

36671

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
THE CITY OF LONG BEACH, CITY MANAGER AND THE BOARD OF HARBOR
COMMISSIONERS OF THE CITY OF LONG BEACH, HARBOR DEPARTMENT**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as May 23, 2023 ("Effective Date") by and between the City of Long Beach, City Manager ("City") and the Board of Harbor Commissioners of the City of Long Beach, Harbor Department ("Harbor"), with respect to the following:

RECITALS

A. Article XII of the Long Beach City Charter ("Charter") establishes the Harbor District and the Board of Harbor Commissioners to manage the same.

B. In accordance with the Charter, the Harbor operates, maintains, leases or otherwise controls various lands in or near the Harbor District ("Harbor Lands").

C. Pursuant to Section 1203(d) of the Charter, the Board of Harbor Commissioners has the exclusive power for and on behalf of the City to control and have jurisdiction on certain lands except to the extent those lands may be used for or in connection with the drilling for, developing, producing, extracting, processing, taking or removing, storing and disposing of oil, gas and other hydrocarbon substances.

D. In 2010, voters of the City of Long Beach approved Measure D, amending portions of the Charter to specify that the City Manager and the City Council have authority for all oilfield operations, including those within the Harbor District, and transferring the Harbor's oil assets, and revenues derived therefrom, to the City's Tidelands Operating Fund.

E. Long Beach Energy Resources Department ("LBER"), under the control of the City Manager, is solely responsible for the administration of all oil operations and properties used for or in connection with the drilling for, developing, producing, extracting, processing, taking or removing, storing and disposing of oil, gas and other hydrocarbon substances.

F. In accordance with the Charter, LBER operates, maintains or otherwise controls various lands in or near the Harbor District in connection with its operations ("LBER-controlled Lands"). As a result of Measure D, certain oil set aside and oil operating areas are under the control of LBER for use by the California Resources Corporation and/or its affiliated entities (including without limitation Tidelands Oil Production Company), the oil and gas company under contract with the City to construct, operate, maintain, and abandon oil field facilities. Some of the oil operating areas, however, are currently underutilized.

G. The Harbor has a steady demand for more space from potential tenants looking for property to rent and the Harbor's potential to generate revenue will increase if the Harbor were to regain control of some of the LBER-controlled Lands.

H. Over three consecutive fiscal years as set forth herein, the Harbor will advance to the City, from the Harbor Revenue Fund, the total principal amount of Twelve Million Dollars (\$12,000,000) with interest thereon for City's use in the Tidelands area.

I. The term "Advance" as used herein shall mean the principal amount and accrued interest thereon.

J. To facilitate City's repayment of the Advance and to enable the Harbor to meet the demand for space, the City will transfer control of certain portions of LBER-controlled Lands to the Harbor.

K. The net lease revenue generated from such LBER-controlled Lands will be applied as follows: fifty percent (50%) of net lease revenue shall be applied for the benefit of the City to the repayment of the Advance as set forth herein; the remaining fifty percent (50%) shall belong to the Harbor.

L. Upon repayment of the Advance in full: (1) the Transferred Areas (as defined herein) that are encumbered by an existing lease shall be retained by the Harbor for the length of the existing lease and any extensions, whenever granted; and (2) to the extent that one or more of the Transferred Areas are not subject to an existing lease or

any extension thereunder, then City shall make a determination as to whether those Transferred Areas shall be returned to the City or transferred to the Harbor.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this MOU, Harbor and City hereby agree as follows:

1. Recitals. The recitals stated above are incorporated herein by this reference.

2. Transfer of Oil Areas. City shall transfer control over the following LBER-controlled Lands to the Harbor (collectively, the "Transferred Areas"):

A. Pier A:

- i. Oil Area 32A: LBER shall transfer approximately 2.37 acres of the oil area as depicted in Exhibit A, attached to this MOU and incorporated herein by reference.
- ii. Oil Area 36: LBER shall transfer approximately 3.86 acres north of Ultramar Terminal as depicted in Exhibit B, attached to this MOU and incorporated herein by reference.

B. Pier Echo:

- i. Oil Area E-2: LBER shall transfer approximately 0.4 acres of the oil area as depicted in Exhibit C, attached to this MOU and incorporated herein by reference.
- ii. Oil Area E-5: LBER shall transfer approximately 0.8 acres at the north end of Oil Area E-5 and 0.4 acres at the south end of Oil Area E-5 as depicted in Exhibit D, attached to this MOU and incorporated herein by reference.

C. Pier S West, Oil Area 30B: LBER shall transfer approximately 6.07 acres of Oil Area 30B as depicted in Exhibit E, attached to this MOU and incorporated herein by reference.

3. Obligations of LBER:

A. LBER shall provide a cost-effective two-way access to Pier A West, the details for the provision of such access shall be mutually determined by the City and the Harbor at a later date. Harbor shall pay the cost of design and construction of such access.

B. Harbor shall pay for the cost of removal of any existing structures from Pier S West prior to the transfer of Pier S West to the Harbor and Harbor shall be reimbursed for all costs of removal from revenue generated from the Transferred Areas prior to any allocation of net revenues pursuant to Section 6.

4. Principal Amount. An aggregate total of Twelve Million Dollars (\$12,000,000) over three consecutive fiscal years (the "Principal") will be transferred from the Harbor Revenue Fund to the Tidelands Operating Fund via journal voucher. The amounts to be transferred shall be determined by City and communicated to Harbor at least thirty (30) days prior to any transfer. The total principal amount transferred to City shall not exceed Twelve Million Dollars (\$12,000,000).

5. Interest. The Principal outstanding at any given time shall bear simple interest at a rate of five percent (5%) per annum ("Interest"), which shall start accruing from each date of disbursement and continue until the Advance is paid in full.

6. Allocation of Revenue. Annual revenue generated from the Transferred Areas net of all upfront and ongoing expenses associated with the Transferred Areas (e.g., cost of removal of any existing structures from Pier S West, expenses incurred to prepare and maintain Transferred Areas for tenancy) shall be allocated as follows: fifty percent (50%) shall be credited to the Harbor; and fifty percent (50%) shall be credited to

the City for repayment of the Advance as set forth in Section 7. To achieve said allocation of net revenue, given the existing accounting practices, City's 50 percent share of net new leasing revenue from the Transferred Areas will be adjusted downward (and, thus, the Harbor's share upward) by a dollar amount equal to the increase in the Harbor Revenue Fund's annual transfer to the Tideland Operating Fund caused by the new leasing program and accompanying increase in gross revenue to the Harbor Revenue Fund; an example of which is depicted in Exhibit F to this MOU, attached hereto and incorporated herein by reference. After repayment of the Advance, then said fifty percent (50%) shall be transferred to the City until all oil operations in the Harbor District cease, after which time all revenues generated from the Transferred Areas shall be the property of the Harbor.

7. Repayment.

- A. Annual revenues credited to the City shall be paid immediately to the Harbor to reduce the amount of the Advance with payments applied first to the reduction of accrued Interest and second to the reduction of outstanding Principal.
- B. City shall be obligated in any event to repay the Advance within eighteen (18) years of the Effective Date.

8. Transferred Areas Following Repayment of Advance. Upon full repayment of the Advance, Harbor shall retain those Transferred Areas which are encumbered by an existing lease for the length of the existing lease and any extension thereof whenever granted. Upon repayment of the Advance and following the termination and/or expiration of the lease, including any extensions thereof, City shall determine whether such Transferred Areas are needed for oil operations. Should City determine that the lands described in the foregoing sentence are not needed for oil operations, the Transferred Areas shall remain with Harbor and Harbor shall be entitled to all revenues derived thereafter.

9. Notices. Any notices to be given under this MOU shall be given in writing and given as follows: if to the Harbor, notice shall be given to the Executive Director of the Harbor; if to the City, notice shall be given to the City Manager.

10. No Third Party Beneficiaries. No person or entity other than the parties to this MOU shall be deemed to be a third party beneficiary hereof, and nothing in this MOU, except as expressly stated herein, is intended to confer upon any person or entity, other than parties to this MOU, any rights, remedies, obligations or liabilities under or by reason of this MOU.

11. No Assignment. There shall be no assignment or transfer of this MOU.

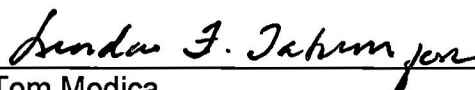
12. Modifications and Amendments. This MOU shall not be amended except in a writing prepared by the City Attorney's office and executed by the parties.

13. Counterparts and Electronic Signatures. This MOU may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one agreement. The words "execution," "signed," "signature," and words of like import in this MOU shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign). The use of electronic signatures herein, or in any amendments to this MOU, and any electronic records related to this MOU (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means), shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. Each party hereto hereby agrees that such electronically

signed and/or electronically transmitted signatures shall be conclusive proof, admissible in judicial proceedings, of such party's execution of this MOU.

CITY OF LONG BEACH

May 17, 2023

By: 
Name: Tom Modica
Title: City Manager

CITY MANAGER

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF LONG BEACH

May 23, 2023


By: 
Name: Mario Cordero
Title: Executive Director

HARBOR

The foregoing document is hereby approved as to form.

DAWN MCINTOSH, City Attorney

May 12, 2023

By: 
Richard F. Anthony, Principal Deputy

DAWN MCINTOSH, City Attorney

May 23, 2023

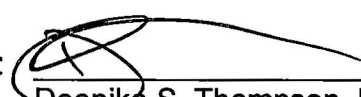
By: 
Deepika S. Thompson, Deputy

EXHIBIT A

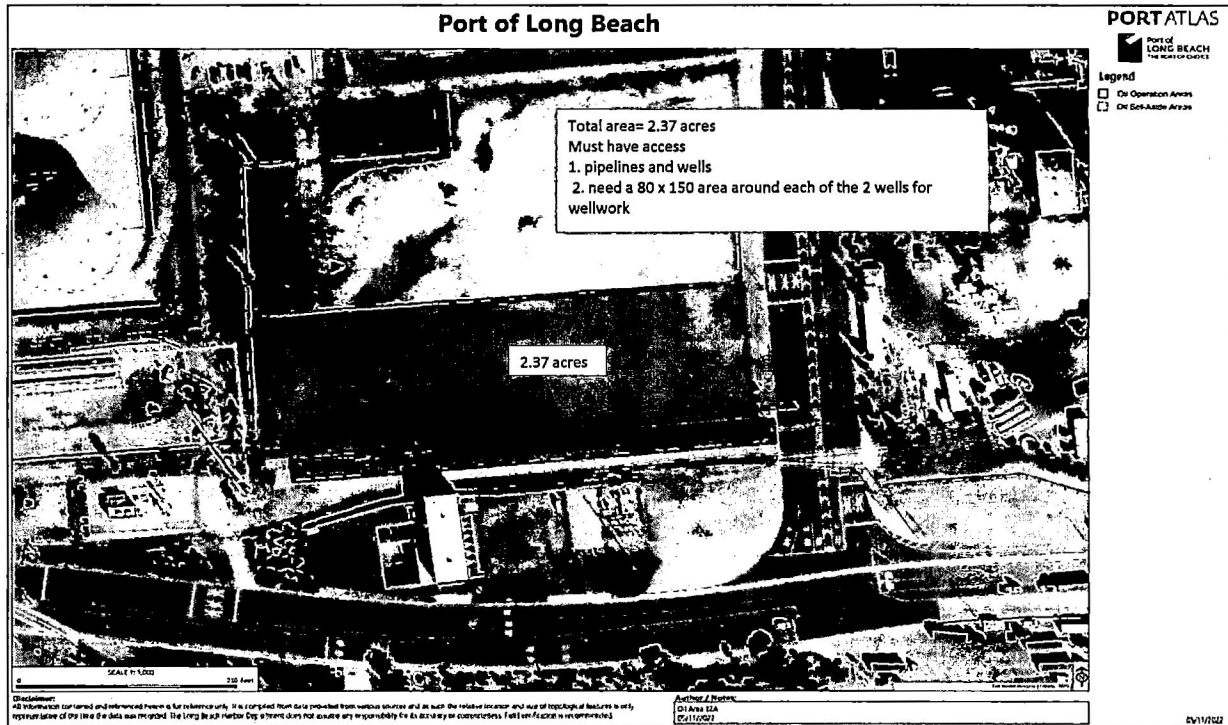


EXHIBIT B

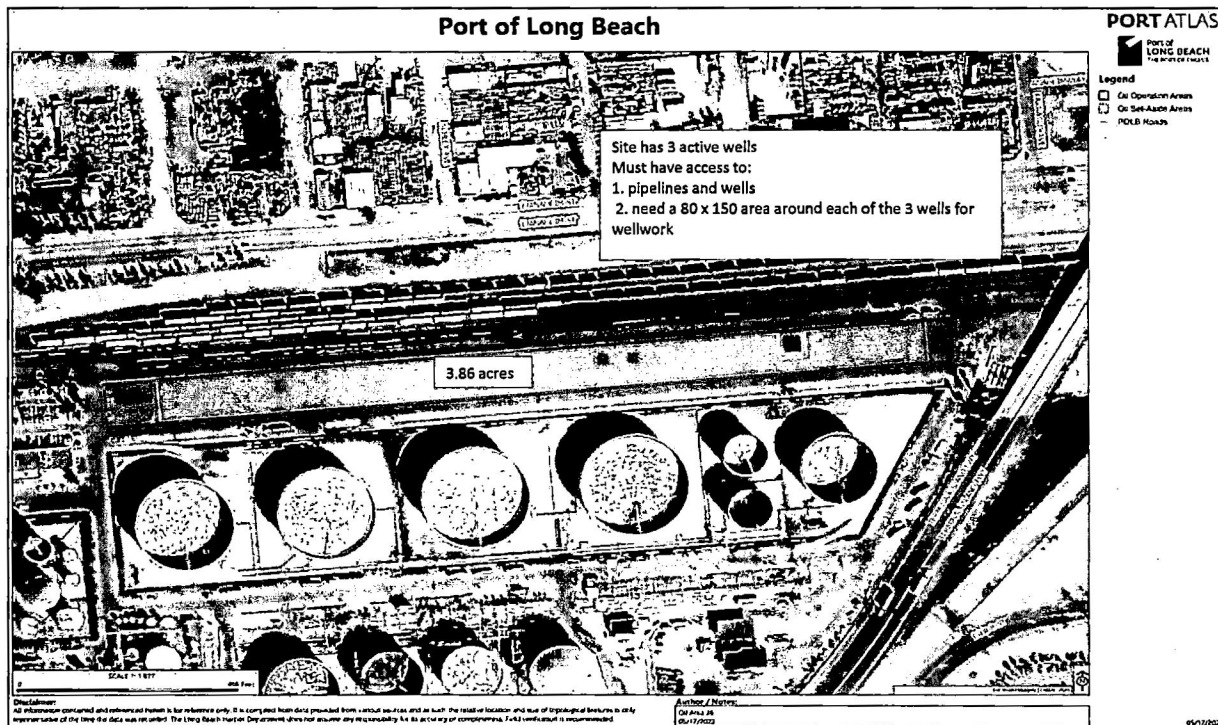


EXHIBIT C

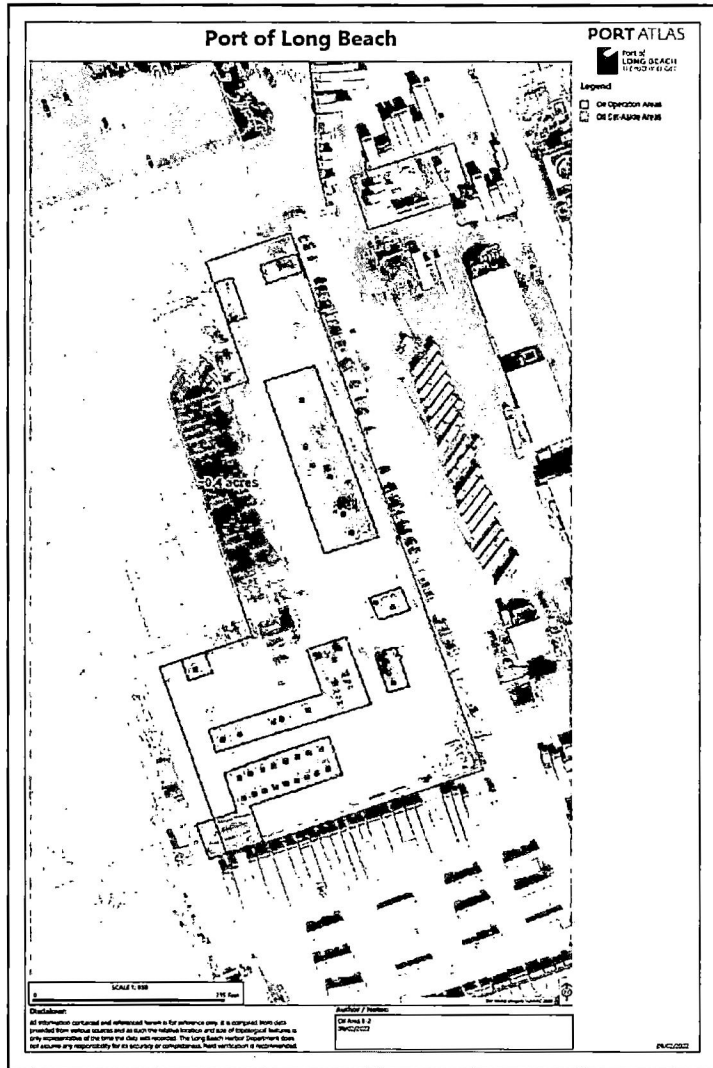


EXHIBIT D

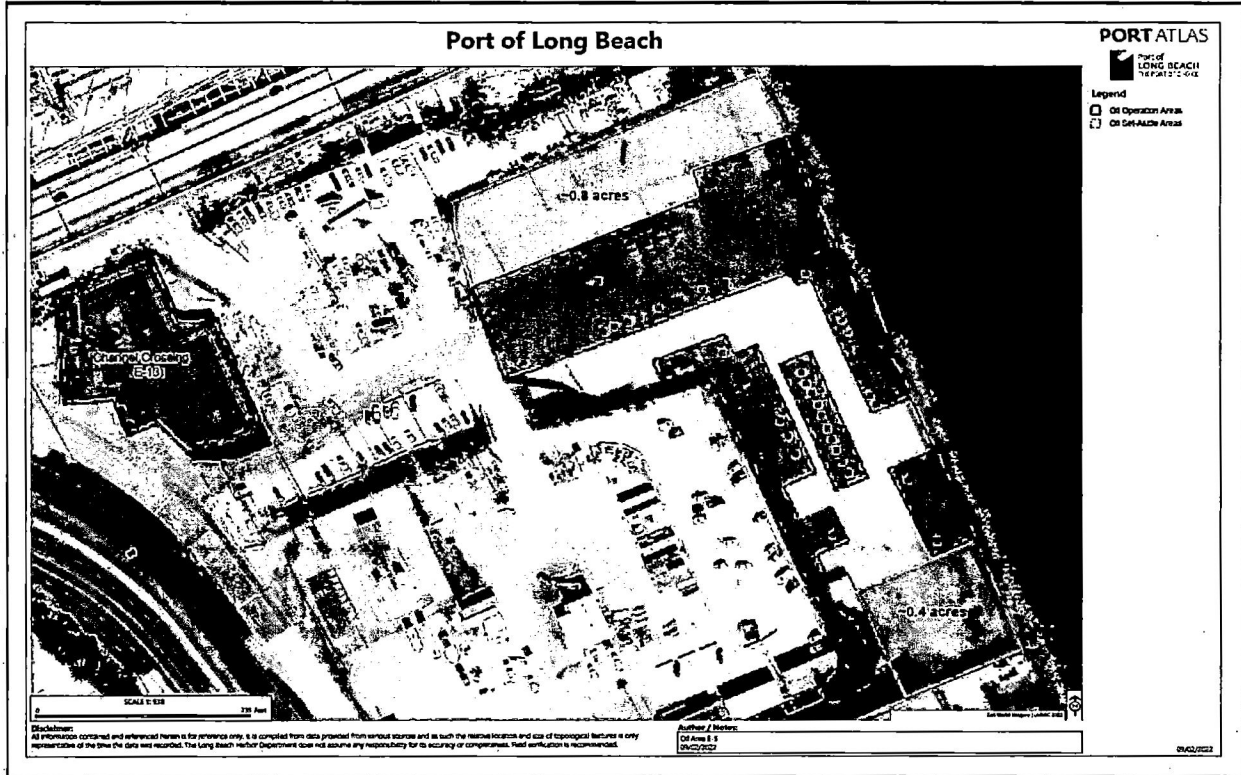


EXHIBIT E

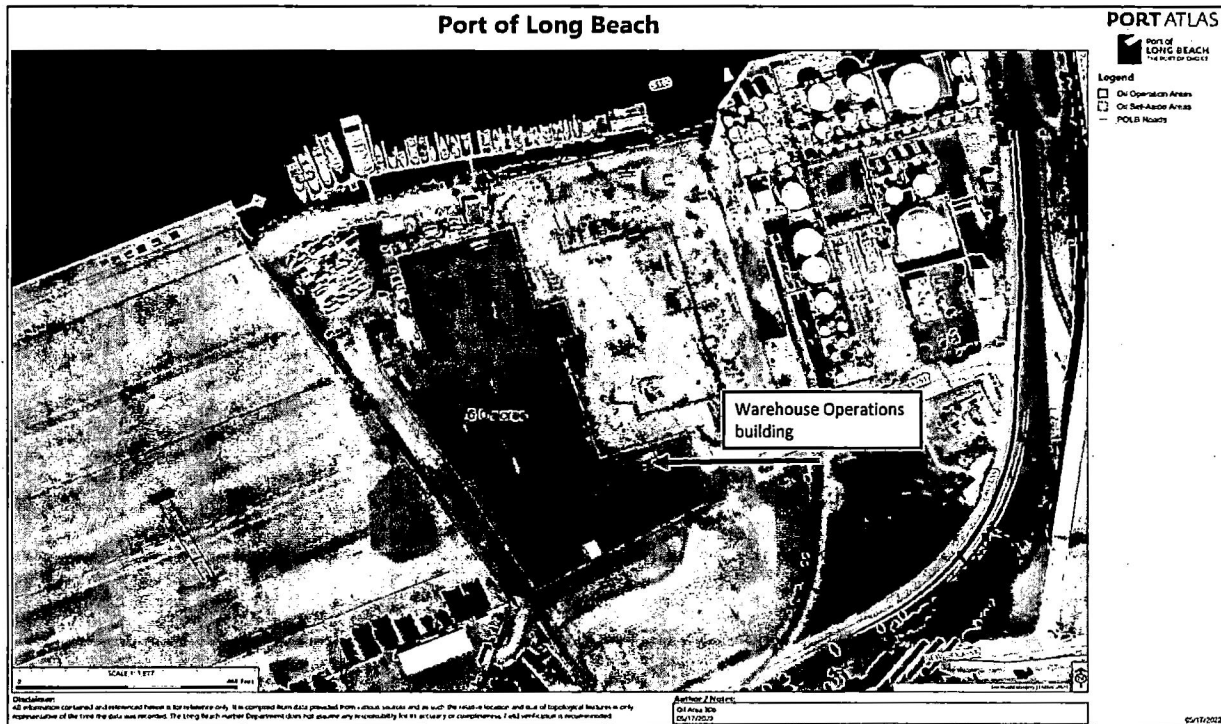


EXHIBIT F

REPRESENTATIVE CALCULATION FOR SECTION 6 "ALLOCATION OF REVENUE"

(dollar amounts are illustrative only)

- Assume \$400.0 million Harbor gross revenue before the new lease activity, and thus a \$20.0 million annual transfer per the City Charter to Tideland Operating Fund (5% of \$400.0 million is \$20.0 million)
- Assume for the sake of example \$3.0 million gross new lease revenue from this MOU, less \$1.0 million of new lease-related costs, for a resulting \$2.0 million of "net new lease revenue" to be split evenly between the Port and the City at \$1.0 million apiece
- Solely due to the new lease program, however, Harbor gross revenue will now be \$403 million, rather than \$400 million, so under the Charter formula, the annual 5% transfer to Tideland Operating Fund would be \$20.15 million (5% of \$403 million), rather than \$20.0 million
- Therefore, the extra \$150,000 of additional revenue to the City from the higher annual 5% transfer needs to be subtracted from the City's \$1.0 million share of the net new lease revenue, and added to the Port's \$1.0 million share
- In this hypothetical example, the City should receive only \$850,000 of the total \$2.0 million of net new lease revenue, and the Port should keep \$1,150,000. The City still nets \$1.0 million in total: (i) \$150,000 from the inflated transfer plus (ii) the remaining \$850,000 from the adjusted split of the net new lease revenue. The Port nets \$1.0 million, too: The Port keeps \$1,150,000 of net new lease revenue but transfers an additional \$150,000 to Tideland Operating Fund as part of the 5% annual transfer.
- The language in Section 6 applies to this hypothetical example thusly: "The City's 50% share of the [\$2.0 million of] net new lease revenue from the Transferred Areas will be adjusted downward [by \$150,000] (and, thus, the Harbor's share upward [by \$150,000]) by a dollar amount equal to the increase in the Harbor Revenue Fund's annual transfer [of \$3,000,000 x 5%] to the Tideland Operating Fund caused by the new leasing program and accompanying increase in gross revenue [of \$3,000,000] to the Harbor Revenue Fund."