statistical information relating to the Alameda Corridor, and to enable ACTA to generate timely and accurate invoices for Alameda Corridor use fees and container charges payable by the railroads. Lessee shall use its best efforts to provide such information in the format requested.

6.3 Accident Reports. Lessee shall report in writing to the Executive Director within fifteen (15) days from any accident or occurrence involving death of or serious injury to any person or persons or damage to property in excess of $50,000, occurring on the Premises or within the Harbor District if Lessee's officers, agents or employees are involved in such an accident or occurrence.

7. As required by the provisions of Long Beach City Charter Section 1207(d), the parties agree to renegotiate the compensation provisions set forth in paragraph 5 and the insurance coverages and limits set forth in paragraph 15 for each five-year segment of the term. The parties shall commence negotiations at least one hundred eighty (180) days prior to the beginning of the second and third five-year segments. The adjusted compensation (whether negotiated pursuant to subparagraph 7.1 or determined by arbitration pursuant to subparagraph 7.3) shall be effective as of the beginning of the applicable five-year segment of the term regardless of when determined. If the adjusted compensation is not determined prior to the commencement of a five-year segment, Lessee shall continue to pay compensation in accordance with compensation provisions in force during the preceding five-year segment. Upon determination of the adjusted compensation, Lessee shall promptly pay

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any difference due City in the event of an increase or Lessee shall be entitled to a credit against compensation payable under this Lease in the event of a decrease.

7.1 Adjustment Factors. In any negotiation or arbitration to establish the compensation in subsequent five-year segments of the term, the parties or arbitrators shall take into consideration the character of the Premises, the rental rates of similar premises and facilities within the Long Beach Harbor District devoted to similar use, the return on investment to City, and any other facts and data necessary for the proper determination of such rent. In no event shall the rent for land and improvements be less than the land rent for the fifth year of the preceding five-year segment as adjusted by paragraph 5.1 above for each lease year of the next segment.

7.2 As a component of the renegotiated compensation, the Guaranteed Minimum Annual Throughput for the second and third segment of the term shall be established on an annual (not a five-year aggregate) basis.

7.3 Compensation Arbitration. If the parties cannot reach agreement with respect to the compensation for subsequent five-year segments of the term thirty (30) days prior to the beginning of the next segment, the matter may at the discretion of either party be submitted to binding arbitration. Each party, at its cost, shall appoint a real estate appraiser licensed by the State of California with at least five (5) years' full time commercial and/or industrial appraisal experience in the Long Beach and Los Angeles harbor areas. If a party does not appoint an appraiser within twenty (20) business days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall determine the compensation within sixty (60) days after his or her appointment. If two (2) appraisers are appointed, each within sixty (60) days after the selection of the second appraiser shall state his or her opinion as provided in subparagraph 7.3.1 as to the compensation payable by Lessee to the City.

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7.3.1 Appraisal Reports. On or before the expiration of the sixty (60) day period, the appraiser or appraisers shall prepare and furnish the party who appointed the appraiser with a report setting forth the compensation payable by Lessee with supporting data and his or her reasons supporting the conclusions. The parties shall promptly exchange reports and shall have ten (10) business days after the exchange of the reports to further negotiate the compensation payable by Lessee.

7.3.2 Third Appraiser. If the parties cannot agree as to the compensation payable by Lessee, City and Lessee shall promptly notify their designated appraiser of that fact and the two appraisers shall promptly select a third appraiser meeting the qualifications stated in subparagraph 7.3. If they are unable to agree on the third appraiser, either of the parties, by giving ten (10) business days' notice to the other party may apply to the Presiding Judge or Assistant Presiding Judge of the Superior Court of the County of Los Angeles, or the Presiding Judge of the South District of said Court, who shall select and appoint the third appraiser. Each of the parties shall bear one-half of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser shall (i) promptly meet and confer with the two appraisers appointed by the parties; (ii) review the reports of the two appraisers and the supporting data and reasons supporting the respective conclusions; (iii) determine the compensation payable by Lessee; and (iv) notify the parties of his or her determination within ten (10) business days after his or her appointment; provided however that said determination shall not result in Lessee paying compensation in an amount lower than nor higher than the determinations of the two appraisers appointed by the parties.

7.4 Memorandum. After the adjusted land rent and Guaranteed Minimum Annual Throughput have been determined (whether by negotiation or

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333 West Ocean Boulevard, 11th Floor
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arbitration), the parties shall promptly execute a memorandum setting forth the adjusted compensation. If either party fails or refuses to execute the memorandum within ten (10) days after the compensation has been determined and the memorandum prepared, the other party shall execute the memorandum on behalf of the party refusing as that party's special attorney-in-fact. The memorandum shall be effective immediately and retroactive to the first day of the applicable five-year segment.

7.5 Arbitration for Insurance Adjustments. For adjustment of insurance coverages and limits submitted for determination by binding arbitration, the arbitration shall be conducted in accordance with the provisions of Title 9 (Arbitration) of Part 3 of California Code of Civil Procedure except as otherwise provided in this subparagraph 7.4. The party desiring arbitration shall select an arbitrator and give written notice to the other party, who shall select an arbitrator within ten (10) business days after receipt of such notice. If the other party fails to name such second arbitrator within said ten (10) business days, the arbitrator named by the first party shall decide the matter. The two (2) arbitrators chosen shall, within ten (10) business days after the appointment of the second, select a third. If the two (2) cannot agree upon a third, the third arbitrator shall be appointed by the Presiding Judge or Assistant Presiding Judge of the Superior Court of the County of Los Angeles, California, or the Presiding Judge of the South District of said Court, upon application made therefor by either party, upon ten (10) business days' written notice to the other which notice shall be given in accordance with the provisions of paragraph 28 of this Lease. The parties shall each pay one-half of the costs of appointment of the third arbitrator and of his fees and expenses. Upon their appointment, the three (3) arbitrators shall enter immediately upon the discharge of their duties. In adjusting insurance requirements, the arbitrator or arbitrators shall consider the risks inherent in Lessee's operations, the number and type of claims made during the preceding

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333 West Ocean Boulevard, 11th Floor
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five (5) year period, the disposition of such claims and such other data as may be deemed by the arbitrator or arbitrators to be relevant. The arbitrators' determination on the applicable insurance coverages and limits shall be made and the parties notified of that determination within thirty (30) days after the appointment of the last arbitrator. After the parties are notified of the arbitrator's determination, the parties shall promptly execute a memorandum setting forth the applicable insurance coverages and limits, which shall be effective immediately. If either party fails or refuses to execute the memorandum within ten (10) days after the applicable insurance coverages and limits have been determined and the memorandum prepared, the other party shall execute the memorandum on behalf of the party refusing as that party's special attorney-in-fact.

7.6 Nothing contained in this paragraph 7 shall be deemed to modify or limit the provisions of subparagraph 5.1 of this Lease.

7.7 Except as otherwise provided above with regard to compensation adjustments and insurance coverages and limits, there is no requirement under this Lease to submit other matters and disputes to arbitration.

8. Lessee shall not construct or make any improvements or alterations to the Premises without City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any improvement or alteration shall be constructed, erected and installed at Lessee's cost in accordance with plans and specifications approved in writing by the Executive Director or his designee and shall be subject to such conditions and limitations as may be set forth in a Harbor Development Permit issued by the Board of Harbor Commissioners in accordance with provisions of Section 1215 of the Long Beach City Charter. For the avoidance of doubt, all improvements currently on the Premises belong to City.

9. Lessee, at its cost, shall keep and maintain the Premises, including without limitation all buildings, structures, other improvements and surface paving, in good and substantial repair and condition and shall perform all necessary maintenance,

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CHARLES PARKIN, City Attorney
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including preventative maintenance, and including but not limited to maintaining and repairing pavement, and cleaning and maintaining storm drains and catch basins, using materials and workmanship of similar quality to the original improvements. In the event that Lessee disagrees with the operator of the shiploader facilities (including all or any portion of the associated conveyor referenced in paragraph 2 above) servicing the Premises as to whether the operator of the shiploader facilities or Lessee should maintain, repair or replace certain items, i.e., conveyors, that are located on the Premises, then, as between City and Lessee, Lessee shall be responsible to City for all necessary maintenance, repair and/or replacement of such items consistent with the previous sentence irrespective of whether City or Lessee may have rights against the operator of the shiploader facilities for maintenance, repair and/or replacements. With respect to pavement, rutting of the asphalt layer(s) is highly dependent on the rate of loading. Maintenance activities may include joint and crack sealing, slurry sealing, localized full depth repairs, and milling/overlays of raveled or rutted areas. The frequency of pavement maintenance is a function of premises utilization.

9.1 Should Lessee fail to make any repairs or perform required maintenance that Lessee is required to perform under this Lease within thirty (30) days after receipt of notice from City to do so, City may, but shall not be obligated to, make such repairs or perform such maintenance. Lessee agrees to reimburse City for the cost thereof within thirty (30) days after receipt of City's invoice therefor. City's cost shall include, but not be limited to, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, supervision, supplies, tools, taxes, transportation, administrative and general expense and other indirect or overhead expenses. In the event Lessee shall commence to prosecute and diligently make such repairs or shall begin to perform the required maintenance within the thirty (30) day period, City shall refrain from making such repairs or performing required maintenance and from making demand for such payment until the work

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has been completed by Lessee, and then only for such portion thereof as shall have been made or performed by City. The making of any repair or the performance or maintenance by City, which repair or maintenance is the responsibility of Lessee, shall in no event be construed as a waiver of Lessee's duty or obligation to make future repairs or perform required maintenance as provided in this Lease.

9.2 Lessee, at its cost, shall provide proper covered containers for trash and keep the Premises free and clear of rubbish, debris and litter at all times. Lessee, at its cost, further agrees to keep and maintain all of the Premises in a safe, clean, wholesome and sanitary condition under all applicable federal, state, local and other laws, ordinances, rules, regulations and orders. No offensive refuse, matter, nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health shall be permitted to be or remain on the Premises and Lessee shall prevent such material or matter from being or accumulating upon the Premises.

9.3 All fire protection sprinkler systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems or appliances which may be installed on the Premises shall be maintained by Lessee, at its cost, in an operative condition at all times. All repairs and servicing shall be made in accordance with the provisions of the Long Beach Municipal Code, Chapter 18.48 and all revisions thereto.

9.4 Lessee shall provide personnel to accompany City's representatives on periodic inspections of the Premises to determine Lessee's compliance with the provisions of this Lease.

10. At all times in its use and occupancy of the Premises and in the conduct of its operations thereon, Lessee, at its cost, shall comply with all applicable federal, state, regional and municipal laws, ordinances and regulations (including but not limited to the City Charter, the Long Beach Municipal Code and Tariff No. 4) and obtain

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all requisite permits for the construction of improvements on the Premises and for the conduct of its operations thereon.

10.1 Without limiting the foregoing, Lessee shall ensure that the Premises, and Lessee's operations on the Premises, fully comply with Rule 1158 of the South Coast Air Quality Management District, as such rule now exists or may in the future be amended, or any similar rule relating to control of petroleum coke dust emissions which may supersede said Rule 1158.

10.2 Without limiting the foregoing, Lessee shall comply with applicable provisions of the Americans with Disabilities Act (42 USCS Sections 12101, et seq.) ("Act") and regulations promulgated pursuant thereto in Lessee's use of the Premises and operations conducted thereon. Additionally, as between City and Lessee, Lessee shall be solely responsible for assuring that the Premises are in compliance with applicable provisions of said Act and related regulations and shall hold City harmless from and against any claims of failure of the Premises to comply during the term of this Lease with the Act and/or related regulations.

10.3 Lessee shall participate in the Port of Long Beach Master Storm Water Program ("Program"). As part of the Program, Lessee is responsible for preparing a facility specific storm water pollution prevention plan ("SWPPP") and implementing best management practices ("BMP's") where appropriate.

11. Lessee, at its cost, shall make arrangements for and pay for all utility installations and services furnished to or used by it, including without limitation gas, electricity, water, telephone service and trash collection and for all connection charges.

12. Except where contested in good faith in a court of appropriate jurisdiction, Lessee shall pay, prior to delinquency, all lawful taxes, assessments and other governmental or district charges that may be levied upon its property and improvements of any kind located on the Premises and upon the interest granted under this Lease. Lessee recognizes and understands that this Lease may create a

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possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes and assessments levied on such interest. Payment of any such possessory interest tax or assessment shall not reduce any compensation due City hereunder.

13. Lessee shall pay all costs for construction done by it or caused by it to be done on the Premises. Lessee shall keep the Premises free and clear of all mechanics' liens resulting from construction done by or for Lessee. Lessee shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by City, Lessee procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half times the amount of the claim of lien. The bond shall meet the requirements of Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if claimant recovers in the action). Lessee agrees that it will at all times save City free and harmless and indemnify City against all claims for labor or materials in connection with the construction, erection or installation of Lessee's improvements made upon the Premises, or from additions or alterations made thereto, or the repair of the same, by or for Lessee, and the costs of defending against any such claim, including reasonable attorneys' fees.

14. INDEMNITY.

(a) Lessee shall indemnify, protect and hold harmless City, the Board of Harbor Commissioners and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with:

(1) the use of the Premises or any equipment or materials located thereon, or from operations conducted thereon by Lessee, its

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officers, agents, employees, contractors, subcontractors, or invitees, or by any person or persons acting on behalf of Lessee and with Lessee's knowledge and consent, express or implied;

(2) the condition or state of repair and maintenance of the Premises;

(3) the construction, improvement or repair of the improvements and facilities on the Premises by Lessee, its officers, employees, contractors, subcontractors, agents or invitees, or by any person or persons acting on behalf of Lessee and with Lessee's knowledge and consent, express or implied;

(4) Lessee's failure or refusal to comply with the Environmental Standards; or

(5) Lessee's failure or refusal to comply with the provisions of Section 6300 et seq. of the California Labor Code or any federal, state or local regulations or laws pertaining to the safety of equipment located upon the Premises, (collectively "Claims" or individually "Claim").

(b) In addition to Lessee's duty to indemnify, Lessee shall have a separate and wholly independent duty to defend Indemnified Parties at Lessee's expense by legal counsel approved by City (which approval shall not be unreasonably withheld, conditioned or delayed), from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Lessee shall be required for the duty to defend to arise. City shall notify Lessee of any Claim, shall tender the defense of the Claim to Lessee, and shall assist Lessee, as may be reasonably requested, in the defense.

(c) If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Lessee's costs of defense and indemnity shall be (1) reimbursed in full if the court

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determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

(d) The provisions of this paragraph shall survive the expiration or termination of this Lease.

15. As a condition precedent to the effectiveness of the Lease, Lessee shall procure and maintain in full force and effect during the term of the Lease, the policies of insurance set forth in Exhibit C attached hereto and incorporated herein by this reference.

16. No signs or placards of any type or design, except safety or regulatory signs prescribed by law, shall be painted, inscribed or placed in or on the Premises without the prior written consent of the Executive Director, which consent shall not be unreasonably withheld. Upon the expiration or termination of this Lease, Lessee, at its cost, shall remove promptly and to the satisfaction of the Executive Director any and all signs and placards placed by it upon the Premises.

17. The occurrence of any of the following shall constitute a default:

(i) Failure by Lessee to pay rent when due, if the failure continues for ten (10) days after notice has been given by City to Lessee.

(ii) Failure by either party to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after notice has been given by the other party; provided, if the default cannot reasonably be cured within thirty (30) days, the party obligated to perform shall not be in default if such party commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

17.1 Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions and shall demand that the defaulting party perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time or, in the case of a default by Lessee, that Lessee quit the Premises. No such notice shall be deemed a

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forfeiture or a termination of this Lease unless City so elects in its notice to Lessee.

17.2 Upon any such termination by City, all improvements of whatsoever character constructed, erected or installed upon the Premises by Lessee shall, at City's option, and upon City's declaring a forfeiture, immediately become the property of City as provided in Subsection 1207(i) of the City Charter.

17.3 The remedies of each party shall be cumulative and in addition to any other remedies available.

17.4 For the purpose of this paragraph, each of the covenants, conditions and agreements imposed upon or to be performed by one party shall, at the option of the other party, be deemed to be either covenants or conditions, regardless of how designated in this Lease.

18. Neither party to this Lease shall be deemed to be in default in the performance of the terms, covenants or conditions of this Lease, if such party is prevented from performing said terms, covenants or conditions hereunder by causes beyond its control, including, without limitation, earthquake, flood, fire, explosion or similar catastrophe, war, insurrection, riot or other civil disturbance, failure or delay in performance by suppliers or contractors, or any other cause reasonably beyond the control of the defaulting party, but excluding strikes or other labor disputes, lockouts or work stoppages. In the event of the happening of any of such contingencies, the party delayed from performance shall immediately give the other party written notice of such contingency, specifying the cause for delay or failure. The party so delayed shall use reasonable diligence to remove the cause of delay, and if and when the occurrence or condition which delayed or prevented the performance shall cease or be removed, the party delayed shall notify the other party immediately, and the delayed party shall recommence its performance of the terms, covenants and conditions of this Lease.

18.1 If the Premises are not reasonably useable in whole or in part for the uses delineated in paragraph 4 by reason of any cause contemplated by

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this paragraph, for a period of six (6) months or longer, Lessee shall have the option of terminating this Lease in its entirety by giving City written notice.

18.2 During any period in which the Premises are not reasonably useable in whole or in part for the uses delineated in paragraph 4 by reason of any cause contemplated by this paragraph, Lessee shall not be relieved of its obligation to pay any sum already due to City at the time of the occurrence.

18.3 Notwithstanding the foregoing, the occurrence of any cause contemplated by this paragraph shall not excuse or otherwise delay performance by Lessee of its obligation to obtain all required permits, licenses, approvals and consents from governmental agencies having jurisdiction for the operation and conduct of permitted activities.

19. In the event the United States of America, the State of California, or any agency or instrumentality of said governments other than the City of Long Beach shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises, or any part thereof, or deny Lessee the right to use the Premises as contemplated by this Lease, or if any court shall render a decision which has become final and which will prevent the performance by City of any of its obligations under this Lease, and if such taking, denial or decision substantially impairs the utility of the Premises to Lessee, then either party may, at its option, terminate this Lease as of the date of such taking, denial or decision, and all further obligations of the parties shall end, except as to:

(i) any award to which Lessee may be entitled from the condemning authority for loss or damage suffered by Lessee, including but not limited to relocation benefits and Lessee's interest in its building, improvements, trade fixtures and removable personal property;

(ii) obligations of indemnity which arise under the provisions of paragraph 13; or

(iii) any obligations or liabilities which shall have accrued prior to

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the date of taking.

20. Upon the termination of this Lease (whether by lapse of time or otherwise), Lessee, at its cost, shall restore the Premises to as good a state and condition as the same were upon the date Lessee originally took possession thereof, reasonable wear and tear and damage by the elements excepted, and shall thereafter peaceably surrender possession.

20.1 All improvements of any kind constructed, erected or installed upon the Premises by Lessee shall be and remain the property of Lessee during the term of this Lease. Prior to termination, Lessee shall remove all of its improvements and, at its cost, shall repair any damage caused by such removal; provided, that City in its sole and absolute discretion may agree to waive the requirement that Lessee remove some or all of its improvements from the Premises. If such requirement is waived, Lessee shall promptly execute and deliver to City such documents as may be reasonably required to demonstrate the transfer of title to Lessee's improvements to City. The obligations contained in this paragraph shall remain in full force and effect, notwithstanding the expiration or termination of this Lease.

20.2 Except as to property owned by City, or property in which City may have an interest, upon termination of this Lease (whether by lapse of time or otherwise) Lessee shall cause all other property upon the Premises, whether or not such property be owned by Lessee or by third parties, to be removed from the Premises prior to the termination date and shall cause to be repaired any damage occasioned by such removal; provided, however, that if any of such property is not with due diligence susceptible of removal prior to the termination date, Lessee's obligation hereunder shall be to remove it in the most expeditious manner and as rapidly as possible following the termination date. If the property is not so removed from the Premises, City shall have the right to remove and/or sell and/or destroy the same (subject to the interest of any person other than Lessee therein)

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at Lessee's expense, and Lessee agrees to pay the reasonable cost of any such removal, sale, or destruction.

21. Lessee understands and agrees that nothing contained in this Lease shall create any right in Lessee for relocation assistance or payment from City upon the termination of this Lease or upon the termination of any holdover period. Lessee acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the termination of this Lease as a result of the lapse of time or Lessee's default or upon the termination of any holdover period.

22. The qualifications and identity of Lessee are of particular concern to City. It is because of those qualifications and identity that City has entered into this Lease with Lessee. No voluntary or involuntary successor in interest or transferee shall acquire any rights or powers under this Lease except pursuant to an assignment or sublease made with City's consent, which consent may be withheld in City's sole and absolute discretion.

22.1 To obtain City's consent to a proposed assignment or sublease of all or part of the Premises, Lessee shall deliver to City a written notice which shall contain the following:

(i) The name and address of the proposed assignee or sublessee;

(ii) A statement whether the proposed assignee or sublessee is a partnership corporation, or limited liability company, and if the proposed assignee or sublessee is a corporation or limited liability company, the names and addresses of such corporation's or limited liability company's principal officers and directors and the place of incorporation or formation, and if the proposed assignee or sublessee is a partnership, the names and addresses of the general partners of such partnership;

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(iii) A copy of the most recent current financial statement of the proposed assignee or sublessee audited by an independent certified public accountant, which financial statement discloses a credit standing and financial responsibility comparable to Lessee's;

(iv) A statement setting forth in reasonable detail the business experience of the proposed assignee or sublessee and, if applicable, its officers, directors and managing employees;

(v) A business plan for the proposed assignee including specific estimates of cargo volume anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources.

(vi) A detailed statement of the business relationship or transaction between Lessee and the proposed assignee or sublessee, including the proposed financial arrangements regarding this Lease.

Upon Lessee's satisfaction of the conditions specified in subparagraphs 22.1 and 22.2, City shall notify Lessee of its decision on the proposed assignment or sublease.

22.2 Simultaneously with an assignment or sublease, the assignee or sublessee shall execute an agreement assuming Lessee's obligations under this Lease after the date of such assignment or sublease. Lessee shall remain fully obligated under this Lease notwithstanding any assignment or sublease.

22.3 Lessee acknowledges and understands that the legislative grants of tide and submerged lands referred to in subparagraph 2.2 impose certain limitations on use of the granted tide and submerged lands and, as a result thereof, City's discretion in consenting to assignments and subleases shall not be limited in any manner.

22.4 Any sale, transfer, conversion, redemption or encumbrance ("Transfer") of any voting stock or ownership interest, directly or indirectly, in

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Lessee which results in a change in Control of Lessee, either separately or in the aggregate with other Transfers taking place after the effective date of this Lease, shall constitute an assignment requiring City's Consent. Control refers to the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of Lessee. The ownership, directly or indirectly, of more than fifty percent (50%) of the voting or ownership interests of, or the possession of the right to vote or direct the votes of more than fifty percent (50%) of the voting interest in any person or entity shall be presumed to constitute Control.

23. If Lessee shall hold over after the expiration of this Lease for any cause, such holding over shall be deemed a tenancy from month to month only, upon the same terms, conditions and provisions of this Lease, except as set forth below, unless other terms, conditions and provisions be agreed upon in writing by City and Lessee. The Executive Director shall establish the compensation to be paid by Lessee during such holdover period, taking into account the character of the subject Premises, the terms and conditions affecting their use, and the fair rental value of similar premises and facilities devoted to similar use. In addition, the Executive Director may, by written notice given at any time during the holdover period, modify any other provision under which Lessee occupies the Premises in order that such provision will conform to the then-current leasing practices and requirements of City.

24. The parties agree to review and commence discussions regarding new air quality technological advancements at least one hundred eighty (180) days prior to the beginning of each five-year segment starting with the second five-year segment. Such review and discussions shall address operational, technical and financial feasibility as well as cost-effectiveness. Implementation of one or more of these technologies by either or both of the parties shall be determined by the parties in their sole and absolute discretion and shall not affect the rent renegotiation set forth in paragraph 7 above.

25. This paragraph constitutes written notice pursuant to

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Section 25359.7 of Health & Safety Code that a release of hazardous substance may have come to be located on or beneath the Premises due to the nature of previous uses of the Premises.

26. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or to any other person shall be in writing and either served personally or sent by prepaid, first-class mail. The address of Lessee is that shown on the first page of the Lease and the address of City is: Executive Director, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801, with a copy to the Director of Real Estate, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801. Either party may change its address by notifying the other party in writing of such change. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this subparagraph and as of the time of receipt if personally served.

27. Lessee agrees, subject to applicable laws, rules and regulations, that no person shall be subject to discrimination in the performance of this Lease on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, AIDS, HIV status, age, disability, handicap, or veteran status. Lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any of these bases, including but not limited to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by City setting out the provisions of this nondiscrimination clause. Lessee shall in all solicitations or advertisements for employees state that all qualified applicants will receive consideration for employment without regard to these bases.

28. The parties hereby waive all claims against the other for damage or loss caused by any suit or proceeding commenced by a third party, directly or indirectly

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attacking the validity of this Lease, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the same, or any part thereof, from being carried out, provided that Lessee shall not be liable for payment of compensation hereunder to the extent that, during any period, it is so prevented from exercising its rights hereunder.

29. The use of paragraph headings or captions in this Lease is solely for the purpose of convenience, and the same shall be entirely disregarded in construing any part or portion of this Lease.

30. This Lease shall be governed by the laws of the State of California (except those provisions of California law dealing with conflicts of interest), both as to interpretation and performance. This Lease shall be deemed made in the State of California. Lessee agrees to submit to the jurisdiction of the California courts and that any actions relating to or arising out of this Lease shall at the option of City, be brought in or transferred to, the Superior Court of Los Angeles County, California without regard to the convenience of any other forum.

31. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Lease shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained nor of the strict and prompt performance thereof by the party obligated to perform. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default nor subsequent acceptance of compensation then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No option, right, power, remedy or privilege of either party hereto shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the parties by this Lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right,

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power, option, or remedy by a party shall not impair its rights to any other right, power, option or remedy.

32. This Lease shall be binding upon and shall inure to the benefit of the successors and assigns of City and shall be binding upon and inure to the benefit of the permitted successors and assigns of Lessee.

33. Should any term or provision of this Lease be held by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any applicable law, public policy, or with any provision of the Charter of the City of Long Beach, all other terms and provisions of this Lease shall nevertheless remain in full force and effect and such invalid, illegal, or unenforceable term or provision shall be reformed so as to comply with the applicable law or public policy (or provision of the Charter of the City of Long Beach) and to effect the original intent of the City and Lessee as closely as possible.

34. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

35. This Lease may be amended or terminated at any time by the written mutual agreement of the parties.

36. All provisions, whether covenants or conditions on the part of Lessee, shall be deemed to be both covenants and conditions.

37. Lessee acknowledges that Metropolitan Stevedore Company ("Metropolitan") and City were parties to a Second Amended and Restated Preferential Assignment Agreement between Metropolitan and City dated November 1, 2002 (Harbor Department Doc. No. HD-6655) which was amended on August 9, 2006 (HD-6655A), January 3, 2008 (HD-6655B), and September 28, 2011 (HD-6655C) (collectively, "PAA"), by which City had granted Metropolitan a preferential assignment of certain marine terminal facilities at Pier G, Berths 212 to 215. Lessee further acknowledges that execution of an Operating Agreement between City and Metropolitan, shall constitute a

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termination of all leases, subleases, subassignments and assignments of rights (whether partial or otherwise) derived from the PAA, and shall otherwise constitute a termination of the PAA, except for those duties, obligations and liabilities of Metropolitan which by their terms are intended to survive. Notwithstanding the foregoing, any obligation of Lessee to City relating to or arising out of its sublease or subassignment with Metropolitan to pay compensation or other sums due City but unpaid to City and any obligation of Lessee to indemnify the City relating to or arising out of such sublease or subassignment, whether directly or indirectly, which obligation accrued or arose prior to the termination but remained undischarged or was incipient at the termination date, as well as any insurance coverages required by such sublease or subassignment, whether directly or indirectly, to be in place during the term of the sublease or subassignment or as tail coverage, shall survive the termination of the PAA and Lessee's sublease or subassignment thereunder.

38. As noted in paragraph 37 above, City is currently processing a proposed Operating Agreement with Metropolitan. Lessee has received a copy of the proposed Operating Agreement and as between City and Lessee, Lessee has no objection to such proposed Operating Agreement. Neither Metropolitan nor any third party may enforce the provisions of this paragraph as a third party beneficiary or otherwise.

39. This document constitutes the whole agreement between City and Lessee. There are no terms, obligations or conditions other than those contained herein. No modification or amendment of this Lease shall be valid and effective, unless

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evidenced by a written agreement signed by the parties which makes specific reference to this Lease.

OXBOW ENERGY SOLUTIONS LLC, a Delaware limited liability company

_____, 2014 By: _____
Name: _____
Title: _____

_____, 2014 By: _____
Name: _____
Title: _____

LESSEE

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

_____, 2014 By: _____
A. J. Moro, P.E.
Acting Executive Director
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

CHARLES PARKIN, City Attorney

_____, 2014 By: _____
Charles M. Gale, Senior Deputy

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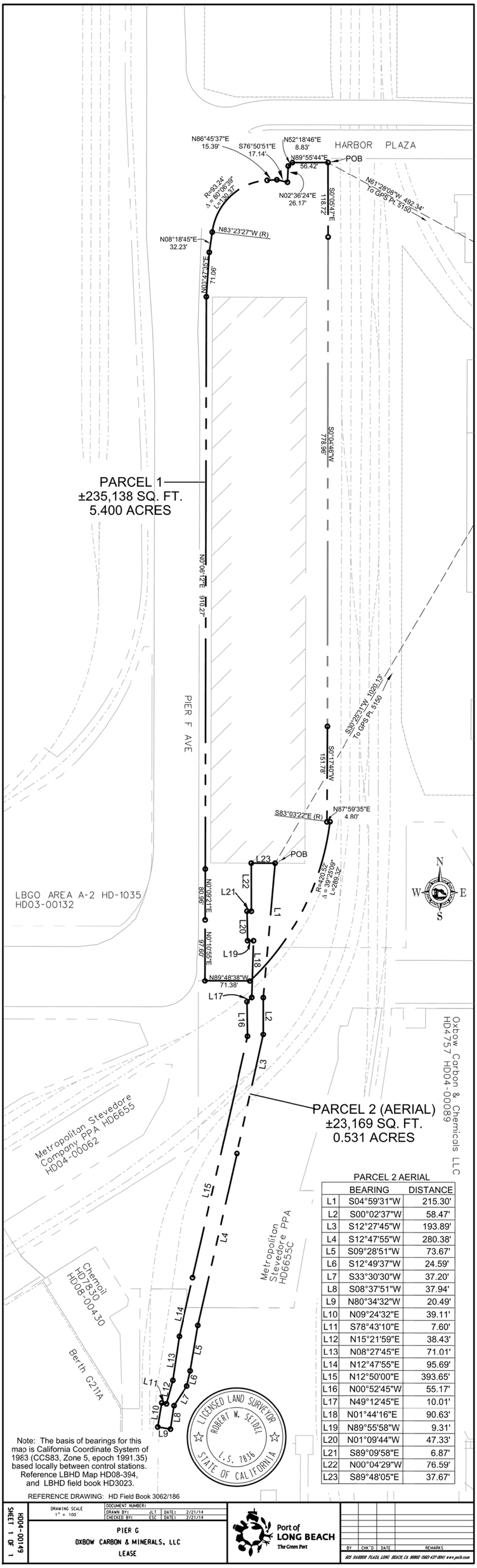


PARCEL 2 AERIAL

	BEARING	DISTANCE
L1	S04°59'31"W	215.30'
L2	S00°02'37"W	58.47'
L3	S12°27'45"W	193.89'
L4	S12°47'55"W	280.38'
L5	S09°28'51"W	73.67'
L6	S12°49'37"W	24.59'
L7	S33°30'30"W	37.20'
L8	S08°37'51"W	37.94'
L9	N80°34'32"W	20.49'
L10	N09°24'32"E	39.11'
L11	S78°43'10"E	7.60'
L12	N15°21'59"E	38.43'
L13	N08°27'45"E	71.01'
L14	N12°47'55"E	95.69'
L15	N12°50'00"E	393.65'
L16	N00°52'45"W	55.17'
L17	N49°12'45"E	10.01'
L18	N01°44'16"E	90.63'
L19	N89°55'58"W	9.31'
L20	N01°09'44"W	47.33'
L21	S89°09'58"E	6.87'
L22	N00°04'29"W	76.59'
L23	S89°48'05"E	37.67'

LICENSED LAND SURVEYOR
ROBERT W. SEIDEL
L.S. 7836
STATE OF CALIFORNIA

Note: The basis of bearings for this map is California Coordinate System of 1983 (CCS83, Zone 5, epoch 1991.35) based locally between control stations. Reference LBHD Map HD08-394, and LBHD field book HD3023.

REFERENCE DRAWING: HD Field Book 3062/186

DRAWING SCALE 1" = 100'	DOCUMENT NUMBER:		
	DRAWN BY: JLT	DATE:	2/21/14
	CHECKED BY: ESC	DATE:	2/21/14

PIER G
OXBOW CARBON & MINERALS, LLC
LEASE

Port of LONG BEACH
The Green Port

BY	CHK'D	DATE	REMARKS

925 HARBOR PLAZA, LONG BEACH, CA 90802 (562) 437-0041 www.polb.com

SHEET 1 OF 1
HD04-00149

REVISED

EXHIBIT B

Oxbow Coal Shed Lease Requirements / Environmental Covenants

Storm Water Pollution Prevention Program

Lessee shall participate in the Port of Long Beach Master Storm Water Program ("Program"). As part of the Program, Lessee is responsible for preparing and maintaining a facility specific storm water pollution prevention plan ("SWPPP") and implementing best management practices ("BMPs") where appropriate.

Hazardous Substances, Materials or Wastes

Prior to the termination date, City, at Lessee's cost, shall have the Premises inspected by qualified environmental professionals for any evidence of hazardous substances, materials or wastes occurring on or after October 1, 2000. If any such evidence is found, Lessee, at its cost, shall (i) at the request of the Executive Director or his designee, initiate chemical and/or physical analyses of the suspected contaminated material; (ii) promptly submit all laboratory or other test results upon receipt thereof to the Executive Director; (iii) develop and submit for approval by the Executive Director or his designee a remediation plan providing for the disposal and/or treatment of the contaminated material; (iv) treat and dispose of or remove such material in accordance with regulations and orders of governmental agencies having jurisdiction; (v) if material is removed, replace all such contaminated material with clean fill material structurally suitable and cause the fill material to be filled and compacted; and (vi) promptly submit copies of all waste manifests to the Executive Director.

Vessel Emission Reductions

Lessee shall ensure that all vessels calling at the Premises shall comply with the Vessel Speed Reduction Program (VSRP). The vessel speed shall not exceed 12 knots within 40 nautical miles of Point Fermin (located in San Pedro, California). This requirement may be waived, in particular instances, where reducing speed to 12 knots on a particular vessel would violate vessel safety requirements, provided that Lessee notifies the City of a specific circumstance requiring the waiver within 14 days after an incident. For purposes of this Exhibit, vessel safety requirements shall include, without limitation, situations where non-compliance is necessary to preserve crew health or safety. Only third party vessels calling at the Premises will be eligible for any VSRP related monetary incentives sponsored by, or established by the City that are already in effect under Tariff No. 4 on the Effective Date.

Vessel Low Sulfur Fuel

Lessee shall ensure that all ships calling at the Premises use marine distillate fuel (as specified by ISO 8217, Category ISO-F-DMA or ISO-F-DMB) in the ship's auxiliary power generator motors, auxiliary boilers, and main engines or to use exhaust gas treatment technology that provides equivalent emission reductions at berth and within 40 nm of Point Fermin (located in San Pedro, California). Beginning January 1, 2014, such fuel shall have a maximum sulfur content of 0.1% by weight. Emissions controls, other than those specified above, may be proposed by Lessee and used at the discretion of the Executive Director upon review and approval of emissions test data demonstrating that the proposed emissions controls can reduce emissions to the same or greater extent as the fuels specified above. This fuel requirement may be waived, in particular instances, at the discretion of the Executive Director upon review and approval of documentation demonstrating that such fuel in a particular vessel would violate vessel safety requirements. Only third party vessels calling at the Premises will be eligible for

any fuel related incentives sponsored by, or established by the City that are already in effect under Tariff No. 4 on the Effective Date.

Vessel IMO Compliance

Lessee shall require ships calling at the Premises that were constructed on or after January 1, 2000, to meet at a minimum the requirements contained in MARPOL 73/78-Annex VI, Regulation 13, Paragraph (3). Lessee will require ships calling at the Premises that were constructed on or after January 1, 2011, to meet the Tier 2 requirements identified in the revised MARPOL 73/78 - Annex VI. Lessee will require ships calling at the Premises that were constructed on or after January 1, 2016, to meet the Tier 3 requirements identified in the revised MARPOL 73/78 -Annex VI within 40 nm of Point Fermin (located in San Pedro, California). The term "ships constructed" is also taken from MARPOL 73/78 - Annex VI and is defined to mean "ships the keels of which are laid or which are at a similar stage of construction."

Green Ship Incentive Program

Lessee shall require operators of the ships calling at the Premises to register for the Port of Long Beach Green Ship Incentive Program. Lessee shall ensure that at least 5% of its annual vessel calls meet a minimum of Tier 2 equivalent vessel engine standard for NOx by December 31, 2014; at least 10% of its annual vessel calls meet a minimum of Tier 2 equivalent vessel engine standard for NOx by December 31, 2016; and at least 25% of its annual vessel calls meet a minimum of Tier 2 or Tier 3 equivalent vessel engine standard for NOx by December 31, 2020.

Reporting

Consistent with the format provided by the City, Lessee shall submit annual reports to the Director of Environmental Planning, on or before January 10 of each year, demonstrating compliance with off-road and material handling equipment requirements. This report shall include an inventory of all equipment activity, including fuel type used, hours of operation, and equipment characteristics (e.g., engine model, engine horsepower, etc.).

On or before January 10 of each year of the term following the date the Lease is fully executed, Lessee shall provide to City an annual inventory of all vessels that called at the Premises in the preceding year including fuel type used, hours at berth, calendar year to date vehicles discharged per hour, vessel characteristics (e.g. engine model, engine horsepower, etc.), and other data in a format provided by City.

Off-road Equipment

Any new diesel-powered, non-road terminal equipment purchased, or after December 31, 2014, any existing diesel-powered, non-road terminal equipment used on the Premises, whether new or repowered or retrofitted, shall comply with Environmental Protection Agency's (EPA) standards in (1) "Control of Emissions of Air Pollution from Non-Road Diesel Engines and Fuel," dated June 29, 2004 (the "Off-Road Standards"); or (2) "Control of Air Pollution From New Motor Vehicles: Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements" dated January 18, 2001.

LEED Requirements

No buildings on the Premises were constructed to Leadership in Energy and Environmental Design ("LEED") standards and certified by the United States Green

Building Council. If any LEED buildings are constructed on the Premises, Lessee shall maintain all LEED buildings in a manner consistent with preservation of LEED certification. If Lessee constructs any building in excess of 7,500 square feet, in addition to requirements set forth elsewhere in this Agreement, Lessee shall comply with the City of Long Beach Green Building Policy (Ordinance No. ORD-09-0013) or the successor policy then in effect.

Efficiency Improvements and Emission Reductions

Lessee shall minimize the release of indirect greenhouse gas (GHG) emissions through measures that improve efficiency and reduce emissions at the facility. Measures to reduce GHG emissions from electricity generation shall include, but are not limited to the installation of low-energy demand lighting (e.g., fluorescent or light-emitting diode) at the Premises, except where compatible energy efficient lighting is not available or its installation could compromise safety. Within six months of the effective date of this Lease, Lessee shall submit to the Port a proposed plan and schedule for implementing the measure. The low-energy demand lighting shall be completed within three years from the effective date of the Lease. Once the installations have been completed, Lessee shall prepare a report detailing the number of existing lights replaced and the number of new low-energy demand lighting installed. The report shall be submitted to the Port and also include a quantitative assessment of the amount of greenhouse gas emissions reduced from each of the two measures.

Indirect GHG Emission Avoidance and Mitigation

Lessee shall be required to use green commodities, such as those available from the California Climate Action Registry's Climate Action Reserve or other third-party broker of verified/certified carbon offsets, to offset carbon emissions associated with the facility's electricity consumption subject to the limitation specified below. This measure applies to all electricity consumed at the Premises. The Premises-related carbon emissions from electricity consumption shall be calculated each year based on the local utility's carbon intensity for that year as recognized by the State of California. Lessee may adjust the carbon intensity value to wholly reflect any carbon offsets provided by the electricity deliverer (i.e., point of generation or point of importation) under applicable California and/or federal cap-and-trade regulations (i.e., no double offsetting). The Port is limiting the potential cost of this measure. The maximum expenditure for purchased offsets required under this measure shall not exceed 15 percent of Lessee's electricity costs for any given year (i.e., cost of offsets shall not exceed 15 percent of Premises electricity costs).

Clean Technology Demonstrations

Lessee shall provide cooperation and assistance to City in testing of at-berth emission control technologies for vessels that call at the Premises. Such assistance shall include Lessee, in response to requests by City from time to time, making available at no cost to City a vessel for a demonstration of the technology's emission reduction capability. Lessee's duty to make available a vessel is limited to three vessels.

EXHIBIT C

PORT OF LONG BEACH

OXBOW CARBON & MINERALS, LLC

INSURANCE

The required insurance and the documents provided as evidence thereof shall be in the name of the Lessee. If policies are written with aggregate limits, the aggregate limit shall be at least twice the occurrence limits or as specified below:

Commercial General Liability:

Commercial General Liability insurance shall be provided on Insurance Services Office (ISO) CGL Form No. CG 00 01 or the equivalent, including provisions for defense of additional insureds and defense costs in addition to limits. Policy limits shall be no less than ten million dollars ($10,000,000) per occurrence for all coverage provided and ten million dollars ($10,000,000) general aggregate. The policy shall not limit coverage for the additional insured to "ongoing operations" or in any way exclude coverage for completed operations. Coverage shall be included on behalf of the insured for claims arising out of the actions of independent contractors. The policy shall contain no provisions or endorsements limiting coverage for contractual liability, third party over action claims, or explosion, collapse, or underground hazards. Defense costs shall be excess of limits. If the Lessee utilizes Subcontractors the policy must include work performed "by or on behalf" of the Lessee. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall not exclude contractual liability, restrict coverage to the sole liability of the Lessee or contain any other exclusion contrary to the Agreement.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Contract with the Port and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Contract.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured using ISO Forms CG 20 10 (2004) and CG 20 37 (2004) or their equivalent. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Business Automobile Insurance:

Automobile Liability Insurance shall be written on ISO Business Auto Coverage Form CA 00 01 or the equivalent, including symbol (1) (any Auto). Limit shall be no less than five million dollars ($5,000,000) combined single limit per accident. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. If Lessee does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies provided that a separate policy limit is provided for this coverage as required by this contract.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Environmental Impairment Liability Insurance:

Environmental Impairment Liability insurance shall be provided on a Environmental Impairment Liability policy form or other policy form acceptable to City providing coverage for liability caused by pollution conditions arising out of the operations of Lessee. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy limit shall be no less than ten million dollars ($10,000,000) per claim and ten million dollars ($10,000,000) general aggregate. All activities contemplated in the Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors the policy must include work performed "by or on behalf" of the insured. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Agreement with the Port and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the lessee, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Workers' Compensation:

Workers' Compensation Insurance, as required by the State of California, and Employer's Liability Insurance with a limit of not less than one million dollars ($1,000,000) per accident for bodily injury and disease, plus coverage under the U.S. Longshore and Harbor Workers' Act (USL&H) for employees performing services covered by said Act(s).

The policy of insurance required above shall be endorsed, as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its Board of Harbor Commissioners, employees and agents.

Cancellation: The policy shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Property Insurance:

Property Insurance on an 'All Risk' basis equal to the full replacement cost of all improvements on the leased premises with no coinsurance clause. The City of Long Beach shall be named as Loss Payee.

Deductible/Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the City, its Board of Harbor Commissioners, agents and employees in the same

manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. Any deductible or self-insured retention must be approved in writing in accordance with City insurance guidelines.

Evidence of Insurance

The Contractor, concurrently with the execution of the Contract, and as a condition precedent to the effectiveness thereof, shall deliver either endorsements on forms approved by the City of Long Beach acting by and through the Board of Harbor Commissioners ("Evidence of Insurance") or certified copies of the required policies containing the terms and conditions required by this contract to the Executive Director for approval as to sufficiency and to the City Attorney for approval as to form.

At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance has been renewed or extended shall be filed with the Executive Director. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Executive Director evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

NOTE: Samples of approved City endorsement forms are included at the rear of this specification book for reference. Forms for execution will be provided with the Contract. Copies of approved endorsement forms can be obtained from the Port website in lieu of, or in addition to the forms provided herein or with the Contract at:

http://www.polb.com/economics/forms_permits/insurance.asp

Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work or delay damages resulting from the suspension.

Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII, and authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City insurance guidelines.

Contractual Liability

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this Contract but this insurance provision in no way limits the indemnity provisions and the indemnity provisions in no way limits this insurance provision.

Attachment 6

November 23, 1992 Staff Report and 1992 Negative Declaration for the Coal Shed

AGENDA ITEM NO. 13

THE PORT OF LONG BEACH

MEMORANDUM

BOARD OF HARBOR COMMISSIONERS
LONG BEACH CALIFORNIA

PERMITS-Harbor Development
91046 — POLB

Meeting of NOV 23 1992

Action APPROVED

DATE November 18, 1992

TO Board of Harbor Commissioners

FROM Geraldine Knatz, Director of Planning

SUBJECT Staff Recommendation to Certify the Negative Declaration and Application Summary Report, and Grant a Level II Harbor Development Permit for the Port of Long Beach Dry Bulk Handling Improvements Project - HDP #91046

The Port of Long Beach has applied for a permit to perform the following work within the Long Beach Harbor District:

Project Description: Construct a 150,000-ton-capacity, covered coal storage shed. The shed would include two rotary plow reclaimers for blending the coal and conveyors to connect the shed to rotary car dumper and to the existing conveyor system that feeds the shiploaders. A new, electric-powered, traveling shiploader would be installed, and the existing railyard reconfigured.

Location: Pier G, Long Beach

Cost: $22,000,000

The project is described in the application dated May 8, 1991, and in three unnumbered drawings.

The Planning Division determined that said work required a Negative Declaration document pursuant to the California Environmental Quality Act, as amended. In addition, a determination has been made under the Port Master Plan Guidelines that this project qualifies as a Level II project and is in conformance with the certified Port Master Plan, the permitted uses of the Southeast Harbor Planning District, and Chapter 8 of the California Coastal Act.

On October 19, 1992, the Board of Harbor Commissioners released the Negative Declaration/Application Summary Report document for the Dry Bulk Handling Project for public review. All pertinent documents related to the project were mailed to the interested public on October 19, 1992. The comment period ended on November 19, 1992. No letters of comment were received during the comment period.

Therefore, we respectfully request the Board to take the following actions with respect to this project:

1. Adopt the Negative Declaration/Application Summary Report and proposed Staff Recommendations and

G21024

2. Approve the issuance of a Level II Harbor Development Permit, pursuant to the California Coastal Act, certified Port Master Plan, and Article XII, Section 1215 of the Long Beach City Charter, subject to the permit conditions listed below.

Standard Conditions: Issuance of the Harbor Development Permit is subject to all Standard Permit Conditions.

Special Conditions:

1) Permittee shall minimize fugitive dust emissions resulting from demolition and fill activities by using water trucks or sprinkling systems to keep all areas subject to vehicle movement damp enough to prevent dust being raised when leaving the site and by wetting down project areas in the late morning and after work is completed for the day. Permittee shall submit to the Director of Planning a monthly, written report describing daily watering times, amount of water used, and area covered by the watering.

2) Permittee shall submit landscaping and sprinkler system plans to the Director of Planning, prior to the start of project construction. Permittee shall not undertake any construction until such plans have been approved by the Director of Planning, whose approval shall not be withheld unreasonably.

3) Permittee shall submit a Storm Water Pollution Prevention Plan to the Director of Planning, for approval, prior the start of facility operation. The Plan shall include Best Management Practices for the control of material accumulation around the coal shed, shiploader and wharf.

Geraldine Knatz
Director of Planning

Recommended by:

Paul E. Brown
Assistant Executive Director

Approved by:

S.R. Dillenbeck
Executive Director

TDJ:s

NEGATIVE DECLARATION
Prepared in Accordance With the
California Environmental Quality Act of 1970
As Amended

And

APPLICATION SUMMARY REPORT
Prepared in Accordance With the
Certified Port Master Plan and California Coastal Act of 1976

For

PORT OF LONG BEACH
DRY BULK HANDLING IMPROVEMENTS PROJECT

This narrative and attached documents, including the project description, site visitation, staff analysis and where appropriate, mitigation measures to be implemented, constitute a Negative Declaration, prepared in accordance with the California Environmental Quality Act and an Application Summary Report with Proposed Staff Recommendations prepared in accordance with the certified Port Master Plan (PMP) and California Coastal Act of 1976. Based upon data contained herein, the proposed project has been determined not to have any significant adverse environmental impacts and is in conformance with the stated policies of the PMP. This document was circulated for public review and becomes effective upon adoption by the Long Beach Harbor Commission.

ISSUED FOR PUBLIC REVIEW: October 19, 1992

BY: DIRECTOR OF PLANNING

Geraldine Knatz

NEGATIVE DECLARATION ADOPTED ON: November 23, 1992

BY: CITY OF LONG BEACH BOARD OF HARBOR COMMISSIONERS

Application No. 91046

PORT OF LONG BEACH
PIER G BULK HANDLING IMPROVEMENTS PROJECT

I. PROJECT BACKGROUND

The Port of Long Beach is proposing to build a coal storage shed on a five-acre site at the junction of Pier A and Pier G (Figure 1). The shed would have a capacity of 150,000 metric tons and would be used by the Metropolitan Stevedore Company (Metro). The site was previously used for maintenance and stevedoring activities and petroleum product storage.

Metro began general stevedoring operations for the Port of Long Beach in 1939, handling black bulk products such as coal and calcined coke, and white bulk products such as soda ash and potash. Metro's bulk handling facilities have been at their current location at Berths 212-215 on Pier G since 1961.

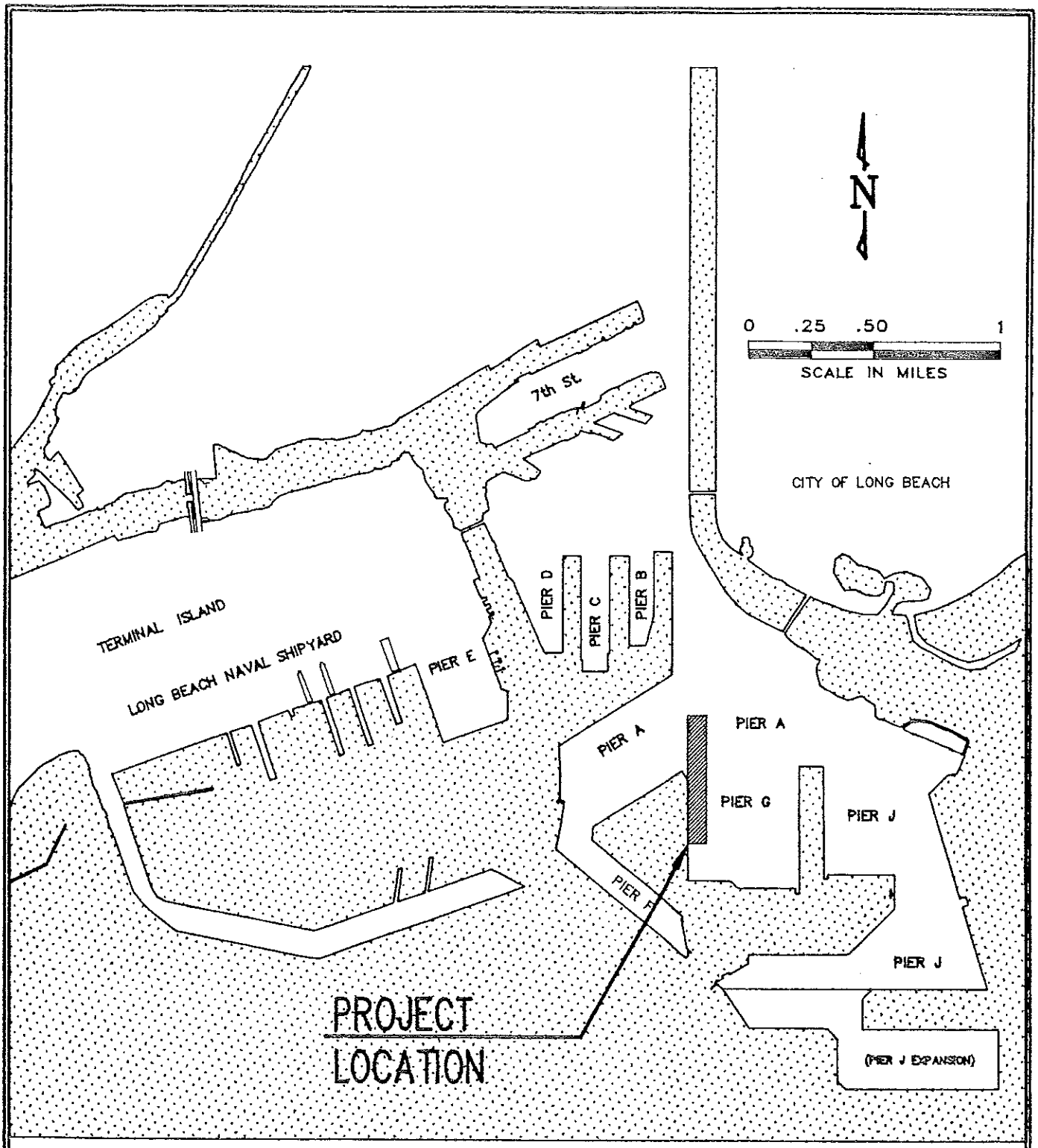
In 1981, the Port began extensive modifications to increase the Pier G facility's handling capacity to five million metric tons. The modifications included construction of a second shiploader, installation of additional conveyors, a water treatment system and a dust suppression system; and increasing the dockside water depth from -34 feet to -50 feet. The upgraded handling facility, which was completed in 1984, would service the proposed coal storage facility.

II. PROJECT DESCRIPTION

The proposed project would increase the efficiency of bulk material handling and would also greatly increase the efficiency of train movements in the Port area. The project would also eliminate the necessity of storing loaded rail cars on sidings in the Long Beach area. The 150,000 ton storage capacity of the shed would enable a ship to be loaded entirely from material on site rather than, as at present, waiting for additional closely spaced train deliveries. Loading ships entirely from on-site storage will permit regular scheduling of trains and will reduce costs and air emissions associated with ship standby times.

The Port of Long Beach is proposing to make the following improvements to the existing bulk handling facilities on Pier G (Figure 2):

- A 900-feet long, 160-foot wide, 110-feet high, covered coal storage shed with two rotary plow reclaimers for blending the coal will be constructed. The shed would include a conveyor system to connect the new plow reclaimers to the existing conveyor system that feeds Shiploaders #1 and #2. An additional conveyor

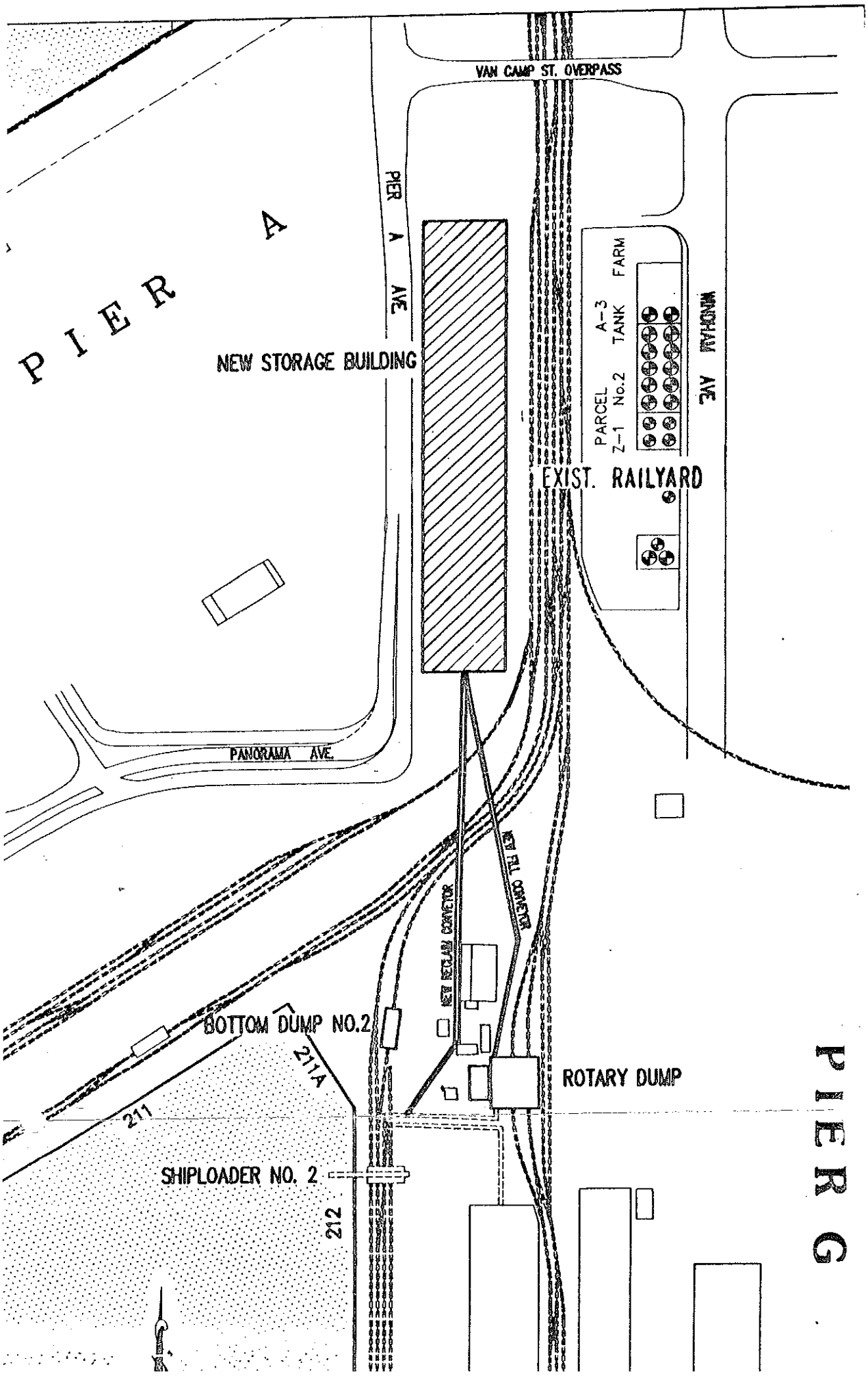


PORT OF LONG BEACH

CALIFORNIA

VICINITY MAP

FIGURE 1


VAN CAMP ST. OVERPASS
PIER A
PIER A AVE.
NEW STORAGE BUILDING
PARCEL Z-1 No.2
A-3 TANK FARM
MONTGOMERY AVE.
EXIST. RAILYARD
PANORAMA AVE.
NEW RECLAIM CONVEYOR
NEW FILL CONVEYOR
BOTTOM DUMP NO.2
211A
211
ROTARY DUMP
SHIPLOADER NO. 2
212
PIER G

system adjacent to the rail tracks would be installed to connect the rotary car dumper system to the new storage shed. Approximately 100,000 cubic yards of fill would be placed on the site prior to construction of the shed to raise the floor elevations and to compact the underlying soils. Approximately 65,000 cubic yards of that fill would be removed to adjacent projects once the compaction process is complete.

- The existing railyard will be reconfigured, including the addition of new crossovers. The modifications would allow better access to the car dumper, provide for future grade separation projects at El Embarcadero and Windham Avenue, and allow storage of two full unit trains.

- At a later time, as Phase II of the project, a new, electric-powered, traveling shiploader would be added between Shiploaders #1 and #2. The new shiploader would be dedicated to white products, thus eliminating the complete washdown now required when changing from black to white product shipments. Contamination problems would be eliminated and more time would be available for the movement of each product. In addition, less water would be consumed, which would reduce the amount of the resulting mixture of waste washdown products.

III. CALIFORNIA ENVIRONMENTAL QUALITY ACT ISSUES

Based on the attached Initial Study, the project would have no significant adverse impacts. The project has the potential to cause minor adverse impacts, most of them temporary during construction, on atmospheric resources, earth resources, noise, and local transportation. Beneficial and adverse impacts are discussed below; section numbers refer to numbers in the attached Initial Study.

1. Atmospheric Resources

a. No increase in operational emissions is anticipated as a result of the proposed project. The shiploader and conveyor system would be powered by electric motors so that there would be no operational exhaust emissions. The shed itself (which will be roofed) and the unloading and conveyor systems would be totally enclosed, thus eliminating particulate emissions. As an additional benefit, fugitive particulate emissions from loaded rail cars stored on sidings would be greatly reduced.

b. Construction of the proposed project would generate exhaust emissions from construction equipment. These emissions would be temporary, lasting only during the 18 months of construction.

Estimated exhaust emissions from the vehicles and equipment to be used on the construction of this project are summarized in Table A. Based upon assumed operating equipment and conditions and the emission factors presented in EPA and Air Resources Board publications, the emissions of NOx are expected to exceed the South Coast Air Quality Management District's (SCAQMD) threshold (applicable to operational emissions) for a significant project as defined by amended Rule XIII (October, 1990). The emissions of the other regulated air contaminants would not exceed the SCAQMD guidelines. Although up five acres would be disturbed at any given time during time during construction, particulate emissions from erosion are expected to be minor because dust suppression measures would be required per Special Condition No. 1 and SCAQMD guidelines for construction. The totals in Table A represent the worst case, assuming all equipment is operating at once; actual construction emissions are unlikely to attain these levels since construction activities will be phased. Because emissions from construction are temporary, they are considered to have a minor effect on existing local air quality and a negligible effect on overall regional air quality, and thus are not considered significant.

TABLE A
CONSTRUCTION EXHAUST EMISSIONS

		Pollutants (lbs/day)[1]			
Source	No.	CO	ROG	NOx	Part.
Backhoe	3	13.6	6.4	45.6	4.0
Grader	2	2.4	0.8	11.2	0.8
Track Loader	3	43.2	4.8	100.0	4.0
Miscellaneous[2]	6	32.8	7.2	80.0	6.4
Paver	2	7.8	0.8	18.3	1.2
Heavy Duty Truck[3]	4	1.6	0.6	4.1	0.5
Light Truck[4]	2	1.3	0.1	0.1	N/A
TOTAL		102.7	20.7	259.3	16.9
SCAQMD Threshold		220.0	30.0	40.0	30.0

1. Based on an eight-hour work day
2. 2 Cranes, 2 Trenchers, 1 Spike Setter Driver, 1 Multi-pile Tamper

3. Values based on a 20-mile round trip, 1982-1984 year Heavy Duty Diesel Powered Vehicles with 50,000 miles
4. Values based on a 20-mile round trip, pre-1988 year, gasoline-powered Water Truck with 50,000 miles.

Sources: USEPA. 1985. Compilation of Air Pollution Emission Factors. AP-42, 4th Edition.

California Air Resources Board. 1986. Motor Vehicle Emission Factor Program - EMFAC7C.

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c. The proposed project is not expected to alter or change air movement, moisture, temperature, or microclimate patterns.

2. Water Quality

a-b. Drainage from the project site would be contained and treated by the closed system currently in use on Pier G. Therefore, there would be no discharge to harbor waters, and no impact to surface water quality from the proposed project.

c. Currently vacant, unpaved land would be paved or covered by the shed, causing a change in absorption rates and drainage patterns. However, due to the industrialized nature of the area, these impacts are not considered to be significant.

d-e. There would be no change in the quantity or quality of ground water or in the exposure of people or property to water-related hazards as a result of the proposed project.

3. Earth Resources

a. The proposed project would not result in a change to earth conditions or geologic substructures.

b. Construction of the shed, conveyor system, and rail spur would result in disruption of the soil. However, since this area is completely industrialized and has been disturbed in the past, any impact is considered insignificant.

c-d. The proposed project would change local topography due to the placement of imported fill to approximately 10 feet above the existing surface elevation at the north end and approximately two feet above the existing at the south end. No change to unique geologic or physical features would occur.

e. There would be a beneficial impact on soil erosion since the remaining project site would be paved following the construction of the coal shed.

f-g. The proposed project would not result in a change in deposition, erosion, or siltation of beach sands since there is no beach within the proposed project area. Due to the industrialized nature of the project site, there would be no change in the exposure of people or property to geologic hazards.

4. Vegetation and Animal Life

Due to the heavily industrialized nature of the site, there is no potential for adverse impacts to terrestrial or aquatic biota.

5. Noise

Construction activities would result in a temporary increase in noise levels at the project site, but noise levels would revert to ambient once the project is completed. The Long Beach Fire Station No. 6 (southwest corner of Windham Avenue and Van Camp Street) is the only noise-sensitive land use that could be affected by the proposed project. Firemen are on duty 24 hours per day at this station. However, they currently experience noise from truck movements on Windham Avenue and rail switching operations to the rear of the station. Therefore, the proposed project is not expected to have a significant impact on the firemen assigned to the station.

6. Visual Quality

The proposed project would result in changes to the visual quality of the area. The construction of the 110-foot shed and third shiploader (100 feet in height) would modify the visual quality of the area and obstruct some views. The project

site is located adjacent to an existing bulk handling facility and is isolated from areas generally frequented by the public. The shed and shiploader would only be visible from the taller buildings in the downtown shoreline area of Long Beach and a few office buildings in the Port. The view of the project from lower levels in the downtown area and along the eastern shoreline of Long Beach would be obstructed by existing structures in the foreground. The shed and shiploader will be visible from the north, west, and south. These views encompass the bulk of the harbor area and are very industrialized in nature. In this setting, the shed and shiploader are not expected to have a significant adverse visual impact.

7. Cultural Resources/Recreation

The proposed project would not affect any buildings or other structures that could be considered significant cultural or archeological resources, nor would it affect recreational opportunities. No scientific or educational institutions would be affected in any way.

8. Land Use

The proposed project is consistent with and is not expected to have any impact on City zoning or Port Master Plan land use designation.

9. Transportation

The proposed project would not increase the number or length of trains arriving at the Port. The trains carrying coal to the Pier G facilities currently arrive on an irregular schedule that corresponds with ship loading. As a result, up to three trains per day and 16 trains per week may arrive at the facilities when a ship is being loaded. With the proposed project, the trains would arrive on a regular schedule of two trains per day, ten trains per week, regardless of whether a ship is present. This is likely to have a minor beneficial impact because the arrival of trains would be spread over a greater time period, which will reduce or eliminate traffic impacts currently caused by the arrival of several trains over a short time period. The same number of train cars would arrive at the Port as at present. The current practice of storing loaded rail cars on sidings in residential areas would no longer be necessary.

10. Utility Systems

The proposed project would involve the relocation of an 18-inch sewer line, a 12-inch water line, and a Southern California Edison power duct, but would not involve substantial alterations of or demands on utility systems.

11. Public Services

The proposed project would not cause changes that alter the nature of or need for public services.

12. Risk Management

This project conforms to the Port Risk Management Plan and would not result in a change in the risk of explosion or response times for emergency services.

13. Economic Considerations

The proposed project would not result in any new economic impacts.

14. Energy

There would be no change in the use or demand for substantial amounts of local or regional energy supplies.

15. Social Considerations

The proposed project would not result in a change in any human population concentrations or in the location or demand for housing.

16. Mandatory Finding of Significance

The proposed project does not have the potential to degrade the quality of the environment. The proposed project would have no long-term or cumulative adverse impacts upon humans or the natural environment.

IV. PORT MASTER PLAN AND COASTAL ACT ISSUES

The proposed project is located within the Southeast Harbor Planning District which is composed of primary port users dedicated to general and bulk cargo shipments. Port Master Plan goals in this district include modernization and maximization of existing facilities and increased handling efficiencies of cargo. Applicable portions of the California Coastal Act are outlined below with a brief description of each.

30260 - Use of Existing Sites

The project would expand the use of an existing primary port facility.

30708 - Environmental Impacts

This Negative Declaration, prepared pursuant to CEQA, has shown no significant environmental impacts.

30715 - Appealable Projects

Under provisions of the Port Master Plan, the project is not appealable to the California Coastal Commission.

V. PROPOSED STAFF RECOMMENDATIONS

The staff recommends that the Board of Harbor Commissioners adopts the following minute order:

1. Findings and Declarations

The Board of Harbor Commissioners finds and adopts as its findings the project background, project description, and analysis of port planning issues and related projects, as set forth in the Negative Declaration/Application Summary Report attached hereto, which are incorporated by reference as though fully set forth herein.

2. Approvals with Conditions

The Board of Harbor Commissioners hereby grant a Level II Harbor Development Permit subject to the conditions below for the proposed development on the grounds the proposed development, as conditioned, would be in conformity with the California Coastal Act and the permitted uses for the Southeast Planning District.

3. Standard Conditions

The permit is subject to the standard conditions given in the attached Exhibit A.

4. Special Conditions

1. Permittee shall minimize fugitive dust emissions resulting from demolition and fill activities by using water trucks or sprinkling systems to keep all areas subject to vehicle movement damp enough to prevent dust being raised when leaving the site and by wetting down project areas in the late morning and after work is completed for the day. Permittee shall submit to the Director of Planning a monthly, written report describing daily watering times, amount of water used, and area covered by the watering.

2. Permittee shall submit landscaping and sprinkler system plans to the Director of Planning, prior to the start of project construction. Permittee shall not undertake any construction until such plans have been approved by the Director of Planning, whose approval shall not be withheld unreasonably.

3. Permittee shall submit a Storm Water Pollution Prevention Plan to the Director of Planning, for approval, prior the start of facility operation. The Plan shall include Best Management Practices for the control of material accumulation around the coal shed, shiploader and wharf.

EXHIBIT A

PERMIT CONDITIONS

This permit shall be subject to the following conditions

1. Effective Date: This permit shall not become effective until the ORIGINAL has been returned to the Planning Division, fully signed by the permittee or agent(s) authorized in the permit application. Failure to return the original within thirty (30) days of approval shall render the permit invalid. Other conditions notwithstanding, if the project is appealable the permit shall not become effective until after the tenth (10th) working day following notification of approval, unless an appeal has been filed with the California Coastal Commission within that time. By executing this permit, permittee or its agent(s) acknowledge that they have received a copy of said permit and accept its contents. The permittee shall keep a copy of the fully-signed permit for its use and post said copy conspicuously at the project site.

2. Non-Waiver Condition: Nothing in this permit shall be deemed or construed as a waiver of any term or condition contained in permittee's lease, preferential assignment, permit, or other agreement with the Long Beach Harbor Commission.

3. Permit Expiration: Work authorized by this permit must commence within two years of the effective date of this permit unless otherwise specified. If work has not commenced, this permit will expire two (2) years from its effective date. Any application for an extension of said commencement date must be made at least thirty (30) days prior to the expiration of this permit.

4. Assignment: This permit shall not be assigned except as provided in the Board of Harbor Commissioners' Port Master Plan Implementation Guidelines and in Section 13170 of Title 14 of the California Administrative Code, to the extent applicable.

5. Compliance With Laws and Regulations: Permittee shall comply with all laws, statutes, rules, regulations, and orders of all governmental agencies having jurisdiction over the permittee's project. Permittee, at its own expense, shall obtain all requisite permits, approvals, and consents from the appropriate agencies, including but not limited to the Long Beach Harbor Department, the City of Long Beach Department of Planning and Building, the City of Long Beach Fire Department, the South Coast Air Quality Management District, the California Department of Health Services, and the Regional Water Quality Control Board, and shall comply with any such permit, approval, or consent. Copies of all requisite permits shall be available for inspection at the project site.

6. Construction Drawings: Final plans and specifications for construction, incorporating any modifications made by the Harbor Department, shall be submitted to the Planning Division for review and approval prior to commencement of any portion of the development.

7. Notification: Permittee shall notify the Chief Harbor Engineer, in writing, of the anticipated start date of any construction at least ten (10) days in advance. Permittee shall also notify the Harbor Department Traffic Engineer ten (10) days prior to the commencement of any project that may affect traffic flow on any street within the Harbor District.

8. Permission From Property Owner: Prior to commencing construction on property not under permittee's control, permittee shall notify and obtain written approval from the owner or lessee of any such property, and shall submit copies of all such approvals to the Director of Planning.

9. Subsurface Construction: Permittee shall consult with the Surveys and Mapping Section of the Harbor Department regarding possible interferences to underground utilities for all work involving excavation. Permittee shall be responsible for all damage to underground structures and utility lines occurring as a result of project construction, and shall restore all ground surfaces disturbed by excavation to original conditions, unless otherwise provided for by the permitted project design. Permittee shall conduct all subsurface work in accordance with Harbor Department Standard Specification No. 116.

10. Conduct of Work: Permittee shall perform all work in strict accordance with the plans and specifications approved by the Harbor Department Planning Division. Permittee shall conduct project site preparation and construction activities in a manner that minimizes dust and releases of materials into harbor waters. Distribution and/or removal of surplus materials (fills, dirt, broken asphalt, etc.) generated by construction activities on property under the jurisdiction of the Harbor Commission must have prior approval of the Chief Harbor Engineer.

11. As-Built Drawings: As-built drawings for construction within the Harbor District shall be submitted to the Construction Inspection Section of the Harbor Department within thirty (30) days of the completion of work. Except in the case of underground work, final construction drawings may serve as as-builts provided a set of such drawings are submitted and stamped "as-built". For underground work, permittee shall submit to the Construction Inspection Section, within thirty (30) days of completion of the work, two (2) sets of as-built drawings and survey notes, signed by a licensed surveyor who shall certify to the correctness of the horizontal and vertical alignments. All of said drawings shall be drawn to a scale of no more than one hundred (100) feet to the inch, shall show the accurate alignments by centerline traverses, shall be referenced to all intersections of street property lines and survey points furnished by the Harbor Department, and shall show the elevations of the tops of the pipelines and facilities. All survey work shall be to the latest third order of accuracy as established by the National Oceanic and Atmospheric Administration survey.

12. Hazardous Materials: If during the course of construction permittee shall discover or have reason to believe that material being excavated at the project site contains extremely hazardous wastes or hazardous wastes as those terms are or have been defined by the Administrator of the Environmental Protection Agency, the California Department of Health Services, or any other person or agency having jurisdiction over the management of hazardous materials, permittee, at its cost, shall: (i) promptly notify the Director of Planning of the permittee's discovery or belief; (ii) at the request of the Director of Planning, initiate chemical and/or physical characterization of the material; (iii) promptly submit all laboratory and test results to the Director of Planning on receipt thereof; (iv) develop and submit for approval to the Director of Planning a remediation plan providing for the disposal and/or treatment of the contaminated material; (v) implement that plan in accordance with the regulations and orders of the governmental agencies having jurisdiction; (vi) if material is removed, replace all such material with clean fill material that is structurally suitable for the project, and cause the excavation to be backfilled and compacted; and (vii) promptly submit copies of all waste manifests to the Director of Planning.

13. Traffic Management: Prior to commencement of construction that may affect traffic within the Harbor District, permittee shall submit to the Long Beach Harbor Department Traffic Engineer a traffic warning and control plan. Permittee may elect to have the Harbor Department provide and install traffic warning and control signs and devices, in which case permittee shall reimburse the Harbor Department for the costs thereof. All traffic warning and control devices, signs, and plans shall be in accordance with the Work Area Traffic Control Handbook (BNI Books).

14. Landscaping: Permittee shall maintain all landscaping and irrigation systems installed in accordance with this permit in a healthy and functional condition.

15. Non-Compliance Penalties: Violation of any provision or condition in this permit shall constitute grounds for revocation of this permit and shall render the permittee liable for civil penalties of up to $10,000.00. Any person who wilfully and knowingly conducts work in the Harbor District in violation of the Port Master Plan Guidelines shall be liable for civil penalties of $5000.00

No. 91046

PORT OF LONG BEACH
PLANNING DIVISION
INITIAL STUDY and CHECKLIST

DATE: September 9, 1991

SITE: Pier A Avenue Coal Shed

INITIAL STUDY PREPARED BY: S. E. Crouch

Project Description:

Construct a 150,000 metric ton coal shed including a conveyor, rail spur and equipment. Construct a new ship loader.

Environmental Setting

1. Existing Use and Condition of the Site:

   a. Number of structures, location, use and size:

   Vacant

   b. Site/structure condition and age: Good

   c. Site dimensions: 1000' x 200' ≈ 4.5 acres

   d. Number of existing parking spaces: N/A

   Open: _____ Enclosed: _____

   e. Condition of:

   Curbs/gutters: N/A

   Pavement: N/A

   Storm drains: N/A

   f. Landscaping and/or other features including landforms:

   N/A

g. Ambient noise and major sources of noise: Rail lines, Pier A Avenue, and Pier G Avenue

h. Current traffic conditions: Moderate along Pier A Avenue

i. Existing use and project's compatibility with surrounding land uses: Compatible with existing uses

2. Uses of Surrounding Properties:

	Adjacent Land Use (Precise Use)	Structure Height	Structure Condition
North:	Fire Station	15'	Good
South:	Pad No. 14	N/A	N/A
	Coke Shed	60'	Good
East:	Railroad Tracks	N/A	N/A
	Container Storage	N/A	N/A
West:	Pier A Avenue	N/A	N/A
	LBCT	N/A	N/A

ENVIRONMENTAL ASSESSMENT CHECKLIST

	Beneficial Impact	Minor Adverse Impact	Significant Adverse Impact	No Impact
1. ATMOSPHERIC RESOURCES				
Will the proposal result in:				
a. Changes in generation of emissions (gases, chemicals, particulates, clarity and odor) or deterioration of ambient air quality.				X
b. Generation of construction emissions.		X		
c. Alterations of air movement, moisture, temperature, change in micro-climate or patterns.				X
2. WATER QUALITY				
Will the proposal result in:				
a. Alteration of surface water quality.				X
b. Change in current, course, or direction of water movement.				X
c. Change in absorption rates, drainage pattern or rate and amount of surface water runoff.		X		
d. Change in quantity, quality of ground water.				X
e. Change in exposure of people property to water related hazards, i.e. flooding.				X
3. EARTH RESOURCES				
Will the proposal result in:				
a. Change in earth conditions or change in geologic substructures.				X
b. Disruptions, displacements, compaction of the soil.		X		

	Beneficial Impact	Minor Adverse	Significant Adverse	No Impact
c. Change in topography.				X
d. Modification of unique geologic or physical features.				X
e. Change in wind or water erosion of soils.	X			
f. Change in deposition, erosion of beach sands, siltation, deposition or erosion.				X
g. Change in exposure of people or property to geologic hazards such as earthquakes and ground failure.				X

4. VEGETATION and ANIMAL LIFE

Will the proposal result in:

a. Change in diversity or number of species.				X
b. Change in numbers of rare or unique species.				X
c. Change in existing plant or wildlife habitat.				X

5. NOISE

Will the proposal result in:

a. Change in ambient noise levels.				X
b. Change in exposure of populations to noise levels.		X		
c. Conformance with applicable noise ordinances and/or other regulations.				X

6. VISUAL QUALITY

Will the proposal result in:

a. Changes in light or glare from street lights or other sources				X
b. Alterations of existing views.		X		

	Beneficial Impact	Minor Adverse Impact	Significant Adverse Impact	No Impact
c. A change in harmony and compatiblity with adjacent uses (i.e. building height, bulk, mass, scale, alignment, color, exterior facade materials).				X
d. Changes in structures visible to the public view.		X		
e. Visible mechanical equipment on the rooftop.				X
7. CULTURAL RESOURCES/RECREATION				
Will the proposal result in:				
a. Change in quality or quantity of recreational opportunities.				X
b. Change in significant archaeological or historical sites.				X
c. Change in quality or quantity of existing educational or scientific institutions.				X
8. LAND USE - DESIGN				
Will the proposal result in:				
a. Conformance with:				
(1) Adopted General Plan and elements.				X
(2) Zoning Ordinances.				X
(3) Relevant regional plans and policies.				X
b. Compatibility with adjacent land uses (i.e. preservation of privacy, spatial cohesiveness, personal safety).				X
c. Change in intensity of development (i.e. rate and density of development).				X
d. Change in open space (i.e. amenities or recreational uses)				X
e. Sufficient building setbacks for sunlight and views.				X

	Beneficial Impact	Minor Adverse Impact	Significant Adverse Impact	No Impact
f. Sufficient natural air circulation in and around buildings.				X
g. Change in parking facilities in terms of number, design, and access from the street.				X
9. TRANSPORTATION				
Will the proposal result in:				
a. Change in vehicular movement.	X			
b. Change in demand for new parking.				X
c. Impact upon existing transportation systems.	X			
d. Alterations to present patterns of circulation or movement of people and/or goods.				X
e. Change in traffic hazards to motor vehicles, bicyclists, or pedestrians.				X
f. Changes in waterborne, rail or air traffic.				X
10. UTILITY SYSTEM				
Will the proposal result in a need for new systems, or substantial alterations to the following:				
a. Electricity or natural gas.				X
b. Communications systems.				X
c. Water.				X
d. Sewer.				X
e. Storm water systems.				X
f. Solid waste systems.				X

	Beneficial Impact	Minor Adverse Impact	Significant Adverse Impact	No Impact
11. PUBLIC SERVICES				
Will the proposal result in a change in demand for:				
a. Police protection.	____	____	____	X
b. Fire protection.	____	____	____	X
c. Public recreation facilities management and maintenance.	____	____	____	X
d. Street maintenance and trash collection.	____	____	____	X
e. Public health services.	____	____	____	X
12. RISK MANAGEMENT				
Will the proposal:				
a. Create risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation).	____	____	____	X
b. Change response time for emergency services or change evacuation ease.	____	____	____	X
c. Conform with the Port Risk Management Plan.	____	____	____	X
13. ECONOMIC CONSIDERATIONS				
Will the proposal result in:				
a. Impacts on tax and general revenues accruing to the City.	____	____	____	X
b. Impacts on local/regional economy.	____	____	____	X
c. Impacts on employment opportunities.	____	____	____	X

	Beneficial Impact	Minor Adverse Impact	Significant Adverse Impact	No Impact
14. ENERGY				
Will the proposal result in:				
a. Use of substantial amounts of fuel or energy.				X
b. Substantial changes in demand upon existing sources of energy, or demand for the development of new sources of energy.				X
c. Change in local/regional energy supplies.				X
d. Change in efficiency of energy use.				X
15. SOCIAL CONSIDERATIONS				
Will the proposal result in:				
a. Change in human population distribution, concentration, or composition.				X
b. Change in existing housing, or demand for housing.				X
c. Change in location of residential, commercial, or industrial buildings or other facilities.				X

16. MANDATORY FINDINGS OF SIGNIFICANCE	YES	MAYBE	NO
a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife species to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	____	____	X
b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.	____	____	X
c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)	____	____	X
d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	____	____	X

17. DISCUSSION OF ENVIRONMENTAL EVALUATION

Tentative recommendations: Negative Declaration X

EIR ____

Note: All items checked beneficial, minor, significant, yes or maybe are discussed in further detail in the attachments.

Discrepancies noted in applicants plans:

Stacey E. Crouch
Signature

Environmental Specialist Associate
Title

Rev. 8/89:SJW

Attachment 7

Appeal Letter dated June 23, 2014

(Appeal Exhibits on disc only, consisting of comment letter dated June 9, 2014 and Attachments A through T)

COMMUNITIES FOR A BETTER ENVIRONMENT
NATURAL RESOURCES DEFENSE COUNCIL
SIERRA CLUB

June 23, 2014

Via Messenger

Honorable Mayor and Members of the City Council
c/o Larry Herrera, City Clerk
City of Long Beach California
333 West Ocean Blvd., Lobby Level
Long Beach, CA 90802

Re: Appeal of Long Beach Board of Harbor Commissioners' Ordinance Approving a New Operating Agreement with Metropolitan Stevedore Company and New Lease with Oxbow Energy Solutions, LLC

Dear Honorable Mayor and Members of the City Council:

On behalf of Communities for a Better Environment ("CBE"), the Natural Resources Defense Council ("NRDC"), and Sierra Club, we write to appeal the decision of the Port of Long Beach Board of Harbor Commissioners ("Port" or "Board") to not engage in a California Environmental Quality Act ("CEQA") analysis for the approval of the Operating Agreement with Metropolitan Stevedore Company ("Metro") and the new lease with Oxbow Energy Solutions ("Oxbow"), a company founded and owned by William Koch. These agreements went to the Board on May 28, 2014 and June 9, 2014. The Board approved the two agreements despite significant public opposition related to the failure to undergo any CEQA analysis.

This letter serves as the formal appeal of the Port's ordinance approving the new operating agreement with Metro and the new lease with Oxbow. Long Beach Municipal Code § 21.21.507; California Public Resources Code § 21151(c).[1] We have previously described the legal failings of the Port's determination that the approval of the new operating agreement and lease is not subject to the California Environmental Quality Act ("CEQA") in a comment letter submitted with attachments on June 9, 2014, which is by this reference incorporated in its entirety. After careful review of the Port's decision, we have determined that the Port's approval of these new agreements does not comply with CEQA. Accordingly, we respectfully request that the City Council remand the determination back to the Board with directions to undertake an environmental review.

[1] Pursuant to Long Beach Municipal Code section 21.21.507, we have submitted documents previously submitted on this project on the attached thumb drive. That device includes the letter submitted to the Board of Harbor Commissioners and all attachments referred to in this letter.

I. BACKGROUND OF THE PROJECT

The current project entails several components. The Board of Harbor Commissioners approved a new 20-year Operating Agreement between Metropolitan Stevedore Company (Metro) and the Port for continued stevedoring services of coal, coke, and a variety of other commodities at Pier G. In essence, Metro operates the bulk export facility under lease from the Port. Metro will remove 126,560 square feet of asphalt to be replaced with a 126,560 square feet of asphalt concrete, and various other construction projects at the facility. The location of the asphalt to be removed and replaced are at berths G212 and G213, a parking lot near berth G211A, and an area south of the coal storage shed.

The Board of Harbor Commissioners has also been asked to approve a new 15-year Lease between Oxbow Carbon and Minerals, LLC (Oxbow) and the Port for use of a 5.4 acre land pad occupied by a coal barn and associated improvements. Oxbow currently operates at the facility under a sublease agreement with Metro. The facility is used for storage and export of coal. The new lease includes a Guaranteed Minimum Annual Throughput of coal, which requires Oxbow to ship a minimum of 1.7 million metric tons ("MT") of coal per lease year for the first 5 years, or else pay economic penalties. After that 5 year term, the Executive Director of the Port may "in his sole and absolute discretion…approve in writing a greater amount per year of petroleum coke or any other commodity." The Board refused to engage in any environmental review, instead claiming these agreements and projects are categorically exempt from CEQA.

The following points outline the major deficiencies regarding the Board's environmental determination:

II. The Proposed Project Does Not Fall Under any Categorical Exemptions.

a. The Proposed Project is Not Categorically Exempt from CEQA Pursuant to CEQA Guidelines Section 15301.

The Port argued that the proposed project fit within Categorical Exemption Class 1 because the new agreements are merely approvals of on-going operations with no or "negligible" expansion. However, as mentioned in our previous comment (June 9, 2014 Comment, at 5-7), the new agreements have new coal shipment minimum requirements as well as unfettered discretion to increase those requirements. Those new provisions indicate a foreseeable expansion that is not "negligible," and therefore does not meet the Class 1 Categorical Expansion.

Class 1 exempts projects that consist of the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no

expansion beyond that existing at the time of the lead agency's determination." CEQA Guidelines § 15301. The key consideration is whether the project involves negligible or no expansion of an existing use. *Id.* Exemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language; such a construction allows the court to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *See Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786 at 792.

The Port argued that the proposed project involves the ongoing operations of the Metro and Oxbow facilities established through separate and new agreements with the Port, and is therefore categorically exempt under Class 1. However, a new leasing agreement that incorporates a Guaranteed Minimum Annual Throughput (GMAT or Minimum Tonnage) of coal to 1.7 million MT is not merely maintaining an ongoing operation at an existing facility, but rather is an entirely new requirement for the operation of that facility. Stated more precisely, the new lease with Oxbow includes economic penalties unless it exports at least 1.7 million MT of coal annually through the facility. This minimum tonnage provision specific to coal did not exist in any prior version of the lease for Pier G.

Instead, the previous agreements had a general minimum dollar amount requirement for several bulk commodities, as opposed to a defined minimum coal export amount. The Second Amendment to the Second Amended and Restated Preferential Assignment Agreement ("Prior Agreement") with Metro had a Guaranteed Minimum Tonnage Dollar Equivalent (GMTDE or Dollar Minimum), which is much different than Minimum Tonnage. The Dollar Minimum in the Prior Agreement required minimum tariff charges to be paid by Assignee to the City for a 4 year term that "shall be the dollar value equivalent of 17,800,000 MT." The Dollar Minimum was calculated by multiplying the tonnage amount (17.8 million MT) to the total of the wharfage charge and the equipment rental charge. The 17.8 million tonnage amount to calculate the Dollar Minimum did not refer to any specific commodities or materials to be exported, and was a purely economic term for calculating the lease amount to be paid, regardless of how much coal or any other commodity was exported through Pier G. For reference, the Metro bulk export facility exports a mixture of bulk commodities like soda ash, sulfur, coal, and petcoke.[2]

The new lease agreement with Oxbow, on the other hand, requires a GMAT of 1.7 million MT of coal per year for the first 5 years. The new lease states that the "Lessee guarantees, during the first five-year segment of the Lease, that it will ship from the Premises, the following quantities of coal per lease year: 1.7 million MT." The lease then creates an economic penalty for failing to export the minimum amount of coal, stating "if the Lessee has not, by the end of the lease year, shipped quantities of coal from the Premises at least equal to the Minimum Tonnage for the lease year, Lessee shall pay to

[2] *See* Metro Ports Long Beach information page, (last accessed June 6, 2014), *available at* http://www.metroports.com/locations/?r=Long%20Beach%2C%20CA.

the city . . . a sum calculated by multiplying the difference in quantity between the applicable Minimum Tonnage and the actual quantity shipped for that lease year times the then-current applicable wharfage and shiploader charges." The Minimum Tonnage therefore requires Oxbow to export a minimum amount of coal, and only requires a penalty if that amount is not met. Moreover, this minimum is only a floor, and it is reasonably foreseeable that more coal will be shipped from this facility during the term of this lease.

Since this new lease provision requires a minimum amount of coal to be exported—a requirement that did not exist in the previous agreements— the project is not simply leasing "existing public or private facilities involving negligible or no expansion beyond that existing at the time of the lead agency's determination." Rather, a Minimum Tonnage of 1.7 million MT of coal is significantly more than the previous amount of coal required to be shipped, which was 0 MT. The difference between 0 MT per year and 1.7 million MT per year is not a "minor alteration" nor is it "negligible." A "minor alteration" cannot be an activity that creates a reasonable possibility of a significant environmental effect. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 at 1195. Here, the increase is more than just "negligible," but rather meets the low bar of creating a reasonable possibility of a significant environmental effect. That effect must therefore be properly analyzed under CEQA.

Moreover, in years 6 through 15 of the lease, the Executive Director "may approve in his sole and absolute discretion" increases in the amount of "petroleum coke or any other commodity." That means that in year 6, the Executive Director could potentially require a minimum of 10 million MT of coal to be shipped through Pier G under his sole and absolute discretion. That is not "negligible." This is also especially troubling because the Port has expressed a desire to increase its coal exports in the future.

The Port hired TranSystems to determine how the Port's coal exports could grow. As the report by TranSystems explains:

> Metro's customer for coal exports would like to increase their volumes, but there are currently some operational and infrastructure constraints that would make this difficult. POLB would like to accommodate the growth, preferably without negatively impacting other customers (e.g., the soda ash exporter, who is perceived by the coal exporter as being an impediment to their growth). POLB tasked TranSystems with analyzing the bulk operations at Pier G to determine: The actual annual capacity of the facility to rail-served products [and] [i]f it is possible, with reasonable operating changes, to accommodate the coal exporters growth without affecting soda ash volumes.

TranSystems, POLB Pier G Bulk Handling Facility Analysis, Final Report, at 3 (Feb. 13, 2013) (Revision 1.0, Administrative Draft). This analysis articulates the Port's desire to increase the throughput of coal and petcoke to increase revenues. Also, private companies

with a stake in this facility would surely welcome this type of increase, which have recently touted collaboration with the Port to increase rail capacity to handle 10,000,000 MT of commodities.[3]

Given these statements and the provisions in the agreement allowing for unfettered discretion to increase the throughput, it is reasonably foreseeable that coal exports will increase substantially more per year than the 1.7 million MT minimum. If Metro, Oxbow, and the Port are working to increase rail capacity to 10 million MT, and the Port is seeking higher minimum exports in this agreement —1.7 million MT for the first 5 years and an unlimited discretionary increase in coal or petcoke exports thereafter—it also means any infrastructure, including rail construction, and the lease renewal would be construed as connected actions that should be analyzed in the same CEQA analysis. *See Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 (A lead agency may not split a single large project into smaller pieces so as to avoid environmental review of the entire project).

Additionally, Metro is proposing to remove 126,560 square feet of asphalt at berths G212 and G213, a parking lot near berth G211A, and an area south of the coal shed, and replace it all with 126,560 square feet of asphalt concrete. Metropolitan Stevedore Company, Exhibit D. The removal of 125,560 square feet of asphalt is roughly the size of two football fields or an average city block, and cannot be described as a "minor alteration." The plain language of CEQA Guidelines § 15301 provides examples of the types of "existing facilities" and activities that are meant to be exempted under Class 1 Categorical Exemptions, which include interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances. The statute in no way contemplates the replacement of large quantities of asphalt as a "minor alteration." To construe the replacement of that much asphalt as exempt would expand the exemption category beyond the reasonable scope of the statutory language. A project proposal of this magnitude should not escape environmental review under CEQA.

Even if this project met the Class 1 exemption, the alteration must be so small as to be one that does not cross the threshold level set by the guidelines for an exception to the categorical exemptions. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 at 1195. There is an exception to Categorical Exemptions when there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. *See* CEQA Guidelines § 15300.2. The unusual circumstances test is satisfied where the circumstances of a particular project (i) differ from the general circumstances of the projects covered by particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects. *See Myers v. Board of Supervisors* (1976) 58 Cal.App.32 413 at 426.

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[3] MetroPorts, Excerpt from Application for Port of Oakland Coal Export Facility [Attachment A]. All attachments cited in this letter have been provided to the City Clerk.

The general circumstances of projects covered by CEQA Guidelines § 15301 involve "minor alterations" such as the restoration of deteriorated or damaged structures to meet public health and safety standards, or an addition to an existing structure that is no more than 10,000 square feet. *See* CEQA Guidelines § 15301. A new lease agreement with a 15-year term that requires a minimum of 1.7 million MT of coal to be shipped for the first five years differs from the general circumstances of projects covered by the Class 1 Categorical Exemption because it involves a large industrial expansion. This amount is not "negligible," especially considering that after year 5, the Executive Director has the sole and absolute discretion to increase the amount of coal shipped to whatever quantity he/she desires. Similarly, the replacement of 126,560 tons of asphalt is not a minor addition or upgrade, but the total replacement of what currently exists, which is not a general circumstance of the projects covered by the exemption. Both the foreseeable increase in coal shipped and the replacement of asphalt create an environmental risk that does not exist for the general class of exempt projects, and should therefore meet the significant effect exception under § 15300.2. *See* CEQA Guidelines § 15300.2.

In addition, as discussed below, there is more and recent evidence of the increased threat to health and safety from train derailments carrying coal and other accidents that render this an "unusual circumstances" meriting CEQA review. New evidence of the severity of greenhouse gas (GHG) emissions from coal and its impact on the climate also warrant an "unusual circumstance" with significant environmental effects. The Port never analyzed GHG emissions or the harms of coal dust in the 1992 Negative Declaration, and must do so now to make an informed decision.

b. The Proposed Project is Not Categorically Exempt from CEQA Pursuant to CEQA Guidelines Section 15302.

The Port also argued that the proposed project fit within Categorical Exemption Class 2 because the new agreements only require "minor repairs to existing structures." However, as we described in our prior comment (June 9, 2014 Comment, at 8-9), the replacement of 126,500 square feet of asphalt is not "minor," nor should asphalt be considered a "structure." Class 2 exempts projects that consist of the "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced..." CEQA Guidelines § 15302. The Port argued that the proposed project meets this exemption because the new agreements approve the replacement of equipment and structures in an effort to bring assets back to operational standards and to increase site safety, and the maintenance and repair work will not add storage capacity or export capabilities to the Metro Component of the proposed project. However, asphalt is neither a structure nor facility for the purpose of a Class 2 exemption, nor is a lease that requires a minimum amount of coal to be shipped.

There is no case that applies a Class 2 exemption beyond the reasonable scope of the plain language of the statute. *See Save our Carmel River v. Monterey Peninsula Water Management District,* 141 Cal.App.4th 677 at 698. The typical application

involves an agency's consideration of plans for reconstruction or replacement of an existing structure. *See Dehne v. County of Santa Clara*, 115 Cal.App.3d 827 at 842. The removal and replacement of asphalt is not the replacement of a structure or facility. Similarly, even if the replacement of asphalt and the changes to existing structures falls under this Class 2 categorical exemption, approving a lease that establishes an economic penalty for moving less than 1.7 million MT of coal per year and allowing for potentially unchecked increases in years 6 through 15 of petcoke, coal or other commodities, cannot be considered the replacement of a structure or facility pursuant to the statute. The Board's approval of the lease with Oxbow and the Operating Agreement with Metro should therefore not be exempt from proper environmental analysis under CEQA.

Finally, both the foreseeable increase in coal shipped and the replacement of asphalt create an environmental risk that does not exist for the general class of exempt projects, and should therefore meet the significant effect exception under § 15300.2. *See* CEQA Guidelines § 15300.2. *See supra* § IIa.

III. The 23-Page Negative Declaration from 1992 Does Not Cover the Proposed Actions the Port is Approving

As detailed in the comment we submitted (June 9, 2014 Comment, at 9), the 1992 Negative Declaration is not sufficient to cover the Port's proposed actions to approve the new lease and operating agreement. The Port claimed that no subsequent EIR or negative declaration is required under CEQA Guidelines section 15162. However, the approval of the new agreements involve substantial project changes from the 1992 project proposal that will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects. The new agreements with Oxbow and Metro will result in new and more significant impacts compared to the Coal Shed as described in the 1992 Negative Declaration. The Port is claiming that the only changes proposed are minor repairs to existing facilities, but as explained above, the replacement of 126,650 square feet of asphalt (which will cost more than $5 million over the next 2 years) cannot be described as a minor repair. Removal and replacement of 126,560 square feet of asphalt will involve new and significant environmental effects that were never analyzed in the 1992 Negative Declaration.

Additionally, new information regarding the extent and severity of impacts from GHG emissions has become available since 1992. Under CEQA Guidelines section 15162, if the lead agency determines that there is "new information of substantial importance that was not known and could not have been known with the exercise of due diligence at the time of the previous negative declaration . . . [and] the project will have one or more significant effects not discussed in the previous negative declaration" that lead agency must prepare a subsequent EIR or negative declaration. CEQA Guidelines § 15162. The Port never analyzed GHG emissions in 1992, and the approval of new leases for coal shipment and storage will likely result in GHG emissions that have never been

analyzed.[4] Under the California Global Warming Solutions Act of 2006 (AB 32), there is no doubt that GHG emissions are a potentially significant impact on the environment that must be analyzed. *See Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515.

The Port mistakenly argued that it does not have to analyze GHG emissions since information regarding GHG emissions is not "new information." The Port erroneously stated that even though GHG emissions and climate change data is arguably "new information" that was unavailable in 1992, case law has concluded that information regarding GHG emissions and climate change is not "new information." *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515. The Port incorrectly characterized that case, in which the question was not about whether the agency had to analyze GHG emissions based on "new information," but what threshold to use when analyzing GHG emissions based on "new information." The case relied upon does not allow the Port to simply ignore GHG emissions entirely, which is what has happened in this case. The Port has never analyzed GHG emissions in the 1992 Negative Declaration, and it must analyze its GHG emissions from the proposed Oxbow and Metro agreements.

Finally, significant new information is now known about health and safety issues related to the export of coal by train. The sections below outline several issues that were not addressed in the 1992 Negative Declaration, including coal train accidents, coal dust emissions along the route of the train, and water quality impacts associated with the transport of coal.

a. The Environmental Review Document Must Consider the Cumulative Impacts of this Project Combined with the Broader Port Operations, Including Rail Transport

A valid CEQA analysis must discuss significant "cumulative impacts." CEQA Guidelines § 15130(a); Public Resources Code § 21083. As we pointed out in our previous comment (June 9, 2014 Comment, at 10), the Port has attempted to avoid this analysis entirely. The Port has clear intentions to increase the amount of coal and petcoke exported, which will undoubtedly have significant cumulative impacts in the already heavily polluted Long Beach area. Those impacts must be analyzed. As the court stated in *Communities for a Better Environment v. Cal. Resources Agency*, ("*CBE v. CRA*") (2002) 103 Cal.App.4th 98, 114:

> Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that have been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear

[4] According to the EIA, one ton of Powder River Basin coal generates 2.86 tons of CO_2, *available at* http://www.eia.gov/coal/production/quarterly/co2_article/co2.html.

> insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

To comply with CEQA, an EIR must contain either "a list of past, present, and reasonably foreseeable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency," or "a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area wide conditions contributing to the cumulative impact." CEQA Guidelines § 15130(b)(1); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740. Here, there has been no analysis of cumulative impacts, which is particularly important in a place like Long Beach, which suffers from the perils of environmental injustice. The TransSystems analysis articulates the Port's desire to increase the throughput of coal and petcoke to increase revenues, while private companies have touted collaboration with the Port to increase rail capacity to handle 10 million MT of commodities.[5] These facts indicate that increased export of coal and petcoke is reasonably foreseeable, and must be analyzed. By completely flouting duties to analyze the impacts from this project, the Port is failing to assess and address the cumulative impacts from this project.

b. Specific Potential Impacts Related to Coal Exports Must Be Analyzed.

Below, we outline several potential impacts related to coal exports that were thoroughly detailed in our comments (June 9, 2014 Comment, at 12) that have not been analyzed for this project.

i. Climate Change Impacts are Significant, and Must be Analyzed

As stated above and in our prior comment (June 9, 2014 Comment, at 9-10), the Port has never analyzed the impact of these agreements on GHG emissions, and refuses to do so now. There is a vast body of new information that highlights the significant impacts of GHG emissions on health and the environment, and those impacts must be properly analyzed under CEQA. Coal and petcoke are major sources of carbon, a GHG pollutant that causes climate change. Petcoke is a byproduct of oil refining and is more than 90% carbon.[6] Very recently, the United Nations' Intergovernmental Panel on Climate Change ("IPCC") released the fifth version of its frequently cited report reflecting the scientific consensus that unrestrained GHG emissions cause global

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[5] *See* TranSystems, POLB Pier G Bulk Handling Facility Analysis, Final Report, at 3 (Feb. 13, 2013) (Revision 1.0, Administrative Draft); *See also* MetroPorts, Excerpt from Application for Port of Oakland Coal Export Facility

[6] Stockman, Lorne. "Petroleum Coke: The Coal Hiding in the Tar Sands." Oil Change International: January 2013, *available at* http://priceofoil.org/content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf

warming. The fifth IPCC report confirms yet again that climate change is being caused by unrestrained carbon pollution from industrial activities.[7]

ii. A CEQA Analysis for the Project Must Evaluate Direct, Indirect, and Cumulative Climate Impacts

As described above and in our previous comment (June 9, 2014 Comment, at 16-18), the Port must analyze the direct, indirect, and cumulative impacts from Climate Change before approving the new agreements. The Port has never analyzed the impacts from Climate Change related to its own project or others, and there is no way to determine whether these new agreements will be significant without some type of analysis.

The impacts of exporting coal are not limited to the climate impacts of its use in overseas power plants. A valid CEQA analysis must also consider the climate and other air emissions of transporting these huge volumes of coal. For example, by one estimate, each trip of a fully loaded Panamax container ship to China, burns over 1100 tons of bunker fuel.[8] Bunker fuel generates significant CO2 emissions and other much more potent greenhouse gases like nitrous oxides (N2O), methane, and black carbon. It also causes a variety of other toxic and harmful air emissions, including diesel particulates that are highly damaging to human health. These kinds of impacts are "indirect effects" of the decision to enter into agreements that allow for, and even require, the export of coal, and should be evaluated in a CEQA analysis, along with any appropriate mitigation. The Port has never analyzed any of these impacts, and must do so now.

The CEQA analysis must also include discussion of the impacts of mercury deposition that will be caused by the burning of this increased volume of coal. Coal burned in Asia is a major source of local mercury contamination. Mercury is a highly toxic pollutant that bioaccumulates and poses severe health hazards, especially to pregnant mothers and small children.[9]

Transportation of coal over long distances via rail also has significant environmental impacts, including the fossil fuel consumption of moving large volumes of material hundreds or thousands of miles. Data also shows that open coal trains lose huge volumes of coal dust during transportation.[10] Such discharges would add to air quality problems along the rail route. According to BNSF studies, 500 to 2,000 lbs. of coal can be lost in the form of dust for each rail car; coal trains are typically composed of at least

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[7] *Available at* http://www.ipcc.ch/news_and_events/docs/ar5/press_release_ar5_wgi_en.pdf (last accessed on June 6, 2013)(emphasis in original).
[8] T.C. Bond et al., *Bounding the role of black carbon in the climate system: A scientific assessment*, Journal of Geophysical Research: Atmospheres (online version Jan. 15, 2013) [Attachment B].
[9] Jaffe, D. et al., "Atmospheric mercury from China," Atmos. Env't., Vol. 39, 3029-38 (2005).
[10] BNSF, Coal Dust FAQ, *available at* http://www.bnsf.com/customers/what-can-i-ship/coal/coal-dust.html.

120 cars per train. In other studies, again according to BNSF, as much as three percent of the coal in each car (around 3,600 lbs. per car) can be lost in the form of dust. Hearing Transcript, July 29, 2010, *Ar. Elec. Coop. Ass'n –Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at 42:5 13 [Attachment C]. This is a large volume of coal that could escape into the air and water. Moreover, as with the GHG impacts, this analysis must be viewed in the context of all existing and reasonably foreseeable similar impacts.

iii. The EIR Must Consider All Impacts Cause by Construction and Operation of the Project.

Coal and petcoke exports from Long Beach Port will affect people and places beyond the immediate facilities at the Port. Every community located along the rail line between the coalmines and the Port will be harmed, and people outside California will be affected by the climate impacts of mining, transporting, and ultimately burning this coal. A proper CEQA analysis must consider all the impacts of the project, which include additional infrastructure expansion as well as the operation of transporting coal and other commodities. Additionally, the construction required to replace 126,560 square feet of asphalt must also be analyzed.

Affected rail communities might include Vernon, Los Angeles, Colton, Torrance, Las Vegas, Salt Lake City, and Denver among other communities.[11] As stated in our prior comment (June 9, 2014 Comment, at 18), the CEQA analysis must, of course, analyze the impacts of construction and operations at the site, but it also must analyze the impacts of coal trains and coal use on a much broader scale. This includes the direct, indirect, and cumulative impacts of coal export on public health, public safety, economics, marine health, public investment, and climate change.

To be clear, the CEQA analysis must examine the full direct, indirect, and cumulative impacts of the proposed project— from the mining of the coal in the Powder River Basin or Utah, Colorado, or New Mexico, the transport of coal by rail through several states and hundreds of communities, the loading and shipping of coal via large ocean vessels, to the burning of the coal in Asia.

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[11] *See, e.g,* Burlington Northern Santa Fe Rail Map, (last accessed June 3, 2014), *available at* http://www.bnsf.com/customers/pdf/maps/coal_energy.pdf; see also Union Pacific Map, last accessed June 3, 2014, http://www.uprr.com/customers/energy/ports/index.shtml. *See also* Union Pacific Rail Map, accessed June 6, 2014, http://www.uprr.com/customers/energy/coal/index.shtml and http://www.uprr.com/customers/energy/ports/index.shtml.

iv. The Public Health Issues Raised by This Project, Which are Significant and Harmful, Must be Analyzed

As we pointed out in our prior comment (June 9, 2014 Comment, at 19), the public health issues raised by a project of this size and extent include increased air pollution from coal dust (mercury, arsenic, lead and uranium), diesel pollution over different operational lifetime projections for the terminal, soil contamination by coal dust, and increased noise. The Port has failed to analyze most of these impacts in its previous 1992 Negative Declaration, and has refused to analyze these impacts now. The CEQA analysis should include a specific focus on children, the elderly, and other vulnerable members of the community. It should also consider cumulative and disproportionate impacts on communities already exposed to high levels of air and water pollution, particularly low-income communities and communities of color. Any health impact analysis should take into account both the needs of communities potentially affected by the en-route trains and the site, as well as workers onsite who will be exposed at much higher levels.

a. The Project, Alone or in Combination With Other Existing and Future Development, Will Cause Harmful Air Impacts Which Must be Analyzed

Long Beach already suffers from some of the unhealthiest air in the region. As we articulated in our prior comment (June 9, 2014 Comment, at 19), air quality impacts and pollution from nitrogen dioxide ("NO2"), particulate matter, sulfur dioxide, sulfuric acid mist, heavy metals and coal dust must be analyzed. NO2 exposure can have a wide range of health impacts depending on the length of exposure and various other factors. Epidemiologic research establishes a plausible relationship between NO2 exposures and adverse health effects ranging from the onset of respiratory symptoms to hospital admission. 76 Fed. Reg. 57105 at 57304; Environmental Protection Agency, Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (EPA/600/R-08/071), 5 -15.

Particulate matter ("PM") refers to a broad class of diverse substances that exist as discrete particles of varying size. *See* 76 Fed. Reg. 57105 at 57302. Recent studies have found an increase in such particles that is higher from coal trains than other types of rail.[12] Such particles are produced by a variety of anthropogenic and natural sources, though most fine particles are produced by anthropogenic combustion and transformations of gas emissions, like NOx, in the atmosphere. The composition of the particles can vary greatly and can remain in the atmosphere for weeks and disperse over thousands of miles. Depending on the size, these particles can be inhaled and penetrate the respiratory tract to cause significant adverse health effects. Coal dust contains many harmful components and causes health problems as people are exposed to fugitive coal dust from coal trains, coal storage piles, loading and unloading practices, emissions from

[12] Jaffe Research Group, Do Coal Trains Make Air Unhealthy (last accessed June 23, 2014), *available at* http://www.atmos.washington.edu/jaffegroup/modules/APOLLO/.

dust control systems, and risk of explosion and fire from coal dust. *See The Fire Below: Spontaneous Combustion in Coal*, U.S. Dep't of Energy (May 1993) [Attachment D]. Coal is a volatile and easily combustible material—other coal terminals have faced huge fires that pollute the air and put emergency responders and terminal staff at risk. *See* Attachment E (picture from a coal fire plant at an ill-fated coal terminal in Los Angeles). A recent study concluded that the spontaneous combustion of coal stocks, in addition to the "obvious safety hazard and the potential loss of valuable assets" constituted substantial sources of GHGs.[13] Although difficult to quantify, the study estimated that GHG emissions from spontaneous combustion of coal were likely around 3%.[14]

Neighborhoods living near existing coal export and barging terminals on the East Coast and Alaska document significant localized pollution, nuisance, and economic loss from coal dust. There is a considerable body of new literature that was not available in 1992 surrounding the risks of coal dust from facilities like this one that should be scrutinized carefully in the CEQA analysis. *See* Surface Transportation Board Decision, *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 16, 2010) [Attachment F]. Ironically, much of this evidence was developed by BNSF in an effort to prevail in litigation against its efforts to require coal shippers to take additional measures to reduce dust losses. *See* Attachment G and Attachment H (BNSF Power Point on Coal).

Besides analyzing the potential detrimental effects on air quality that will arise from the export terminal itself, our previous comment (June 9, 2014 Comment, at 20) noted that a valid CEQA analysis must also consider the negative impacts that will arise from the mining of the coal, the required transport of coal from its source in Utah, Colorado, and/or the Powder River Basin to Long Beach, the burning of the coal, and the disposal of coal combustion waste. This is especially crucial considering the foreseeability of coal exports increasing at the Oxbow location. This process will affect air quality through a variety of manners. Mining of the coal and loading it onto trains creates significant particulate matter and NOx emissions from the explosives. The NOx emissions from the blasting are so significant that it creates visible clouds of pollution and forces warning signs to be placed near the mines. Transportation creates both the emissions from the diesel locomotives required to carry the coal, as well as the fugitive coal dust that will escape the freight cars along the way, as well as during loading and unloading on both ends of transport. These effects will have a significant impact on the ability of air quality control regions through which the trains will pass to meet the National Ambient Air Quality Standards, which are set in order to protect public health. In fact, no matter which route the trains take from the Powder River Basin, Utah or

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[13] Lesly Sloss, Quantifying Emissions from Spontaneous Combustion, (last accessed on June 6, 2014), *available at* http://www.worldcoal.com/news/coal/articles/Quantifying_emissions_from_spontaneous_combustion_227.aspx#.U5XbExsU-Uk.

[14] *Id.*

Colorado to the export facility, they will pass through numerous nonattainment and maintenance areas for the criteria pollutants they will be emitting.

Further, a valid CEQA analysis must consider air pollution impacts that specifically accompany transporting and burning coal overseas. Each trip of a fully loaded Panamax container ship to China, for example, uses around 500 tons of bunker fuel per trip, generating both significant CO2 emissions in its own right as well as a N2O, NOx, SO2, sulfuric acid mist and a variety of other toxic and harmful air emissions, including diesel particulates that are highly damaging to human health, as well as black carbon, one of the most potent greenhouse pollutants in existence. *See* T.C. Bond et al., *Bounding the role of black carbon in the climate system: A scientific assessment*, Journal of Geophysical Research: Atmospheres (online version Jan. 15, 2013) [Attachment B]. Relatedly, to the extent shore power, or cold ironing, is not available, the CEQA analysis must consider idling ship emissions of cargo vessels at the terminal. The Port did not analyze these emissions in the 1992 Negative Declaration, and there is evidence that such emissions have been a significant source of toxic air pollution in other ports. *See* McCarthy, James, *Air Pollution and Greenhouse Gas Emissions, Congressional Research Service* (Dec. 23, 2009) [Attachment I]; Fried Axel et al., *Air Pollution and Greenhouse Gas Emissions from Ocean-Going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth*, International Council on Clean Transportation (March 2007) [Attachment J]; and Scott Janea et al., *Protecting American Health from Global Shipping Pollution: Establishing An Emission Control Area in U.S. Waters*, Environmental Defense Fund (2009) [Attachment K].

Exporting coal may also increase the air-quality impacts associated with its combustion. When coal is burned domestically, we can be reasonably certain of the pollution-control regulations to which it will be subject. However, there is no guarantee that equivalent regulations will be in place in the countries where the exported coal will be sold and burned. As a result, the air pollution impacts of exporting American coal may be greater than if the coal were to be burned domestically. Yet these impacts will not stay in other countries. Airborne transport of soot, sulfur compounds, mercury, ozone, and other byproducts of coal combustion can travel across the Pacific Ocean and affect the health of western states' ecosystems and residents. *See* Place, Eric de, *Northwest Coal Exports: Some common questions about economics, health, and pollution* (Nov. 2011) at 7.[15] These kinds of impacts are "indirect effects" of the shipment of coal and should be evaluated in the CEQA analysis along with any appropriate mitigation. To complete the lifecycle analysis, the impacts from fugitive particular matter and heavy metals from the transport and disposal of coal combustion waste must also be considered.

[15] *Available at* http://www.sightline.org/wp-content/uploads/downloads/2012/11/coal-FAQ-November-12.pdf.

b. The Project Will Harm Water Resources, Which Must be Analyzed

The CEQA analysis must consider effects to all surface and ground water resources within the project area. As our prior comment explained (June 9, 2014 Comment, at 21), the CEQA analysis must consider all potential water quality impacts (e.g., increased sediment loads, possible spills, coal dust impacts, mercury deposition, changes to alluvial groundwater quality, degradation of drinking well water), and water quantity impacts (e.g., drawdown of aquifers, diversions or diminutions of surface flow, hydrologic changes affecting seeps and springs, drinking water impacts) of the project's construction and operation. The agencies should ensure that the CEQA analysis describes, in detail, the possible sources of all water needed for the railroad and associated mining activities, including water originating in any over-allocated water source.

The agencies also must consider cumulative water resource impacts flowing from reasonably foreseeable coal mines in the Powder River Basin or in Utah or Colorado (e.g., disruption of hydrologic systems, pollution impacts), as well as impacts to water resources that would be expected from burning the coal and disposal of coal combustion waste, whether domestically or overseas. In addition to water availability considerations, the CEQA analysis must examine the project's potential impacts to water quality. Contamination of river and drinking water supplies can occur with diesel emissions and diesel spills both during project construction and during the ongoing operation of the project, which relies on continuous activity of trains. In addition, drinking water supplies can become contaminated from coal dust and coal spills. Coal will be delivered in open top rail cars to the site. Regular movement of uncovered rail cars and the loading and unloading of these cars cause the release of fugitive coal dust, which can further contaminate the water supplies. Construction and operation of the railroad may also result in water quality impacts in the way of increased sedimentation and other changes. In addition, the possibility of spills of coal and heavy bunker oil in the San Pedro Bay after loading the coal onto ocean-going vessels must be analyzed. The CEQA analysis must assess these impacts and detail how federal, state, and local water quality standards will be met, monitored, and maintained.

c. Public Safety Will be Jeopardized by Construction and Operation of The Project

The impacts to public safety run the gamut from increased train traffic and vehicle accidents, increased derailments and concomitant emergency response, travel time delays at specific intersections (including the economic impacts of those delays, and impacts to/delay of emergency services (fire, police, EMT).

Our previous comment (June 9, 2014 Comment, at 22) noted that threats from frequent long trains at rail crossings all along the route from the source of the coal to the export terminal in Long Beach will mean delayed emergency medical service response

times; and increased accidents, traumatic injury and death. Each fully loaded train is long, and this proposal would significantly increase the daily number of trains along the rail route. These trains will bisect multiple communities along the route, leading to significant traffic delays and potential safety issues at grade-crossings. The delay of only a few minutes for an emergency response vehicle can mean the difference between life and death for citizens in these rural communities. In addition, increased rail traffic will lead to increased collisions between passenger vehicles, pedestrians, and trains; there are approximately 3,000 vehicle collisions with coal trains each year already, and 900 pedestrian accidents. *See* Daniel A. Lashof, et al., Natural Resources Defense Council, *Coal in a Changing Climate* (Feb. 2007) [Attachment L].

In addition to the threat of delay, our prior comment (June 9, 2014, Comment at 22) pointed out that the CEQA analysis must review the threats associated with coal train derailments. There were over 18 derailments of coal trains in the United States in the summer of 2012. In 2013 alone, there have been over 90 coal train-related incidents in the U.S. that include derailments, spills and other dumping, 36 of which were derailments.[16] There is a serious risk to human health from a huge increase in coal train traffic along the route to and from the source of the coal and near the Long Beach export terminal. Even if Categorical Exemptions are deemed to apply, this increased threat of railroad accidents serves as "unusual circumstances" meriting addition analysis. *See* CEQA Guidelines § 15300.2.

Coal dust has also been shown to be a cause of rail bed instability and derailments, which can pose a significant public safety hazard. As the Surface Transportation Board ("STB"), which found coal dust to be "a pernicious ballast foulant,"[17] acknowledged in its coal dust proceeding, the quantity of coal emitted by a train into the air, water and onto tracks is not insignificant.[18] *See* Surface Transportation Board Decision, *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 3, 2011) [Attachment M]. An average of 500 pounds of coal dust per rail car is lost during each trip. *See* BNSF Railway, Coal Dust Frequently Asked Questions (2011).[19] Each train is composed of 120 cars or more. *See* Hearing, July 29, 2010, *Arkansas Electric Cooperative Association—Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305 at 42:5-13. The risk of train

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[16] As of November 4, 2013. *See* National Response Center Database, *available at* http://www.nrc.uscg.mil/default.asp?p=109:2:9481443649338:pg_R_181081710265543 9:NO&pg_min_row=81&pg_max_rows=20&pg_rows_fetched=2. Database temporarily offline and raw data available at http://cgmix.uscg.mil/NRC/ or via the Freedom of Information Act (FOIA).

[17] Also *available at* http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/40436?(OpenDocument).

[18] The STB has conducted two proceedings related to coal dust, referenced at Docket numbers 35557 and 35305. *See* http://www.stb.dot.gov/newsrels.nsf/219d1aee5889780b85256e59005edefe/72355569b86fcf0485257950006d6966?OpenDocument.

[19] Copy on file with Earthjustice. BNSF website has been taken down but a copy of the webpage is available at http://www.coaltrainfacts.org/docs/BNSF-Coal-Dust-FAQs1.pdf.

derailments is heightened on lines with heavy coal-train traffic. "Coal dust, even in small amounts, poses a real threat to the integrity of the ballast section and track stability." *Id.* at 46:18-20. *See* Surface Transportation Board Hearing Transcript (STB Hearing Transcript), Re: *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (July 29, 2010) [Attachment C].

Right of way fires on the land of property owners along rail lines with coal trains are also a known safety and economic risk that must be analyzed.[20] Last year, several coal-related fires occurred along a railway in North Dakota.[21] Coal dust lodged in the ballast, and from constantly passing coal trains, kept the track fires smoldering for several days. As South Heart Fire Chief said, "When there is that much coal dust, there is not a lot we can do…you think you have it out…and then half-a-day later, it flares up once again."[22]

The CEQA analysis' assessment of coal dust should include a discussion of the efficacy of surfactants to control coal dust, as our prior comment (June 9, 2014 Comment, at 23) elaborated on. The CEQA analysis should further discuss the potential impacts of the use of surfactants to control dust emissions as well as consequences from not using surfactants. First, although use of surfactants in some contexts is common, their efficacy and safety for use on coal-carrying trains is unproven. The oft-claimed 85% control efficiency has been called "junk science" by coal shippers. Topping agents wear off along the route, are themselves pollutants, and can even possibly increase the amount of coal lost due to saltation. *See* Phyllis Fox, *Fugitive Particulate Matter Emissions from Coal Train Staging at the Proposed Coyote Island Terminal*, July 19, 2013 [Attachment N].

Second, surfactants contain myriad undisclosed chemicals, many of whose biological and ecological effects have not yet been adequately studied. Surfactants could cause a number of potential harms, including: danger to human health during and after application; surface, groundwater, and soil contamination; air pollution; changes in hydrologic characteristics of the soils; and impacts on native flora and fauna populations.[23]

Third, while BNSF has a voluntary tariff encouraging the use of surfactants for Powder River Basin coal, this tariff would not apply to areas outside the Powder River Basin, such as the Utah or Colorado coal shipped to Long Beach for export. In the

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[20] *See* Hearing Transcript, July 29, 2010, *Arkansas Electric Cooperative Association – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at Tr. 69: 7-10.
[21] *Coal Dust Keeps South Heart Fire Crews Busy*, The Dickinson Press, September 1, 2012, *available at* http://www.thedickinsonpress.com/content/coal-dust-keeps-south-heart-fire-crews-busy.
[22] *Id.*
[23] Environmental Protection Agency, *Potential Environmental Impacts of Dust Suppressants: Avoiding Another Times Beach* § 3 (May 30-31, 2002), *available at* http://www.epa.gov/esd/cmb/pdf/dust.pdf.

absence of binding regulation, many coal companies are electing not to apply any sort of topping agent. *See Some shippers not complying with industry's coal dust tariff*, Platts Energy Week, Nov. 3, 2011 [Attachment O]. As a result, the use of surfactants is not certain, and so the analysis of the impact of coal dust must consider scenarios both without and with any sort of surfactant use. Furthermore, the coal dust emitted by trains is contaminating waterways. Washington state groups, including the Sierra Club and NRDC, have filed a Clean Water Act suit based on coal and petcoke contamination of Washington's rivers and streams from the open top rail cars transporting these commodities.[24]

v. The Overall Economic Impacts of Coal Exports are Likely Negative.

The CEQA analysis must further review the economic impacts of this project. As outlined in our prior comment (June 9, 2014 Comment, at 25), issues here include the impact of increases in coal train traffic on real estate values and damage to property from coal dust, diesel emissions, vibration, and noise. There are also serious concerns relating to the impact of an increase in coal rail traffic on other non-coal shippers of freight by rail, including ports and shippers of agricultural products. These same issues may affect passenger rail interests. These significant rail traffic increases are likely to create major impacts on communities affected by vehicle traffic problems related to delays at non-grade separated railway crossings, which will affect non-rail freight mobility, access to ports, retailers, tourist centers, and employers. On the marine side, there are likely to be significant economic impacts on marine dependent industries, such as commercial fisheries and shellfish growers, tourism, and other businesses.

a. The Project, Individually and In Combination With Other Proposed Projects, Threaten Increases In Rail Traffic For A Single Commodity, With Major Impacts On Other Rail Users And Affected Communities.

The increased rail traffic associated with shipping unknown quantities of coal per year to Long Beach could represent a huge increase in freight rail usage and would likely present significant conflicts with other users of the rail line, including freight and passenger shippers. As we explicitly mentioned in the comment we submitted (June 9, 2014 Comment, at 25), it is critical that the CEQA analysis include a full analysis of the cumulative impacts from this proposal combined with other coal, petcoke and oil export and refining proposals in the region, including the capacity of the rail system to handle these increases without significant adverse impacts on other shippers, passenger rail users, and communities. Moreover, the Port should consider any trucking impacts related to transport of petcoke to the export facility.

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[24] BNSF Railway, coal shippers sued in federal court for water contamination violations, http://content.sierraclub.org/environmentallaw/lawsuit/2013/bnsf-railways-coal-shippers-sued-federal-court-water-contamination-violations and http://content.sierraclub.org/tags/bnsf (accessed June 6, 2014).

Unless mitigated with significant capacity additions, increases of coal train traffic is likely to present significant adverse impacts on other users of the rail line, including grain and fruit shippers, intermodal users, ports, industries, aircraft manufacturers and passenger rail—all of whom are critically dependent on timely and affordable access to the rail system. Existing studies from the Northwest indicate that coal rail traffic is already having a significant negative impact on the ability of Washington State shippers to access markets where coal traffic from the Powder River Basin is dominating the rail lines; experts working for that State have concluded that "the high volume of coal trains moving east out of the Powder River Basin has made it virtually impossible to route time-sensitive intermodal trains moving from Pacific Northwest ports to central and southeast gateways such as Kansas City and Memphis through the near continuous flow of slow-moving coal trains. *See Heavy Traffic Ahead: Rail Impacts of Powder Basin Coal to Asia by Way of Pacific Northwest Terminals*, Western Organization of Resource Councils (July 2012) [Attachment P].

Adjusting to this report, BNSF has shifted most intermodal traffic destined to locations south of Chicago to the Ports of Los Angeles and Long Beach."[25] These reports also confirm that the railroad prioritizes unit trains, such as coal trains, over other shippers. The CEQA analysis should fully analyze the impacts on other types of shippers if inbound and outbound freight or passenger rail traffic is diverted or eliminated due to the competition with coal trains, such as agricultural products. Further, the EIR should look at impacts related to diversion of this freight rail traffic to other modes, including trucks and barges.

The CEQA analysis must also analyze impacts, mitigation measures and potential funding relating to the use of passenger rail on these same lines. The CEQA analysis must analyze how existing and expanded passenger rail uses will be impacted if freight traffic increases. The CEQA analysis should further consider existing and prospective public funding for rail capacity to purchase passenger rail service.[26] The CEQA analysis should include all needed capacity improvements that will be required to address at least those areas where the planned coal train traffic will exceed the capacity of the existing system.

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[25] Communitywise Bellingham, Annotated Bibliography with Key Extracted Pages Studies Relevant to Rail Related Public Policy Concerns Community Impacts, Local Business Impacts, Lack of BNSF Cost Sharing, *available at* http://www.communitywisebellingham.org/wp-content/uploads/2012/05/CWB-WSDOT-Public-Policy-Concerns-Report.pdf.

[26] *See* Sightline, January 2013, *Who Pays for Freight Rail Upgrades?*, *available at* http://daily.sightline.org/2013/01/18/who-pays-for-freight-railway-upgrades/.

b. The Project is Likely to Create Very Significant Impacts Relating to Rail Traffic in Dozens of Impacted Communities.

Our prior comment (June 9, 2014 Comment, at 26) mentioned that increases in freight rail traffic for coal export could result in significant adverse impacts on other traffic and freight mobility within affected communities. *See Heavy Traffic Ahead: Rail Impacts of Powder Basin Coal to Asia by Way of Pacific Northwest Terminals*, Western Organization of Resource Councils (July 2012) [Attachment P]. These traffic impacts cause direct economic losses to affected communities and businesses through interruptions of freight mobility, challenges for customers reaching businesses, and lost employee time. Air pollution impacts related to increased idling and congestion may also directly impact growth in affected communities. It is imperative that the CEQA analysis fully examine these issues in all communities that are likely to be similarly affected along the entire corridor from the source of the coal to the Long Beach export terminal.

Finally, it is particularly critical that the evaluation of rail impacts be placed in the context of cumulative effects from multiple projects currently under consideration that will dramatically raise the amount of train traffic in California. In addition to the other coal export terminals that will in part use the same lines as this one, there are numerous proposals to increase the amount of crude oil travelling by rail in California.[27] Together, these projects will add toxic and dangerous crude oil shipments to the already overcrowded rail lines. The CEQA analysis should evaluate the direct, indirect, and cumulative impacts of reasonably foreseeable projects, including crude oil, coal export, and liquefied natural gas terminals in California. This includes the cumulative impacts associated with rail traffic, vessel traffic, and associate pollution and public health impacts.

c. Coal Exports Threaten Nearby Property Valuations, Which Must be Analyzed

As relied upon in our prior comment (June 9, 2014 Comment, at 27) recent studies have indicated that increases in coal train traffic induced by agreements may directly result in significant reductions in property values, affecting owners, other taxpayers, and affected communities. *See Increased Coal Train Traffic and Real Estate Values*, The Eastman Company (Oct. 30, 2012) [Attachment Q]; Robert A. Simons, A. El Jaouhari, *The Effect of Freight Railroad Ttracks and Train Activity on Residential Property Values*, (Summer 2004) [Attachment R]; Futch, M., *Examining the Spatial*

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[27] *See, e.g.*, http://www.reuters.com/article/2013/11/07/tesoro-rail-crude-idUSL2N0IS13N20131107 ("U.S. refiner Tesoro Corp has tripled the amount of North Dakota Bakken oil delivered by crude-only trains to its northern California refinery since the first such shipment in September") (last visited on June 6, 2013); http://www.mysanantonio.com/business/article/Moving-crude-by-rail-works-for-refiners-4547720.php ("Valero hopes to have approval soon from local officials to ship North American crude by rail to its Benicia plant in Northern California and complete the project by year's end.") (last visited on June 6, 2014).

Distribution of Externalities: Freight Rail Traffic and Home Values in Los Angeles (Nov. 11, 2011) [Attachment S]. A study conducted by the Eastman Company (property valuation experts and consultants) relevant to the GPT in Whatcom County in Washington concludes that property valuation losses are likely to be significant for properties located within 500 feet of the mainline tracks in Whatcom, Skagit, Snohomish, King, and Pierce Counties, due to the impacts related to traffic, safety, vibration, noise, pollution, and stigma and perception issues. For example, the study found that single-family residential properties north of Everett could lose values in the range of 5-20%. Other estimates included multi-family properties (5-15%); commercial properties (5-10%); and industrial properties (5-8%). Using a database of assessed property values in the study area, the Eastman report concluded that even a 1% diminution in property value would result in a loss of approximately $265 million. A similar study for the City of Seattle showed potential property value losses of up to half a billion dollars. *See* Attachment T (CAI OED Report). While we are not yet aware of any comparable study for Long Beach, it is clear that a substantial increase in rail traffic has important impacts that need to be assessed. The EIR should look at these issues along the entire corridor, using specific estimates of rail traffic associated with the project, as well as the cumulative impacts of other coal export facilities and proposed crude-by-rail.

d. There will be Negative Impacts on Economies Dependent on the Marine Environment.

There are likely to be significant adverse impacts and major risks posed to the San Pedro Bay aquatic ecosystem from this project. In addition to the impacts on ecosystems and to those who fish in the Santa Monica Bay for sport and food, these issues must be evaluated for the impacts and risks that they pose for marine related businesses and economies, including tourism and other related businesses. These businesses cumulatively provide significant amounts of revenue in positive economic impacts to the state and region. Impacts to other forms of recreation, e.g., boating, hiking, birding, should be closely analyzed.

vi. The CEQA Analysis Must Analyze Harm to Wildlife, Marine, and Aquatic Health.

As our prior comment thoroughly explained (June 9, 2014 Comment, at 28), the CEQA analysis must include an analysis of coal export-related impacts to biological, marine, and aquatic resources on both public and private lands and waters in the affected area, that is, in the area from the mining of the coal in the Powder River Basin (or Utah or Colorado), through the rail corridor to the project, through the loading and shipping of the coal through the Long Beach Port and surrounding waters, to its final destination and combustion in Asia. Such resources include marine and terrestrial mammals, game and non-game resident and migratory bird species, raptors, songbirds, amphibians, reptiles, fisheries, aquatic invertebrates, wetlands, and vegetative communities. The agencies must ensure that up-to-date information on all potentially impacted flora and fauna is made available, so that adequate impact analyses can be completed. Habitat degradation,

fragmentation, and loss must all be assessed, along with any resulting impacts to wildlife and marine species.

Stormwater is another critical concern, given the toxicity of the material being shipped, and the historic contamination of this site. The San Pedro Bay is already listed as impaired under the state's § 303(d) list, and under Ninth Circuit precedent, any additional discharge to such impaired water bodies is prohibited. Increased wildlife mortality from railroad and mining related activity (including, but not limited to, increased human conflicts, habitat loss, and increased hunting pressure) must also be discussed. Impacts to wildlife migration corridors must be evaluated.

Increased shipping traffic brings with it an increased risk of collisions, groundings, spills, discharges, and accidents during vessel fueling. For instance, the devastating Cosco Busan spill in the San Francisco Bay just a few years ago could become a more common occurrence.[28] Similarly, the potential for introduction of invasive species, including through ballast water, must be assessed, as tens of thousands of cubic meters of ballast water per visit will be discharged by the shipping vessels. Hull fouling presents a similar danger of invasive species introduction. All of these risks and impacts must be carefully scrutinized. And, it is particularly important for the agencies to evaluate increases in vessel traffic in the context of the cumulative impacts from multiple current and reasonably foreseeable fossil fuel-related projects.

IV. The CEQA Analysis Must Analyze a Reasonable Range of Alternatives, Including Phasing Out Fossil Fuel Exports

A proper CEQA analysis requires that the lead agency discuss a reasonable range of alternatives. CEQA Guidelines § 15126.6(a). As we clearly pointed out in our prior comment (June 9, 2014 Comment, at 28), the Port must analyze a reasonable range of alternatives before approving the new operating agreement and lease. The Port has refused to analyze any alternatives, subverting the purpose of CEQA. The analysis of alternatives lies at "the core of an EIR." *See Citizens of Goleta Valley v Board of Supervisors*, 52 Cal. 3d 553 at 564; *see also* Pub. Res. Code § 21002.1(a). In this analysis, the CEQA analysis must consider a reasonable range of alternatives that would avoid or substantially lessen this impact while feasibly attaining most of the Project's basic objectives. *See* § 21100(b)(4); CEQA Guidelines § 15126.6(a). The purpose of this analysis is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. *See Citizens of Goleta Valley*, 52 Cal.3d 553 at 564.

The EIR "protects not only the environment but also informed self-government." *Id.* If the lead agency refuses to consider a reasonable range of alternatives or fails to

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[28] *See, e.g.*, http://www.fws.gov/contaminants/documents/coscobusan.pdf. The Cosco Busan cargo ship hit the Bay Bridge in heavy fog in 2007, resulting in the worst spill in the San Francisco Bay for 20 years, and significant fish and bird kills.

support its analysis with substantial evidence, the purposes of CEQA are subverted. *See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713 at 735-38. If a feasible alternative exists that will meet the project's objectives while reducing or avoiding its significant environmental impacts, the project may not be approved. *See* Pub. Res. Code § 21002. In addition to the need for thorough consideration of the impacts of permitting fossil fuel exports, the CEQA analysis must consider the option of not including fossil fuel exports out of Long Beach. Here, the lack of a CEQA analysis has curtailed options for alternatives to the current effort to encourage greater levels of coal export.

V. Analysis of Important Mitigation Measures has been Curtailed by this Failure to Analyze Impacts

The Port now has an opportunity to help "Green" the Port by minimizing impacts of coal exports, but minimizing those impacts requires an environmental analysis. In our prior comment (June 9, 2014 Comment, at 29), we brought to the Port's attention several important mitigation measures that could serve to make this project more sustainable, including covering the rail cars and funds for GHG mitigation. Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *See Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). If the EIR is the heart of CEQA, then mitigation is its teeth. *See Envtl. Council of Sacramento v. City of Sacramento*, 142 Cal.App.4th 108 at 1039. Under CEQA, feasible mitigation measures must be adopted that will avoid or substantially lessen significant environmental effects. Pub. Res. Code § 21002. CEQA is clear that "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding agreements." CEQA Guidelines § 15126.5(a)(2).

While we are appreciative that the Port is requiring some electric vehicles and more efficient lighting, this mitigation does not address the scope of the impacts associated with this terminal. In particular, the CEQA analysis needs to explore requiring covers for the rail cars. In addition, the Port should mitigate the impacts from this facility through contributions to its community GHG mitigation program. Exporting and transporting a minimum of 1.7 million MT of coal per year will have significant GHG emissions, which must be analyzed and mitigated. The Port has not analyzed its current GHG emissions, and without that analysis, it is impossible to develop enforceable mitigation measures. CEQA requires that an "EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects to be considered in the full environmental context." CEQA Guidelines, § 15125(c).

VI. Conclusion

NRDC, CBE, and Sierra Club raised all of these issues before the Board of Harbor Commissioners. These organizations have attached all the letters and attachments

filed related to this appeal. We respectfully respect that this information be incorporated into the record for this appeal.

Thank you for your consideration of this appeal. As you are no doubt aware, there is great public interest in the shipment of products like petcoke and coal out of the Port; the harmful impacts caused by the proposed expansion of coal exports will occur at the local, regional, and global scale; and the relevant state laws emphasize a thorough, up-front review of all the environmental effects of proposed actions. We reiterate our request for a full EIR for the action under CEQA. We look forward to working with the City and the Port in the development of an Initial Study and EIR that actually looks at the full direct, indirect, and cumulative impacts of the proposed project. We have included the address for all parties and counsel below to receive communications regarding this appeal.

Sincerely,

Adriano L. Martinez
Staff Attorney
Earthjustice
800 Wilshire Blvd., Suite 1010
Los Angeles, CA 90017
amartinez@earthjustice.org
Counsel for Sierra Club and Communities for a Better Environment

Jessica Yarnall Loarie
Staff Attorney
Sierra Club Environmental Law Program
85 Second St, 2nd Floor
San Francisco, CA 94105
Counsel for Sierra Club

Morgan Wyenn
Staff Attorney
Natural Resources Defense Council
1314 Second St.
Santa Monica, CA 90401
Counsel for Natural Resources Defense Council

Maya Golden-Krasner
Staff Attorney
Communities for a Better Environment
6325 Pacific Blvd., Suite 300
Huntington Park, CA 90255
Counsel for Communities for a Better Environment

Attachment 8

Detailed Response of Harbor Department to Appeal

ATTACHMENT 8

HARBOR DEPARTMENT'S RESPONSE TO APPEAL SUBMITTED BY EARTHJUSTICE ON BEHALF OF COMMUNITIES FOR A BETTER ENVIRONMENT, NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB

This document contains the detailed response of the Long Beach Harbor Department ("Port") to the appeal of the environmental determinations made by the Long Beach Board of Harbor Commissioners ("Board") pursuant to the California Environmental Quality Act ("CEQA") in connection with approving an Operating Agreement related to the Pier G dry bulk facility ("Pier G") in the Port of Long Beach and a Lease of the Pier G Coal Shed ("Coal Shed"). The appeal was filed by Earthjustice on behalf of Communities for a Better Environment, Natural Resources Defense Council and the Sierra Club ("Appellants").

I. Summary of Harbor Department's Response to Appellants' Claims.

Appellants filed an appeal of the Board's approval of the following two agreements ("Agreements") related to the continued operation of the existing Pier G dry bulk facilities: (1) an Operating Agreement between the Port and Metropolitan Stevedore Company ("Metro") allowing Metro to continue to provide terminal operating services at the Port's Pier G dry bulk facility[1], and (2) a Lease of the existing Pier G Coal Shed to Oxbow Energy Solutions LLC ("Oxbow").[2] Through their appeal, Appellants claim that the Board erred in finding the approval of the Agreements exempt from CEQA, and further erred in making an alternative finding that no subsequent environmental review was required beyond the 1992 CEQA review completed for the Coal Shed. Appellants contend that the Agreements allow for an increase in the amount of coal shipped out of the facility and that an environmental impact report ("EIR") is thus required.

As explained in more detail below and in the City Council letter, the Board approved the Agreements in order to: (1) bring the leasing of the existing Coal Shed into alignment with the other leases at Pier G; (2) increase the Port's return on investment for its Pier G land and assets; and (3) require certain maintenance, repairs and equipment replacement at Pier G. The size and capacity of the Coal Shed and related facilities are not changing at all as a result of the Agreements. Nor will the Agreements cause any significant environmental impacts. As such, the Board correctly determined that the approval of Agreements was categorically exempt from CEQA pursuant to the Class 1 and/or Class 2 exemptions and that no exceptions preclude reliance on those exemptions. In addition, the Board determined that the approval of the Coal Shed Lease did not trigger the need for subsequent CEQA review beyond the Negative

[1] The primary purpose of the Pier G dry bulk facility is storage and shiploading of dry bulk commodities, such as petroleum coke, coal, sulfur and soda ash. Metro currently provides the terminal operating services for Pier G and has done so since 1962, eight years before the enactment of CEQA. Under its current agreement, which does not expire until March 31, 2016, Metro provides terminal operating services for all of the bulk materials entering or leaving Pier G.

[2] "Oxbow" as used herein refers to the above-referenced entity and its affiliates. Currently, Metro holds a preferential assignment of the Coal Shed from the Port and subleases it to Oxbow. Oxbow also leases 5 of the 7 other storage sheds on Pier G for petroleum coke export. The other two sheds are used for petroleum coke export by an unrelated third party.

Declaration adopted in 1992 for the construction and operation of the Coal Shed. For both independent reasons, no CEQA review was necessary and the appeal should be denied.[3]

II. The Agreements are exempt from CEQA pursuant to one or more categorical exemptions.

The key fact that Appellants fail to overcome is that the Pier G facilities that are the subject of the Agreements already exist. The core of the facility was constructed in the 1960s, before the enactment of CEQA. The rock dikes and fill at Berths 212-216 occurred in 1960. The wharf followed in 1963. Between 1966 and 1970, the bulk handling facilities were completed. This included five of the storage sheds, a conveyor system, a shiploader, railroad improvements, utilities and pavement. In 1968, the Port embarked on 30-month ($3.1 million) project to expand the bulk loading facilities.

The improvements to the Pier G dry bulk facility that post-date the enactment of CEQA have been made in full compliance with its requirements. In 1979, the construction of a petroleum coke shed for Berth 214-215 was completed pursuant to a Negative Declaration issued in 1973. During the early 1980s, the Port upgraded the Pier G dry bulk facility to increase its handling capacity, including a submerged bulkhead, dredging for larger ships, and a second shiploader. These improvements were assessed in a Negative Declaration approved in 1982. The improvements were specifically designed to increase the capacity of the facility to export coal. According to that Negative Declaration, the improvements increased the annual coal export capacity to 5 million metric tons ("MMT"). The report notes that, in addition to coal, the facility would handle 3.5 MMT of petroleum coke and 370,000 metric tons of white bulk commodities. This Negative Declaration, along with several others, is included in the Additional Reference Documents. As discussed in the City Council letter and below, the amount of dry bulk commodities anticipated to be exported under the authorization of the Agreements is well within this existing capacity.

The additional storage shed constructions and improvements were assessed in various Negative Declarations, such as the 1992 Negative Declaration at issue here for the Coal Shed. (Attachment 6 to Council Letter.)

The CEQA Guidelines include a list of classes of projects that the State has determined do not have a significant effect on the environment and thus are exempt from CEQA. If a project fits into one or more of these classes, an agency must find it categorically exempt from CEQA. Public Resources Code ("PRC") § 21084; CEQA Guidelines § 15300. An agency may combine several exemptions to find an entire project exempt. *See, e.g.*, *Surfrider Found. v. California Coastal Commission*, 26 Cal.App.4th 151 (1994) and *Madrigal v. City of Huntington Beach*, 147

[3] In addition and/or alternatively to the positions presented herein, the Port's approval of the Agreements is not a "project" for purposes of CEQA because it does not result in a direct or reasonably foreseeable indirect physical change in the environment and/or is exempt pursuant to the common sense exemption because there is no reasonable possibility that it may have a significant impact on the environment. *See* Pub. Res. Code ("PRC") § 21065; 14 Cal. Code of Regulations, Section 15000 et seq. ("CEQA Guidelines") § 15061(b)(3); and *Muzzy Ranch Co. v. Solano County Airport Land Use Commission*, 41 Cal.4th 372 (2007). Moreover, given that the core of the dry bulk facility predates CEQA, its ongoing operation is statutorily exempt from CEQA. PRC § 21169; CEQA Guideline § 15261(a).

Cal.App.4th 1375 (2004). Courts apply the deferential substantial evidence standard to an agency's factual determination that a project comes within the scope of a categorical exemption. *See, e.g., North Coast Rivers Alliance v. Westlands Water District*, 227, Cal.App.4th 832 (2014). The Agreements are exempt from CEQA pursuant to two categorical exemptions discussed below.

The Class 1 exemption "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." A non-exclusive list of examples of the Class 1 exemption includes existing streets, sidewalks and similar facilities and restoration or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety.

The approval of the Agreements qualifies for the Class 1 exemption. Both the Coal Shed Lease and the Operating Agreement relate to existing facilities and structures. Per the express terms of the Class 1 exemption, these actions are exempt from CEQA. The lease of an existing facility qualifies for the Class 1 exemption. CEQA Guidelines § 15301; *City of Pasadena v. State of California*, 14 Cal.App.4th 810 (1993). The maintenance, repair and replacements of Pier G facilities, including the replacement of asphalt and equipment, is also exempt pursuant to the express terms of the Class 1 exemption. *See also*, *Erven v. Board of Supervisors*, 53 Cal.App.3d 1004 (1975) (road improvement and maintenance services to a county service area were deemed exempt pursuant to the Class 1 exemption).

In *North Coast Rivers Alliance*, *supra*, the most recent case addressing the scope of the Class 1 exemption, the Court of Appeal upheld application of the exemption to water service contracts authorizing water districts to continue to receive large quantities of water from the Central Valley Project ("CVP"). The court reasoned that the contracts did not involve any change in (1) the use of existing facilities that were constructed in the past for the purpose of receiving and delivering CVP water, or (2) the operation of those facilities to actually receive CVP water and deliver it to customers for irrigation purposes. The court made it clear that, for purposes of applying the exemption, the baseline of the analysis must include the on-going operations rather than reassessing such operations.

In essence, Appellants are asking the City Council ("Council") to reassess the existing operation. The Agreements at issue here do not involve any change in the use or operation of existing Pier G facilities. Pier G and the Coal Shed will continue to be used, as they have for decades, for the storage and transport of bulk materials, including coal and petroleum coke.

Contrary to Appellants' claims, the provision in the lease establishing an annual guaranteed minimum tonnage ("GMT") of 1.7 MMT of coal for the first 5 years of the 15-year lease does not result in an expansion of use. The GMT is not a minimum coal shipment requirement as portrayed by Appellants. Instead, the GMT is simply an economic term of a ground lease. It ensures that the Port will either receive a certain promised level of tariff income based on the GMT or a payment that makes up the difference between the promised level of tariff income and the actual level of tariff income. Under the current agreements, the 2014 level of throughput for the Coal Shed is projected to be above 1.7 MMT and consists almost exclusively of coal. The

1.7 MMT GMT was based upon Oxbow's projection of what its 2014 throughput would be, and what it anticipated its ***minimum*** throughput would be for the first 5 years of the lease period. As explained in more detail in the Council letter, that level of throughput would produce $2,805,000 in wharfage and shiploading fees based upon current tariffs. The lease structure allows the Port to essentially "count on" receiving at least that amount of revenue in addition to the base land and asset rent, either in actual tariff fees or in a supplemental rent payment to cover any shortfall in the tariff fees.

The ability to rely upon minimum payments is a critical part of the Port's financial planning and strategy, and has been an important factor in financial ratings of the Port. *See, e.g.,* the 2014 Fitch and Standard & Poor's Ratings included in the Additional Reference Documents.

The GMT is not new. When the Coal Shed was first placed in service in the mid-1990s, Metro and the Port agreed that the GMT for Pier G would be increased by 2.4 MMT to account for the capacity of the new Coal Shed. Thus, rather than reflecting a forced increase in operations, the contractual GMT in the Coal Shed Lease is over ***700,000 MMT lower*** than the original GMT allocated to the Coal Shed. The 1.7 MMT is also well within the existing capacity of the facility.

These types of GMTs are standard in the industry, and are no different than percentage rent agreements in private commercial leases. From a practical level, at $1.65 per ton—the current tariff—it is unreasonable to suggest, as Appellants do, that Oxbow would go through the cost and expense of producing, transporting, and exporting coal if the demand was not otherwise there, just to avoid this payment.

Appellants' arguments are also based upon the erroneous assumption that the Agreements are somehow increasing the maximum throughput that can be processed through the Coal Shed. Not so. There is not now and never has been a contractual or regulatory limit on the maximum amount of coal that can be shipped from this facility. As part of the 1980 improvements, the existing facilities at Pier G were designed for the export of up to 5 MMT of coal per year. As much as 2.35 MMT of coal has passed through the Coal Shed in one year.

The case of *Bloom v. McGurk*, 26 Cal.App.4th 1307, 1317 (1994) demonstrates that Appellants' argument on this point is without merit. In *Bloom*, the Class 1 exemption was found applicable to the permit renewal for a medical waste treatment facility. The facility had two incinerators with a combined capacity to incinerate one ton of medical waste per hour. However, the permits did not limit the amount of trash that could be incinerated. The court found that the approval of a permit renewal for continued operation was entitled to the Class 1 exemption even though the facility had never undergone CEQA review. That case stands for the proposition that when the physical capacity of a facility is not changing in connection with a permit renewal, and there are no other changes in operational caps or limits, it is appropriate to rely upon the Class 1 exemption. In *Bloom,* the court noted that because the previous permits at issue there contained no limitation of the amount of waste that could be incinerated by a medical waste treatment

facility, and there would be no increase in the physical capacity of the incinerators, the permit renewal did not trigger the need for an EIR.[4]

The court in *Bloom* explained that it would be nonsensical and contrary to CEQA to require new CEQA analysis in the context of a renewal of existing permits. *See* 26 Cal.App.4th at 1315:

> We presume that thousands of permits are renewed each year for the ongoing operation of regulated facilities, and we discern no legislative or regulatory directive to make each such renewal an occasion to examine past CEQA compliance at every facility built [since the enactment of CEQA]. That result would contravene the applicable statute of limitations and the ordinary meaning of the words used in the class 1 exemption.

Accord Citizens for East Shore Parks v. State Lands Commission 202 Cal.App.4th 549, 561 (2011).

The Class 2 exemption consists of "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including . . . [r]eplacement of a commercial structure with a new structure of substantially the same size, purpose and capacity." CEQA Guidelines § 15302. For example, a substantial modernization of a large cement manufacturing plant, including replacement of production kilns and air pollution control equipment, repositioning of structures so as to reduce visual impacts, and the option to burn coal in addition to natural gas and oil, was held to be an exempt project under the Class 2 exemption. *Dehne v. County of Santa Clara*, 115 Cal.App.3d 827, 837-838 (1981).

The Operating Agreement qualifies for the Class 2 exemption. Despite Appellants' claims to the contrary, the size of the facility is irrelevant for purposes of the Class 2 exemption. The *Dehne* court specifically rejected the notion that a size limit applied to this exemption, noting that the cement plant at issue there was located on a 1,300 acre site and had a production capacity of 1.6 million tons of concrete per year. 115 Cal.App.3d at 841.

Thus, there is no basis for Appellants to take issue with the amount of asphalt that is being replaced, since it is a like-kind replacement. The asphalt is one component of the Pier G facility, and its replacement is entitled to the same exemption as the facility itself. *Dehne*, *supra*, 115 Cal.App.3d at 839 (court observes that Class 2 exemption does not require "minute scrutiny" of each individual project component to justify application of the exemption). Given that the Class 2 exemption was found applicable to the modernization of an entire cement plant, the one-to-one replacement of certain paved areas at issue here surely also qualifies for the Class 2 exemption.

In sum, the approval of the Agreements fits within the Class 1 exemption and at least parts of it fit within the Class 2 exemption. As such, the Agreements are exempt from CEQA.

III. None of the exceptions to the use of a categorical exemption would apply here.

[4] *See also, Committee for a Progressive Gilroy v. State Water Resources Control Board*, 192 Cal.App.3d 847 (1987) (the restoration of waste discharge levels to amounts previously analyzed and authorized did not trigger any of the requirements for subsequent environmental review and was further exempt pursuant to the Class 1 exemption).

A categorical exemption cannot be utilized if certain exceptions apply. For instance, a categorical exemption cannot be relied upon if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. In order for this exception to arise, a showing of ***both*** significant effect ***and*** unusual circumstances is required. As explained in Section III.B below, neither prong applies here. An exemption also cannot be used when the cumulative impact of successive projects of the same type in the same place over time is significant. As shown in Section III.C below, the Agreements will not result in significant cumulative impacts. Since none of the exceptions apply, the Board properly relied on the above categorical exemptions when acting on the Agreements.

A. Even applying the most conservative standards and assumptions, the exemptions pertain here.

As noted, a categorical exemption under CEQA cannot be used if certain exceptions apply. CEQA Guidelines § 15300.2. An agency's determination that an activity is categorically exempt constitutes an implied finding that none of the exceptions to the exemptions exist and an agency is, thus, not required to specifically find that none of the exceptions apply. *Association for Protection of Environmental Values v. City of Ukiah*, 2 Cal.App.4th 720, 731 (1991). The Board here made an express finding that none of the exceptions were applicable. The burden is on Appellants to supply evidence showing that one or more of the specified exceptions are met. As discussed below, Appellants have not and cannot sustain that burden.

There is a split in case law as to whether the "substantial evidence" or the "fair argument" standard of review applies to any claim that an exception applies. The substantial evidence standard is a more deferential standard of review than the fair argument standard that applies to an agency's adoption of a negative declaration. In applying the "substantial evidence" standard, the question is whether substantial evidence in the record supports the agency's decision. By contrast, in applying the "fair argument" standard, the question would be whether any substantial evidence in the record supports a fair argument that the project may have a significant effect on the environment. CEQA Guidelines section 15064(f)(1); *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68 (1974). While the Harbor Department believes the correct standard is the substantial evidence test, none of the exceptions would apply here even if the more stringent fair argument standard were to apply.

To determine whether an exception applies, one must evaluate the impacts of a project against the existing environmental setting or baseline, which normally consists of the existing environmental conditions in the vicinity of a project as they exist at the time environmental analysis is commenced. CEQA Guidelines § 15125. However, there are notable exceptions to the use of existing conditions as the baseline. For instance, in the case of an existing operation, the baseline includes fully permitted or allowable operations if the project involves either: (1) subsequent environmental review under PRC § 21166 for modification of a previously analyzed project, or (2) approvals allowing the continuation of an existing operation without significant expansion of use and thus qualifying for a categorical exemption as an existing facility under CEQA Guidelines § 15301. *See Communities for a Better Environment v. South Coast Air*

Quality Management District, 48 Cal.4th 310, 326 (2010).[5] Both of these exceptions apply here, such that the baseline is properly full operation of Pier G and the Coal Shed under existing approvals based on its physical capacity. However, even if the current throughput conditions were to be used as the baseline, the result would be the same–the current throughput is consistent with the anticipated throughput under the Coal Shed Lease.

Because the Agreements arise in a subsequent environmental review context and because they qualify for the Class 1 Exemption, CEQA review of the Agreements may properly rely on the full capacity baseline. This means that the only environmental impacts that need be evaluated in connection with the Agreements for purposes of determining whether one of the exemption applies are impacts that are different from or greater than those that were authorized by the existing agreements and approvals for the facility. The baseline here equates to operations that can be accommodated by the existing physical conditions of the facility. The Agreements do not propose any material changes to the existing facilities or operations. Thus, impacts would not be different or greater than those authorized by the existing approvals.

B. The Unusual Circumstances Exception does not apply to the Agreements.

A categorical exemption may not be used for a project if "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." CEQA Guidelines section 15300.2(c) (the "Unusual Circumstances Exception"). Application of this test involves two distinct inquiries: (1) whether the project presents unusual circumstances ***and*** (2) whether there is a reasonable possibility of a significant environmental impact resulting from those unusual circumstances. *Banker's Hillcrest, Park West Community Preservation Group v. City of San Diego*, 139 Cal.App.4th 249, 278 (2006); *San Francisco Beautiful v. City & County of San Francisco*, 226 Cal.App.4th 1012, 1024 (2014). "A negative answer to either question means the exception does not apply." *Santa Monica Chamber of Commerce v. City of Santa Monica*, 101 Cal.App.4th 786, 800 (2002). "[W]hether a circumstance is 'unusual' is judged relative to the *typical* circumstances related to an otherwise typically exempt project." *Id.* at 801. In particular, the Unusual Circumstances Exception applies where "the circumstances of a project differ from the circumstances of projects covered by a particular categorical exemption, and those circumstances create an environmental risk that does not exist for the general class of exempt projects." *Banker's Hill*, supra, 139 Cal.App.4th at 278. Here, not only is there no indication of a significant impact, but there is also no unusual circumstance.

In some cases, courts have ruled that the Unusual Circumstances Exception precluded an agency's reliance on a categorical exemption. For instance, in *Azusa Land Reclamation Company, Inc. v. Main San Gabriel Basin Watermaster*, 52 Cal.App.4th 1165 (1997), relied on by Appellants, the court found unusual circumstances given the nature and size of the proposed project, *i.e.*, an 80 acre unlined solid waste landfill atop a groundwater basin.[6] The court there

[5] *Accord*, *North Coast Rivers Alliance*, *supra* ("Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline.").

[6] *See also*, *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District*, 202 Cal.App.3d 1136, 1148-1149 (1988) (presence of hazardous wastes on property to be acquired by an open space district is an unusual circumstance precluding reliance on a categorical exemption); *Committee to Save the Hollywood Land Specific Plan v. City of Los Angeles*, 161 Cal.App.4th 1168, 1185-1187 (2008) (placement of wooden fence atop a

found that the project did not qualify for the Class 1 exemption because there was evidence that the landfill was leaking and would continue to leak leachate into the groundwater thereby contributing to degradation of the basin. 52 Cal.App.4th at 1205.

By comparison, in several cases, the courts have ruled that the Unusual Circumstances Exception did not preclude reliance on the use of categorical exemptions because there was no evidence of adverse environmental impacts due to unusual circumstances. *See, e.g.*, *City of Pasadena*, *supra*, 14 Cal.App.4th at 826-834 (court rules that the lease of a building for a parole office did not constitute an unusual circumstance given the presence of other custodial and criminal justice facilities in the immediate vicinity of the site); *Bloom*, *supra*, 26 Cal.App.4th at 1316 (court finds no unusual circumstances in connection with continued operation of medical waste treatment facility noting the "presence of comparable facilities in the immediate area"); *San Francisco Beautiful*, *supra* (court finds the addition of 726 utility cabinets not to be an unusual circumstance in the context of an urban environment); and *Wollmer v. City of Berkeley*, 193 Cal.App.4th 1329, 1351 (2011) (court rejects claims that location of an infill project at a busy intersection was an unusual circumstance noting that this type of circumstance is precisely what is expected in the infill development context).

The Unusual Circumstances Exception does not preclude the Port's reliance on categorical exemptions in this case. First, there are no unusual circumstances associated with the activities authorized by the Agreements that set them apart from the types of projects for which the exemptions were intended to apply. The continued use of the existing Pier G facilities comports with the typical projects for which the Class 1 and 2 exemptions were intended to apply, and the uses authorized by the Agreements are fully compatible with surrounding industrial Port uses. The Agreements are not calling for any activities to take place on a sensitive drinking water aquifer as was the case in *Azusa*. Instead, the activities will take place in the heart of a heavily industrialized port. Since there are no unusual circumstances, there can be no significant effects arising from unusual circumstances.[7]

Even assuming that Appellants had been able to establish unusual circumstances, there is no substantial evidence that the activities authorized by the Agreements may have a significant impact on the environment. Substantial evidence includes "fact, a reasonable assumption predicated upon fact, and expert opinion supported by fact." PRC §21080(e)(1). Generic evidence that does not relate to the impacts of the particular project under consideration (including evidence pertaining to other uses or locations) does not constitute substantial

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historic wall was not exempt pursuant to the Class 5 exemption due to evidence that project would significantly impact the historic resource); and *Lewis v. Seventeenth District Agricultural Association*, 165 Cal.App.3d 823, 829 (1985) (exemption for stock car racing at fairgrounds as an ongoing activity was improper because of unusual circumstance of proximity of residences).

[7] Appellants claim that the approval of the Agreements "would significantly increase the daily number of trains along the rail route" and that the "increased threat of railroad accidents" qualifies as an unusual circumstance. Appellants' June 23, 2014 letter to the Council ("Appellants' Appeal Letter"), p. 16. There is no evidence, let alone substantial evidence as is required, that the activities authorized in the Agreements will result in any additional rail traffic compared with the baseline. Even if there were evidence of increased rail traffic, such increased traffic would not be caused by the activities authorized by the Agreements. *See City of Riverside v. City of Los Angeles*, Court of Appeal Case No. G043651, included in the Additional Reference Documents submitted herewith. Thus, the alleged increased rail traffic does not constitute an unusual circumstance.

evidence. *See, e.g., Gentry v. City of Murrieta,* 36 Cal.App.4th 1359, 1422-1423 (1995) (court discounted evidence of hydrology impacts because it "related exclusively to the effects of other existing and planned projects in the area . . . ."); *see also, Lucas Valley Homeowners Assn. v. County of Marin*, 233 Cal.App.3d 130, 163 (1991); and *Citizens for Responsible Development v. City of West Hollywood,* 39 Cal.App.4th 490, 501-502 (1995). None of the voluminous reports and studies relied on by Appellants relate to impacts caused by the approval of the Agreements. Thus, this information does not constitute substantial evidence of a fair argument of impacts.

The activities authorized by the Agreements will result in no significant effect on the environment. *See, e.g.*, PRC § 21068 (defining "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the environment"); *see also, Simons v. City of Los* Angeles, 63 Cal.App.3d 455, 466 (court observes that a "long standing and well established use does not constitute an environmental 'change' which is the criteria for requiring an EIR"). It is well settled that a proposal to continue existing operations without change has no cognizable impact under CEQA. *See, e.g., Citizens for East Shore Parks , supra* (since baseline included current operations of marine terminal, ongoing water discharges were part of that existing baseline and not an effect of the lease renewal under consideration); *Bloom, supra* (renewal of medical waste treatment facility's permit with no significant change in operations was exempt as the continued operation of an existing facility); and *North Coast Rivers Alliance, supra* (no showing that water renewal contracts had potential to cause a substantial adverse change from the environmental baseline, which baseline included existing physical conditions and established levels of CVP water distribution and use). As in the above cases, the Agreements involve the continuation of existing operations with no or minimal change from baseline conditions.

The operation and use of the Coal Shed for coal storage and export activities will not change as a result of the Agreements. Nor will Metro's terminal operating services change. The existing agreement with Metro authorizes Metro to provide terminal operating services for all of the bulk materials entering or leaving Pier G and further authorizes Metro to use the Coal Shed with no limit on the amount of coal that can be exported annually. The existing Coal Shed was constructed for the express purpose of storing and shipping coal and has been used for that purpose, with no upper limits as to amount of export, since it became operational in 1994. The original Pier G annual GMT allocated for the Coal Shed was 2,476,000 MMT. While the Coal Shed throughput has fluctuated over the years, the annual throughput has been as high as 2.35 MMT, and the 2014 throughput is projected to be over 1.7 MMT. Because there is no cap on coal that can be stored and shipped out of the Coal Shed, and 1.7 MMT GMT is substantially less than the highest historical throughput and is consistent with current throughput, Appellants cannot show that the imposition of an annual GMT of 1.7 MMT would result in an expansion of the use of the Coal Shed. Moreover, as explained in detail in the Council letter, the GMT does not control the amount of the throughput. It is a standard economic term provided in many private commercial leases and beyond the scope of CEQA review because it does not have an adverse physical effect on the environment.

In short, the Unusual Circumstances Exception does not preclude reliance on the Class 1 and Class 2 exemptions in connection with the Port's action on the Agreements.

C. The Cumulative Impact Exception does not apply to the Agreements.

"[W]hen the cumulative impact of successive projects of the same type in the same place, over time is significant," a categorical exemption cannot be used. CEQA Guidelines section 15300.2(b) (the "Cumulative Impact Exception"). A cumulative impact is defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355.

There must be evidence of cumulative impacts in order to trigger the Cumulative Impact Exception. *Santa Monica Chamber of Commerce*, *supra*, 101 Cal.App.4th at 799 (in upholding agency's reliance on Class 1 exemption for creation of a residential parking district, court finds no substantial evidence to support Cumulative Impact Exception). Speculation that significant cumulative impacts will occur because other projects may be approved in the same area is insufficient to trigger this exception. *Hines v. California Coastal Commission*, 186 Cal.App.4th 830, 857 (2010) (listing other projects in the area that might cause significant cumulative impacts is not evidence that the proposed project will have adverse impacts or that the impacts are cumulatively considerable).

Appellants contend that the proposal combined with other coal, petroleum coke and oil export and refining proposals throughout California could result in significant impacts to rail traffic, vessel traffic and associated pollution and public health impacts. Appellants' Appeal Letter, pp. 18-20.[8] Appellants' arguments on cumulative impacts ignore the fundamental facts. The Pier G dry bulk facility is the only facility in San Pedro Bay exporting coal and petroleum coke. There are no plans to undertake any improvements to that facility that would increase its capacity. Appellants' argument is based upon coal and petroleum coke projects or activities elsewhere. In *Robinson v. City & County of San Francisco*, 208 Cal.App.4th 950, 958 (2012), the court held that the phrase "in the same place" refers to the area where the environmental impact will occur. The court thus rejected claims that installation of wireless and telecommunications equipment on utility poles would have significant cumulative aesthetic and noise impacts because there was no showing that multiple devices would be installed within visual or auditory range of each other. The *San Francisco Beautiful* and *North Coast Rivers Alliance* courts came to the same conclusion with respect to the activities at issue in those cases.

Nonetheless, Appellants contend that a full analysis of the cumulative impacts of the activities authorized by the Agreements, combined with other coal, petroleum coke and oil exports and refining proposals must be performed. As just stated, there is no evidence that the cumulative impact of successive projects of the same type in the same place, over time would be significant. Instead, there is only speculation about future, unrelated projects or activities outside the San Pedro Bay. And, contrary to CEQA, the supposed future developments are not based on a list of

[8] These assertions are raised in the context of Appellants' claim that an EIR must "review the economic impacts of this project." Appellants' Appeal Letter, p. 18. In particular, Appellants contend that the approval of the Agreements may result in increased rail traffic to the detriment of other rail users and could adversely affect property valuations and economies dependent on the marine environment. There is no evidence that any such impacts would result from the Harbor Commission's approval of the Agreements. More fundamentally, CEQA Guidelines § 15064(e) expressly provides that "[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment," noting that the focus of CEQA analysis is on physical changes to the environment. *Accord*, CEQA Guidelines § 15131.

probable future projects or a summary of projections contained in an adopted plan. CEQA Guidelines § 15130.

Moreover, as to the Agreements' contribution to such hypothetical impacts, because there is no change in comparison to the baseline conditions, the contribution to cumulative impacts arising from the Board's approval of the Agreements is zero. *Sierra Club v. West Side Irrigation District*, 128 Cal.App.4th 690, 700 (2005) (court observes that a project "must make some contribution to the impact; otherwise it cannot be characterized as a cumulative impact of the project"); *Citizens for East Shore Parks*, *supra* (lease renewal of an operative marine terminal had no cumulative impact to waste discharge since those effects were part of the baseline of the existing marine terminal and not of the lease renewal). Thus, even assuming that there were significant cumulative impacts as a result of other hypothetical projects, the contribution to those impacts arising from the Board's approval of the Agreements would be less than cumulatively considerable and thus less than significant.

In sum, the Cumulative Impact Exception does not preclude reliance on the Class 1 and Class 2 exemptions in connection with the Port's actions on the Agreements, and the Board's determination on this point must be upheld.

IV. The environmental impacts of the Agreements were adequately analyzed in a prior CEQA document.

A. None of the triggers for subsequent environmental review have been met.

A negative declaration was prepared and adopted by the Port in 1992, when it approved the Coal Shed (the "Negative Declaration"). The Negative Declaration identified the purpose of the shed as coal storage and coal blending and identified the capacity of the Coal Shed to be approximately 150,000 metric tons.[9] The Coal Shed was built, in part, to reduce air emissions from coal storage and handling. It was also built to help avoid erratic train arrivals since coal could be stored and need not be immediately shipped upon arrival. (Negative Declaration, p. 8.)

In terms of maximum throughput, the Coal Shed's annual throughput has been as high as 2.35 MMT per year. None of the existing permits or agreements placed any limit or cap on the amount of coal that could be exported through the Coal Shed. Instead, the only limit on throughput is the physical size and physical condition of the shed and accompanying conveying and loading equipment.[10]

When an EIR or negative declaration has been prepared for a project, a lead agency shall not require a subsequent or supplemental EIR unless one of the three prongs of PRC § 21166 is met. In simple terms, those three prongs are: (1) substantial changes are proposed to the project that would cause new or more severe environmental impacts than those previously disclosed; (2) substantial changes have occurred relating to the circumstances under which the project will be carried out, such that the project will now cause new or more severe environmental impacts than

[9] This is an approximate figure given that the actual maximum storage capacity could vary from approximately 135,000 to 170,000 metric tons depending on the density and weight of the stored materials.

[10] TranSystems, a Port consultant, estimated the annual throughput capacity of the Coal Shed, assuming a coal-only operation, to be 2.3 MMT.

those previously disclosed; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified or negative declaration was adopted, shows that the project will have new or more severe impacts than previously disclosed. PRC § 21166; *see also*, CEQA Guidelines § 15162. PRC § 21166 "represents a shift in the applicable policy considerations" in that "[t]he low threshold for requiring the preparation of an EIR in the first instance is no longer applicable" and "instead, ***agencies are prohibited from requiring further environmental review unless the stated conditions are met***." *Citizens for Megaplex-Free Alameda v. City of Alameda*, 149 Cal.App.4th 91, 110 (2007) [Emph. add.][11]

"When an agency has already prepared an EIR [or negative declaration], its decision not to prepare a [subsequent or supplemental EIR] for a later project is reviewed under the deferential substantial evidence standard." *Santa Teresa Citizen Action Group v. City of San Jose*, 114 Cal.App.4th 689, 702 (2003). Substantial evidence is defined as including "fact, a reasonable assumption predicated upon fact, and expert opinion supported by fact." PRC § 21080(e)(1). Substantial evidence does not include "argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly inaccurate or erroneous. . . ." PRC § 21080(e)(2); *see also,* CEQA Guidelines § 15384(a) ("Mere uncorroborated opinion or rumor does not constitute substantial evidence.").[12] The burden is on Appellants to show that the triggers for subsequent review are met. *American Canyon Community United for Responsible Growth v. City of American Canyon*, 145 Cal.App.4th 1062, 1070 (2006). Appellants have not and cannot sustain that burden here.

The Board's approval of the Agreements did nothing more than effectuate revisions and realignments of ***existing*** agreements relating to ***existing*** facilities. Since the Coal Shed began operating in 1994, coal has been stored in and shipped out of the facility. The size and capacity of the Coal Shed was fixed when it was constructed, and the amount of coal that can be stored in or transported through it is not changing at all as a result of Board's actions on the Agreements. While certain financial terms and provisions related to repair and maintenance of existing facilities are changing, those changes do not result in new or substantially more severe impacts than were previously disclosed. Thus, there is no substantial change to the Coal Shed meriting subsequent review.

There are also no substantial adverse changes related to the circumstances under which the project will be carried out. A substantial change of circumstances relates to factors external to the project resulting in new or more severe impacts. For instance, in *Mira Monte Homeowners*

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[11] *Accord*, *Citizens Against Airport Pollution v. City of San Jose*, 227 Cal.App.4th 788 (2014) (court observes that PRC § 21166 applies when "in-depth review has already occurred, the time for challenging the sufficiency of the original [CEQA document] has long since expired, and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process").

[12] *See also*, *Gentry*, *supra*, 36 Cal.App.4th at 1417 ("dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence."); *Leonoff v. Monterey County Board of Supervisors*, 222 Cal.App.3d 1337, 1352 (1995) ("Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence supporting a fair argument of significant environmental effect. Environmental decisions should be based on facts, not feelings."); *Citizen Action To Serve All Students v. Thornley*, 222 Cal.App.3d 748, 756 (1990) (speculation and generalizations about traffic, parking, economic effects, and earthquake safety did not constitute substantial evidence).

Association v. County of Ventura, 165 Cal.App.3d 357 (1985), the court characterized the discovery of an encroachment into wetlands as a substantial change in circumstances that would cause the project to have new or more severe impacts than previously disclosed. As a long-standing part of the Port, Pier G is an industrial use in an industrial area that has not experienced any substantial adverse change in circumstances since adoption of the Negative Declaration for the Coal Shed. To the contrary, as pointed out in the Council letter, the environmental conditions in the area have improved in recent years due to the Port's implementation of the Clean Air Action Plan and other environmental programs and regulations.

Finally, there is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Negative Declaration was adopted, which shows that the Agreements will have new or substantially more severe impacts than previously disclosed. Appellants claim that the greenhouse gas ("GHG") emissions associated with Pier G and the Coal Shed were not analyzed in the Negative Declaration, and therefore should be treated as new information. However, the potential environmental impacts of GHG emissions were known or could have been known in 1992 when the Negative Declaration was adopted and the Coal Shed was approved. *See, e.g.*, *Citizens Against Airport Pollution*, *supra*; *see also*, *Citizens for Responsible Equitable Environmental Development v. City of San Diego*, 196 Cal.App.4th 515 (2011) ("*CREED*") and *Concerned Dublin Citizens v. City of Dublin*, 214 Cal.App.4th 1301 (2013). In rejecting a claim similar to that raised by appellants here, the *Citizens Against Airport Pollution* court recently noted:

> We reiterate, as stated in *CREED*,[13] that under [PRC] section 21166, subdivision (c), "an agency may not require [a subsequent or supplemental EIR] unless '[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.'" (*CREED, supra*, 196 Cal.App.4th at p. 532.) Since the potential environmental impact of [GHG] emissions does not constitute new information within the meaning of section 21166, subdivision (c), City did not violate [CEQA] by failing to analyze [GHGs] in [an] addendum [to the EIR].

Because scientific data regarding GHGs has been known for at least half a century, information regarding the potential adverse impacts of GHGs does not constitute information that could not have been known at the time the Negative Declaration was adopted.

Indeed, there is substantial evidence that concerns regarding GHG emissions and climate change predate the Board's 1992 approval of the Negative Declaration. For instance, in *Massachusetts v. E.P.A.*, 549 U.S. 497, 507 (2007), the United States Supreme Court explained the issue began garnering governmental attention long before the 1992 Negative Declaration. The opinion states:

> In the late 1970's, the Federal Government began devoting serious attention to the possibility that carbon dioxide emissions associated with human activity could

[13] Appellants contend that the *CREED* case is distinguishable because it only related to the appropriate threshold to use in assessing GHG impacts. Appellants' Appeal Letter, p. 8. The court's decision in *Citizens Against Airport Pollution* plainly refutes Appellants' position and confirms that this case is directly on point.

> provoke climate change. In 1978, Congress enacted the National Climate Program Act, 92 Stat. 601, which required the President to establish a program to "assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications." President Carter, in turn, asked the National Research Council, the working arm of the National Academy of Sciences, to investigate the subject. The Council's response was unequivocal: "If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible. . . . A wait-and-see policy may mean waiting until it is too late."

Further, in *City of Los Angeles v. National Highway Traffic Safety Admin.,* 912 F.2d 478, 483 (D.C. Cir. 1990), overruled on another ground in *Florida Audubon Soc. v. Bentsen,* 94 F.3d 658, 669 (D.C. Cir. 1996), the Natural Resources Defense Council ("NRDC"), argued that an "increase in fossil fuel combustion . . . will . . . lead to a global increase in temperatures, causing a rise in sea level and a decrease in snow cover that would damage the shoreline, forests, and agriculture of California; and these local consequences of such global warming would injure the NRDC's members who now use those features of California for recreational and economic purposes." The opinion adds, "According to the NRDC, this 'catastrophic and permanent' change in the global climate would reduce yields from agriculture, increase urban smog, kill forests along climatic borders, and cause a two-foot rise in the sea level, thereby destroying 80% of United States coastal wetlands, forcing salt water into coastal drinking water supplies, and severely damaging shorelines and shoreline-related industries." Thus, at least two years before the adoption of the Negative Declaration by the Port, one of Appellants here was raising claims concerning global climate change in a reported decision.

Appellants also claim that information regarding coal dust escaping open rail cars constitutes new information requiring subsequent CEQA review. This argument overlooks the fact that approval of the Agreements is not causing any increase in rail activities. If anything, the current and future rail activities are projected to be below the levels assumed by the Negative Declaration.

More fundamentally, the debate about uncovered coal-filled railcars dates back to well before the 1992 approval of the Negative Declaration. *See, e.g.,* In-Transit Control of Coal Dust from Unit Trains, Report No. EPS 4-PR-77-1 (May 1977), by Claudio Guarnaschelli, Environmental Protection Service, Fisheries and Environmental Canada and Coal Particulate Emissions from Rail Cars, Proceedings from the Air Pollution Control Association specialty conference on Fugitive Dust Issues in the Coal Use Cycle, Pittsburgh, PA, USA (April 1983). Indeed, as referenced by the second article, the Air Pollution Control Association had an entire conference on coal dust issues nine years before the 1992 approval of the Negative Declaration. In coal producing states such as Virginia, debates were raging in the 1991-1992 time frame as to whether legislation should force the railroad companies to cover coal cars. *See* 1992 Session, Virginia Senate Joint Resolution No. 1, February 5, 1992, Continuing the Special Subcommittee Studying Measures to Reduce Emissions from Coal Carrying Rail Cars as a Joint Subcommittee. *See also,* A Rail Emission Study: Fugitive Coal Dust Assessment and Mitigation, Edward M. Calvin, *et al*, p. 50, and the referenced documents cited therein, all of which predate the 1992 Negative Declaration.

Even the enactment of new regulations does not trigger further review if information about the underlying issue was known or could have been known at the time the original CEQA document was prepared. *Fort Mojave Indian Tribe v. Department of Health Services*, 38 Cal.App.4th 1574, 1605 (1995); *Concerned Dublin Citizens*, *supra*, 214 Cal.App.4th at 1320.

Thus, like GHG, the issues associated with uncovered coal-carrying rail cars do not constitute new information.

Appellants' claims that new reports and studies about coal dust have become available is thus irrelevant, since information about those issues was known or could have been known at the time the Negative Declaration was adopted.[14] Even if such information was somehow viewed as new and related to the Agreements, the only activities associated with the Agreements that will change the physical environment–the maintenance, repair and replacement of the Pier G infrastructure–will not result in any new or more severe impacts than were previously disclosed.

Moreover, Appellants' arguments are based upon the assumption that the Port has jurisdiction over such items as coal production and transport. When an agency has no jurisdiction or authority to modify a project or impose mitigation, no subsequent or supplemental EIR is required because further CEQA review would be a "meaningless exercise."[15] *See*, *e.g.*, *San Diego Navy Broadway Complex Coalition v. City of San Diego*, 185 Cal.App.4th 924, 928, 933-934, 938-940 (2010) (design review approval granted in subsequent review context did not extend to climate change or GHG impacts); PRC § 21002 (noting that the fundamental policy objective of CEQA is to "assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects."); CEQA Guidelines § 15126.4 ("Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments."); CEQA Guidelines § 15040 ("CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws."); and CEQA Guidelines § 15041 (mitigation measures must have an essential nexus, and be roughly proportional, to the impacts of a proposed project). The Port has no authority to impose legally binding mitigation requirements on coal mining activities undertaken by third parties in other states, on the transport of coal by third party railroad companies (which are governed exclusively by the federal Surface Transportation Board), on the transport of coal overseas by third party shipping companies, or on the burning of the coal in a foreign country to produce energy.

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[14] If the trigger for subsequent review were, as Appellants contend, that new reports and studies about an issue have become available, the exception would swallow the rule because new reports and studies about environmental issues are always being made available. "CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors." CEQA Guidelines § 15204(a). And, agencies are prohibited from requiring further environmental review unless the stated conditions for subsequent review are met. *Citizens for Megaplex-Free Alameda*, *supra*.

[15] Courts have also emphasized this principle in CEQA cases not arising in a subsequent review context. *See*, *e.g.*, *Citizens for East Shore Parks*, *supra* (court rules that refinery operations were not part of the renewal of the lease of a marine terminal because the refinery required no approvals by the commission for continued operations) and *Leach v. City of San Diego*, 220 Cal.App.3d 389 (1990) (city not required to prepare an EIR before drafting water from an existing reservoir because city had no ability to minimize the environmental impacts that might be identified in an EIR).

Because the Agreements do not encompass those activities or the parties undertaking them, CEQA review would be an empty and wasteful exercise.[16]

In short, none of the triggers for subsequent environmental review have been met and substantial evidence supports the Port's decision to not prepare a subsequent or supplemental EIR.

B. The purported impacts referenced by Appellants as the alleged basis for requiring subsequent CEQA review are not only unrelated to the Agreements, but are also remote, speculative and beyond the scope of CEQA.

Appellants assert that a thorough environmental analysis of the global impacts of coal use from its mining to its transport, to its use overseas for energy production must be performed.[17] However, as explained above and in the Council letter, these issues do not relate to the Board's approval of the Agreements and do not trigger any of the factors requiring subsequent environmental review. Appellants cite no authority to support the scope of their request; nor does such authority exist.[18] CEQA instead requires a good faith effort to reasonably disclose localized impacts associated with a project and cautions against attempting to assess speculative or uncertain impacts.

The Agreements involve the modification of certain contract terms related to existing, operational Port facilities. The Agreements do not encompass mining, transport or overseas use of coal or petroleum coke. The impacts associated with coal mining, transport and use would occur with or without the Agreements and thus are not impacts of the Agreements. *See*, *e.g.*, *Friends of the Eel River v. Sonoma County Water Agency*, 108 Cal.App.4th 859, 876 (2003) (court observes that "when a project relies on an arrangement that predates the project and is authorized in a different proceeding, the project's EIR [need not] consider the significant impacts of this prior arrangement."). In other words, the worldwide demand for coal will be met with or without the continued lease of the existing Coal Shed to Oxbow. Thus, neither the mining, transport, nor burning of coal for energy production could fairly or reasonably be considered impacts of the Agreements.

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[16] Appellants themselves acknowledge the geographical limits on environmental review and mitigation in their letter, yet ask the Port to do what Appellants themselves admit cannot be done. *See* Appellants' Appeal Letter, p. 17 ("while BNSF has a voluntary tariff encouraging the use of surfactants [to control dust] for Powder River Basin coal, this tariff would not apply to areas outside the Powder River Basin, such as the Utah or Colorado coal shipped to Long Beach for export.").

[17] *See*, Appellants' Appeal Letter, p. 11 ("To be clear, the CEQA analysis must examine the full direct, indirect, and cumulative impacts of the proposed project–from the mining of the coal in the Power River Basin or Utah, Colorado, or New Mexico, the transport of the coal by rail through several states and hundreds of communities, the loading and shipping of coal via large ocean vessels, to the burning of the coal in Asia."). Appellants contend that such an analysis must address impacts related to air quality, GHG emissions, public safety, biological and marine resources, etc.

[18] Along those lines, it is important to keep in mind that CEQA is not to be interpreted "in a manner which imposes procedural or substantive requirements beyond those explicitly stated in [the statute] or in the [CEQA] guidelines." PRC § 21083.1. The California Supreme Court has likewise cautioned that CEQA "must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." *Laurel Heights Improvement Association v. Regents of University of California*, 6 Cal.4th 1112, 1132 (1993) and *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 576 (1990).

More fundamentally, even if what was at issue was a new coal export facility rather than an ongoing coal export facility, the analysis requested by Appellants would require the Port to examine the impacts of activities that generally take place outside California, and even outside of the United States, which is plainly beyond the scope of CEQA. The purpose of CEQA is to analyze projects' environmental impacts ***within the State of California***. For instance, PRC § 21000 states: "The Legislature finds and declares as follows: (a) The maintenance of a quality environment for the people ***of this state*** now and in the future is a matter of ***statewide*** concern. . . . (c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of ***the people of the state***, including their enjoyment of the natural resources **of *the state***. . . . [and] (g) It is the intent of the Legislature that all agencies of the state government which regulate activities or private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment ***for every Californian***." [Emph. add.]

Nothing in CEQA requires the far-reaching analysis urged by Appellants here. Instead, CEQA specifically requires that analysis be focused on impacts within a relatively localized project area. CEQA Guidelines § 15125, which addresses the environmental setting, states: "An EIR must include a description of the physical ***environmental conditions in the vicinity of the project***, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time the environmental analysis is commenced, ***from both a local and regional perspective***." [Emph. add.] In *City of Riverside v. City of Los Angeles*, the Fourth District Court of Appeal ruled that the Port of Los Angeles did not abuse its discretion by failing to include an analysis of increased rail traffic some 65 miles away in Riverside allegedly due to a port expansion project. *See* Additional Reference Documents. The court there reasoned that Riverside was not in the vicinity of the project area and that it was speculative to tie impacts there to a port expansion project. *See also* Trial Court ruling in *City of Riverside v. City of Los Angeles* included in Additional Reference Documents.

A significant effect on the environment is defined as a "substantial adverse change ***in the physical conditions which exist in the area affected by the proposed project***." CEQA Guidelines § 15002(g) [Emph. add.];[19] *see also*, CEQA Guidelines § 15126.2 ("In assessing the impact of a proposed project on the environment, the Lead Agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time [environmental review commences]," noting that the discussion should include "relevant specifics of the area" and the "resources involved."). The scope of review certainly does not extend to impacts beyond the borders of California (over which the Legislature of this State has no jurisdiction), especially ones that are not directly or indirectly caused by a project, as is the case here. Any analysis of such impacts would be speculative and beyond the reasonable, good faith disclosure standard established by CEQA. CEQA Guidelines §§ 15064(d)(3), 15088(c), 15144, 15145, 15151, 15204(a); *Save Tara v. City of West Hollywood*, 45 Cal.4th 116, 133 (2008); *Save Round Valley Alliance v. County of Inyo*, 157 Cal.App.4th 1437, 1450-1454 (2007).

[19] *Accord*, CEQA Guidelines § 15382.

The genesis of the obligation to analyze GHG emissions in CEQA documents is the California Global Warming Solutions Act of 2006 or "AB 32." The focus of AB 32 is on "***statewide*** greenhouse gas emissions," which are expressly limited to "the total annual emissions of greenhouse gases ***in the state***." Health & Safety Code Section 38505(m). [Emph. add.] The mandate of AB 32 is to reduce the "in state" GHG emissions to their 1990 level by 2020. Health & Safety Code Section 38550.

The CEQA Guidelines were amended in 2010 to address GHG emissions. CEQA Guidelines § 15064.4 requires a lead agency to "make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." When assessing the significance of GHG impacts, CEQA Guidelines § 15064.4(b) states that a lead agency should consider, among others, "[t]he extent to which the project complies with regulations or requirements adopted to implement a ***statewide, regional, or local plan*** for the reduction or mitigation of greenhouse gas emissions." [Emph. add.] In regard to plans for the reduction of GHG emissions, CEQA Guidelines § 15183.5 states that such plans must, among others, **"**[q]uantify greenhouse gas emissions . . . resulting from activities ***within a defined geographic area***," and "[i]dentify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions ***anticipated within [that] geographic area***." [Emph. add.]

In *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal.4th 155 (2011), the California Supreme Court cautioned against reliance on "life cycle" studies associated with a particular product, such as plastic or paper bags. The court noted that while such studies may be a useful guide for the decision-maker when a project entails substantial production or consumption of a product, when "increased use of the product is an indirect and uncertain consequence, and especially when the scale of the project is such that the increase is plainly insignificant, the product 'life cycle' must be kept in proper perspective and not allowed to swamp the evaluation of actual impacts attributable to the project at hand." 52 Cal.4th at 175. The court went on to conclude that the environmental impacts discernible from the life cycles of plastic and paper bags would not be significantly impacted by a plastic bag ban in the City of Manhattan Beach.

Similarly here, it simply cannot be shown that the changing of economic terms in the Agreements would create as much as a ripple in sea of worldwide coal production, distribution and usage.

Further, and tellingly, the Governor's Office of Planning & Research ("OPR") and Natural Resources Agency specifically rejected the notion of requiring the type of global analysis of GHG emissions urged by Appellants here when adopting CEQA Guidelines on that topic, noting that "the phrase 'associated with' in the preliminary draft [of CEQA Guidelines § 15064.4] was replaced by 'resulting from' ***to conform to the existing CEQA law that requires analysis only of impacts caused by the project***. ***This change is also necessary to avoid an implication that a 'life-cycle' analysis is required.***" April 13, 2009 letter from Cynthia Bryant, Director of OPR to Natural Resources Secretary Mike Chrisman. (Emph. add.)

In short, the impacts of coal mining, transport and use are separate and divorced from the Agreements and those impacts do not trigger the need for subsequent environmental review.

Finally, nothing in CEQA mandates the far-reaching and limitless analysis urged by Appellants here.