

35179

PIPELINE RELOCATION AGREEMENT

This PIPELINE RELOCATION AGREEMENT (“**Agreement**”) is entered into as of this 12th day of February, 2019, by and between Toyota Logistics Services, Inc., a California corporation, with its principal address at 6565 Headquarters Drive, Plano, Texas 75024 (“**TOYOTA**”) and the City of Long Beach, a California municipal corporation, with its principal address at 333 W. Ocean Blvd., Long Beach, California 90802 (“**COLB**”), together the “**Parties**” and each a “**Party**.”

RECITALS

- A. WHEREAS, TOYOTA is proposing improvements (“**Project**”) on its yard known as 785 Edison Avenue located on property owned by COLB within the Port of Long Beach; and
- B. WHEREAS, COLB owns pipeline facilities and wells located on the TOYOTA yard; and
- C. WHEREAS, COLB has agreed to relocate, remove and protect existing underground and above ground pipeline systems (“**Work**”) necessary for the Project to proceed; and
- D. WHEREAS, COLB intends to 1) timely perform the Work as shown on the attached drawings 7120-EX-001 and 7120-EX-002 in Exhibits A and B (attached hereto and incorporated herein), respectively, 2) complete detailed engineering plans and specifications (as reviewed and approved by TOYOTA, “**Plans**”) for the Work, and 3) provide an estimated budget for the Work, all in accordance with the terms and provisions of this Agreement; and
- E. WHEREAS, TOYOTA intends to reimburse COLB for costs associated with the Work, all in accordance with the terms and provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. General Conditions

1. Preliminary. COLB has provided to TOYOTA a preliminary estimate for all costs related to the Work, which is provided in Exhibit C, attached hereto and incorporated herein. Pursuant to Section II.1. and other terms herein, COLB shall promptly following execution of this Agreement (i) engage a professional to complete the Plans, which professional and Plans must be reasonably acceptable to TOYOTA; and (ii) provide a revised estimate for costs related to the Work following development of the Plans.

2. Contracts and Contractors. COLB shall cause the Plans and Work to be performed by its own forces or those of its contractor(s) (each a “**Contractor**”; together, “**Contractors**”). COLB or its Contractor(s) shall submit for TOYOTA’s approval any proposed contract with a Contractor, total expenditures under which are expected to exceed

\$250,000. TOYOTA shall have five (5) business days to review and respond to COLB or its Contractor. If TOYOTA does not respond as provided above within five (5) business days after receipt by TOYOTA, it shall be deemed to have approved such contract. The Parties acknowledge and agree that TOYOTA has pre-approved Tidelands Oil Production Company ("Tidelands") and its affiliates as a Contractor. COLB and Tidelands have previously entered into that certain Drilling and Operating Contract (Long Beach Harbor Department Tidelands Parcel), dated as of September 16, 1963 ("Field Contract") pursuant to which Tidelands operates the oil field wells and pipelines on behalf of COLB. Tidelands will perform portions of the Work pursuant to the Field Contract, and will enter into subcontracts for the performance of the remaining Work (the Field Contract and all other such contracts, each, a "Contract").

3. Role of Contractors. COLB and TOYOTA hereby acknowledge that each Contract shall authorize the corresponding Contractor to, among other things and in accordance with the terms of such Contract, act on behalf of COLB in completing the Plan and the Work (as applicable).

4. Licenses and Permits. COLB shall obtain any and all required permits, including but not limited to, harbor development permits, encroachment permits, zoning permits, or other written authorizations or grants of easements required from all governmental agencies claiming jurisdiction over the Work to be done by COLB pursuant to this Agreement. TOYOTA agrees that it shall reasonably assist and cooperate with COLB in obtaining all required permits for the performance of the Work.

5. Site Conditions and Critical Path. Prior to and in connection with its preparation of the Plans as contemplated by Section I.1.(i), COLB and its Contractors shall be responsible for verifying the location of their existing equipment and facilities as depicted on drawings 7120-EX-001 and 7120-EX-002 by potholing or other suitable methods, as well as identifying any other of their equipment and facilities that might be required to be removed, relocated or protected for the Project. COLB and its Contractors shall also be responsible for verifying the suitability, serviceability, and constructability of the locations for the relocated facilities, or as depicted on the project drawings, including identifying any potential underground interferences and accordingly advise TOYOTA as to the appropriate new recommended location. Pursuant to Section 11.3 of that certain Lease dated November 16, 2011, by and between COLB, acting by and through its Board of Harbor Commissioners (in such capacity, the "Port"), and an affiliate of TOYOTA, the Port shall be responsible for managing hazardous materials encountered during the performance of the Work in accordance with applicable law..

II. Scheduling and Payment of Costs

1. Generating Plans and Schedule. Within 10 business days or 14 calendar days, whichever is later, after receipt of Notice to Proceed No. 1 ("NTP 1") and the funds contemplated by Section II.5. below for Phase 1, COLB and its Contractors shall initiate the Plans, including without limitation the matters contemplated by Section I.5. COLB shall provide for TOYOTA's comment, drafts of the Plans. In consultation with TOYOTA, COLB shall within 10 business days after the completion of the Plans which TOYOTA has approved, provide to TOYOTA a cost estimate,

including an appropriate additional contingency line item not to exceed 20% (“**COLB Contingency**”), and a schedule for final completion of the Work. This revised cost estimate shall be labeled as Exhibit C-1 and, once approved in writing by TOYOTA in its reasonable discretion, shall replace Exhibit C to this Agreement.

2. Construction Schedule. COLB and its Contractors shall make all reasonable efforts in developing the Work schedule to accommodate the proposed schedule of the Project, and COLB and TOYOTA shall promptly work together in good faith to enforce all schedules contained in the Contracts, as the same may be affected by approved change orders. Time is of the essence of this Agreement and the Contracts and the parties will use commercially reasonable efforts to complete the Work in a timely manner. TOYOTA shall be entitled to the benefit of any and all concessions, damages, penalties, offsets, etc. accruing under a Contract otherwise in favor of COLB, relating to a Contractor’s failure to timely complete its obligations under its Contract.

3. Commencement and Prosecution of the Work. Upon acceptance of the estimate and schedule by TOYOTA, TOYOTA will send COLB a Notice to Proceed No. 2 to commence the Work. COLB shall thereafter diligently pursue same to completion in coordination with TOYOTA. Notwithstanding the foregoing, COLB and its Contractors shall not commence any Work until receipt of (i) the necessary permits for the Work; and (ii) payment of the deposit described in Section II.5. below. TOYOTA shall have the right at all times to inspect, and consult with COLB and the Contractors regarding, the prosecution of the Work.

4. Responsibility for Costs. Pursuant to the terms of this Agreement, TOYOTA agrees to pay COLB one hundred percent (100%) of the actual third-party costs associated with development of the Plans and the performance of the Work outlined in Exhibit C-1, including but not limited to (a) engineering, (b) material procurement, (c) field construction and inspection, (d) overhead and supervision at a supportable percentage of direct costs, and (e) insurance and bonds. For purposes of this Agreement, each Contractor shall be deemed a third-party.

5. Funds to be Advanced. TOYOTA shall advance to COLB the following amounts, which funds COLB shall hold and administer in accordance with the terms of this Agreement and the Contracts:

| PHASE | AMOUNT | TIMING |
|---------------------------------------|---|--|
| Phase 1 – Engineering and Procurement | As stated for Engineering in <u>Exhibit C</u> , as modified by <u>Exhibit C-1</u> | 5 Days after NTP 1 (includes amounts for preliminary engineering prior to NTP 1) |

| | | |
|------------------------|--|---------------------------------------|
| Phase 2 – Construction | Total Estimate in <u>Exhibit C</u> , as modified by <u>Exhibit C-1</u> less funds distributed in Phase 1 | 5 Days prior to execution of Contract |
|------------------------|--|---------------------------------------|

6. Funds Released Only After Approval. COLB or its Contractor(s) shall submit for TOYOTA’s approval invoices for completed Work. TOYOTA shall have five (5) business days to review and respond to COLB either (i) approving and authorizing payment; (ii) requesting additional documentation; or sending notice of its disapproval of payment along with a reasonably detailed explanation thereof. If TOYOTA does not respond as provided above within five (5) business days after receipt by TOYOTA, it shall be deemed to have accepted such invoice.

7. Engaging Contractors. COLB shall deliver to TOYOTA documentation confirming that COLB has authorized its Contractors to perform the Work for no more than the cost set forth in Exhibit C-1 (excluding the COLB Contingency).

8. Cost Overruns. All change orders or other matters that could authorize any increase in the costs of the Work by more than ten percent (10%) of the estimate in Exhibit C.1 (which shall include the COLB Contingency) must be reviewed and approved in writing by TOYOTA prior to being signed and/or otherwise effective. COLB shall provide reasonable notice to TOYOTA in the event that it determines incurred costs may exceed the total costs in a given Contract. TOYOTA shall be authorized to reasonably request additional documentation evidencing cost increases (including a proposed change order), which COLB shall promptly provide.

a. In the event that TOYOTA objects to any such cost increase, TOYOTA shall notify COLB in writing within five (5) business days, whereupon COLB shall cease any work until such time as COLB and TOYOTA agree upon revised Project costs. TOYOTA shall be responsible for any costs or expenses arising from start-up of the Work after any such cessation.

b. In the event that the Parties cannot agree on any such cost increase, COLB shall be entitled to keep funds only for costs provided for pursuant to this Agreement and paid in connection with the Work as of the date COLB provided TOYOTA notification of the cost increase as required in this Section II.8., the Work shall cease, and all remaining funds advanced to COLB pursuant to Section II.5. shall be promptly returned to TOYOTA.

c. In the event that TOYOTA approves (or fails to timely object to) any such cost increase, COLB may use the COLB Contingency to pay such increased costs.

9. Excess Funds Applied to Next Phase. Upon completion of each phase of the Work as set forth in Exhibit C-1, COLB shall submit an itemized statement of the total costs for that completed Phase. In the event that excess money is available, any remaining amounts shall be allocated to TOYOTA’s payment for the next phase of the Work.

10. Final Draw. COLB or its Contractors shall submit a final reconciled invoice to TOYOTA within 180 days after the completion of the Work. The final billing shall be in the form of an itemized statement of the total costs for the Work, less any amounts covered by advance payments.

a. Other than as provided herein, TOYOTA shall not approve COLB to pay final bills which exceed the estimated cost of the Work without documentation of the reason for the increase and approval of said increase (i.e., an approved and signed change order) in accordance with the terms of this Agreement.

b. Any advanced funds held by COLB in excess of the total actual cost for the two phases shall be returned to TOYOTA within 180 days after the completion of the final phase and any necessary final adjustments shall be made after TOYOTA's receipt of the final invoice.

III. Indemnification and Insurance

1. Indemnification. Except to the extent of any gross negligence or willful misconduct of TOYOTA, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, COLB undertakes and agrees to defend, indemnify and hold harmless TOYOTA and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, government enforcement actions, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees (outside counsel only) and cost of litigation (including all actual litigation costs incurred by TOYOTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including COLB's employees and agents, or damage or destruction of any property of either Party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of the Work by COLB, its Contractors, agents, or subcontractors of any tier or COLB's breach of this Agreement. Rights and remedies available to TOYOTA under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California. Except to the extent of any gross negligence or willful misconduct of COLB, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, TOYOTA undertakes and agrees to defend, indemnify and hold harmless COLB and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, government enforcement actions, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees (outside counsel only) and cost of litigation (including all actual litigation costs incurred by COLB, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including TOYOTA's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to Toyota's breach of this Agreement. Rights and remedies available to COLB under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California.

2. Insurance. For the purpose of this Agreement, COLB agrees to TOYOTA's minimum insurance requirements for its contractors as follows:

COLB agrees to maintain at its sole cost and shall require its agents and contractors to maintain at their sole cost at all times while performing under this Agreement, the following minimum insurance coverage by an insurer or insurers with a current A.M. Best rating of no less than A-VI:

a. 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 five million dollars (\$5,000,000). 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 contractors. 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 COLB Contractor is using Subcontractors, the policy must include work performed "by or on behalf of the COLB Contractor. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to COLB or any employee or agent of COLB. 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 COLB Contractor or contain any other exclusion contrary to this Agreement.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Agreement with COLB 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.

Coverage shall contain no contractors' 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: TOYOTA, COLB, 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 Agreement.

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 by the COLB Contractor upon TOYOTA, except ten (10) days shall be allowed for nonpayment of premium.

b. Automobile Liability 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 one million dollars (\$1,000,000) 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 COLB or any employee or agent of COLB. If COLB Contractor 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 Agreement.

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

Additional Insured: TOYOTA, COLB, 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 Agreement.

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 by the COLB Contractor upon TOYOTA, except ten (10) days shall be allowed for non-payment of premium.

c. Workers' Compensation Insurance. 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.

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 TOYOTA, COLB, and 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 by the COLB Contractor upon TOYOTA, except ten (10) days shall be allowed for non-payment of premium.

d. Self-Insurance. COLB shall retain the right to self-insure any or all of the insurance required above.

IV. Miscellaneous Provisions

1. Notices. Any notice provided for or permitted to be given by any Party to the other Parties and their agents hereunder shall be in writing and delivered in person or by United States Mail, registered or certified, postage prepaid, return receipt requested, addressed to the Party for whom intended, as follows:

To TOYOTA:

Toyota Logistics Services – Long Beach
ATTN: Kevin Young – National Logistics Manager
785 Edison Avenue
Long Beach, CA 90813

With an emailed copy to:

John Elizalde
john.elizalde@toyota.com

To COLB:

City of Long Beach, Energy Resources Department
ATTN: Kevin Tougas, P.E. – Manager, Oil Operations Bureau
2400 E. Spring St.
Long Beach, CA 90806

2. Force Majeure. The performance of the obligations of the Parties under this Agreement except for the payment of monies owed, shall be excused while, and to the extent that, a Party is prevented from complying therewith, in whole or in part, by a strike, fire, war, civil disturbance, act of God; by federal, state or municipal law; by any rule, regulation or order of a federal, state or municipal governmental agency, or by inability to secure equipment and materials. None of the Parties shall be required, against their respective wills to adjust or settle any labor dispute in order to meet any obligation imposed hereunder.
3. Interpretation. Neither this Agreement nor any provision hereof shall be interpreted for or against any of the Parties on the basis that said Party drafted the provision in question, nor on the basis of a previous draft or drafts of the provision in question.
4. Successors and Assigns. This Agreement and all of its terms, provisions, covenants and conditions, except as otherwise expressly provided in this Agreement, shall inure to the benefit of and be binding upon the personal representatives, successors and assignees of the Parties hereto.
5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.
6. Modification. This Agreement may be modified only by written agreement of all Parties.
7. No Consequential Damages. NEITHER PARTY SHALL BE LIABLE IN AN ACTION INITIATED BY ONE AGAINST THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS

AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF VALUE, LOSS OF FINANCIAL ADVANTAGE, LOSS OF PROFIT OR BUSINESS INTERRUPTIONS, HOWEVER THE SAME MAY BE CAUSED.

[signature pages follow]

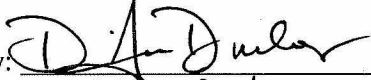
Attachments:

Exhibit "A" – Well Exhibit – Plot Plan. Drawing No. 7120-EX-001
Exhibit "B" – Conceptual Relocation. Drawing No. 7120-EX-002
Exhibit "C" – Projected Costs

IN WITNESS WHEREOF, this Agreement shall become effective as of the date and year first above written.


TOYOTA:

Toyota Logistics Services, Inc.,
a California corporation

By: 
Name: D'Anne Duclos
Title: VP TLS

COLB:

City of Long Beach,
a California municipal corporation

By: 
Name: Tom Modica
Title: Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

APPROVED AS TO FORM

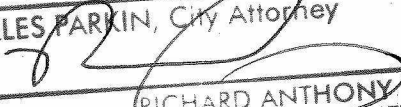
2.12.30.19
CHARLES PARKIN, City Attorney
By 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

Exhibit "A"

Well Exhibit – Plot Plan. Drawing No. 7120-EX-001

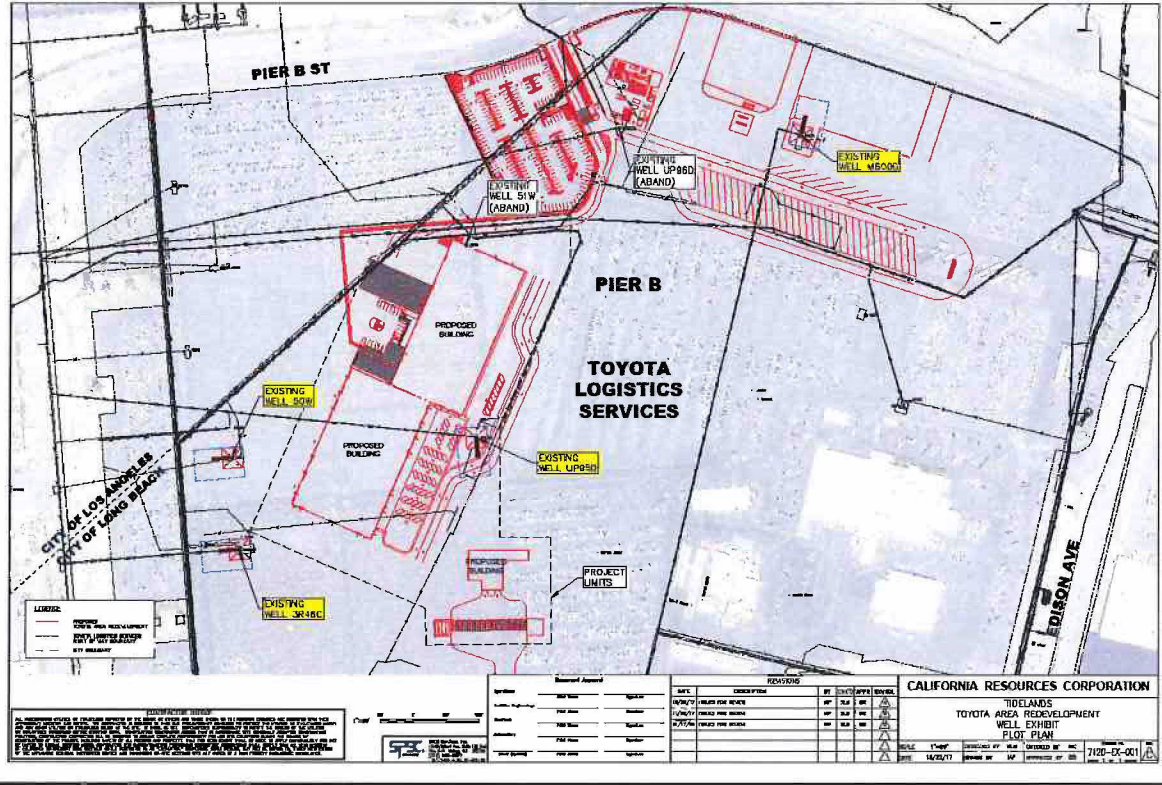


Exhibit A

Port of Long Beach
 TLS / COLB
 PIPELINE RELO AGMT

Exhibit "B"

Conceptual Relocation. Drawing No. 7120-EX-002

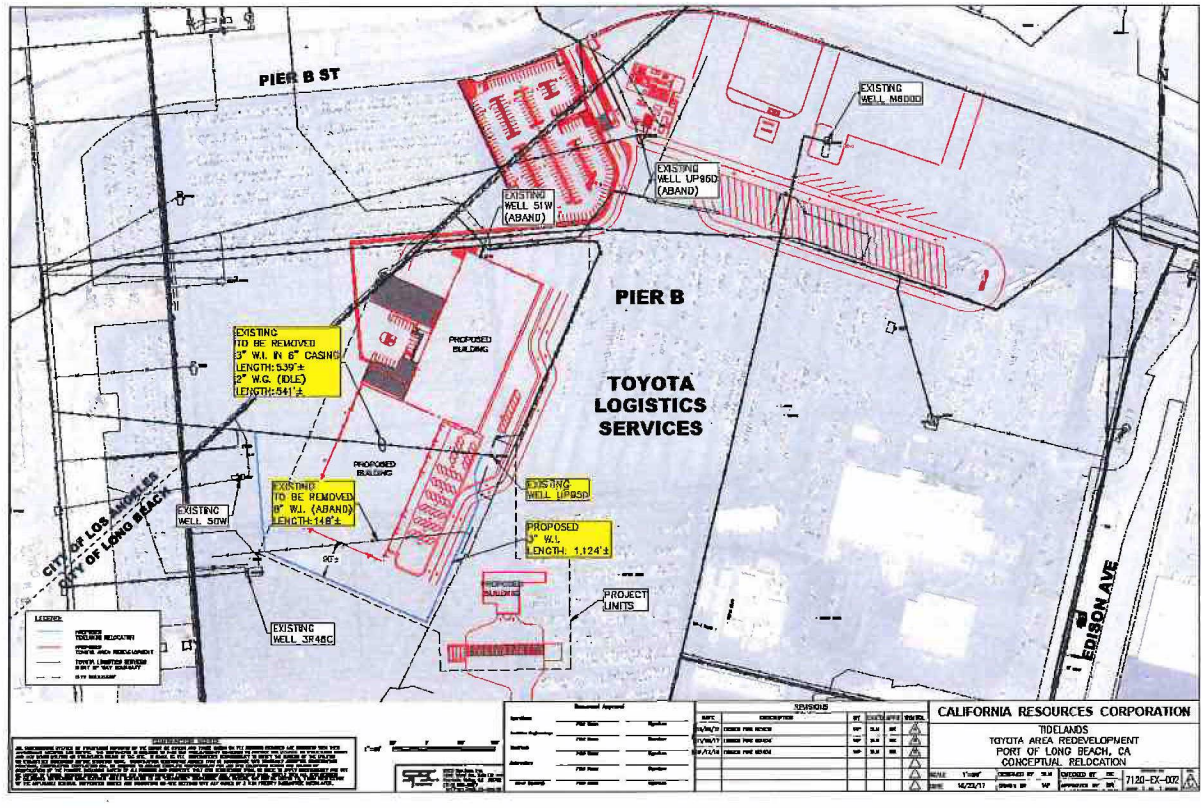


Exhibit B

Port of Long Beach
 TLS / COLB
 PIPELINE RELO AGMT

EXHIBIT "C"

Projected Costs

The Parties agree that the estimated costs for the Work are as follows:

| | COLB Costs |
|---|--------------------|
| Phase 1: Engineering and Procurement | \$176,000 |
| Phase 2: Construction | \$780,000 |
| Overall Contingency | \$191,000 |
| Total Estimate | \$1,147,000 |