STAFF REPORT
INFORMATIONAL
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A 70 08/17/17
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INFORMATIONAL UPDATE ON ISSUES RELATED TO A REVOCABLE PERMIT ISSUED BY THE PORT OF LOS ANGELES TO RANCHO LPG HOLDINGS LLC FOR USE OF A RAILROAD SPUR ON PROPERTY OWNED BY THE PORT OF LOS ANGELES, IN THE CITY OF LOS ANGELES, LOS ANGELES COUNTY

INTRODUCTION:
The Commission oversees the management of sovereign Public Trust lands granted by the Legislature to local entities in trust for the benefit of the State.[1] The Legislature granted the City of Los Angeles, acting by and through the Port of Los Angeles (Port), filled and unfilled sovereign Public Trust lands pursuant to Chapter 656, Statutes of 1911, and Chapter 651, Statutes of 1929, as amended. The Los Angeles Board of Harbor Commissioners oversees the management and operation of the Port, which is the busiest port in the United States by container volume. The five-member board is appointed by the Mayor of Los Angeles and confirmed by the Los Angeles City Council. The commissioners serve five-year terms and elections are held every July for the offices of president and vice president. The Board's jurisdiction is limited to the Harbor District, which it manages in accordance with the Public Trust Doctrine and the City's statutory trust grant to promote maritime commerce, navigation, fisheries and public access to the waterfront.

San Pedro, Wilmington, and other community members have expressed significant public health and safety concerns about the operations of Rancho LPG Holdings LLC, a limited liability company (Rancho LPG), including the transportation of the Rancho LPG products via rail and pipeline, on and adjacent to private property near the Port that operates a liquefied petroleum gas storage facility. Although the facility is on private property, Rancho LPG uses a railroad spur on property owned by the Port to transport its commodities. Members of the community claim butane and propane are extremely hazardous materials that are also highly explosive. Community members are very concerned about the potential threats to life, health, loss of business, private and public property and infrastructure posed to the entire City of Los Angeles from an explosion, fire or contamination stemming from the Rancho LPG facility. These concerns have only grown stronger because of recent incidences throughout the country involving rail transportation of hazardous materials. Members of the community have also expressed

[1] Public Resources Code section 6301 et. Seq.; *State of California ex rel. State Lands Commission v. County of Orange* (1982) 134 Cal. App. 3d 20, 23).

concerns that these threats are compounded by the risk of seismic activity and tsunamis in the area.

BACKGROUND:
Rancho LPG operates a facility that stores butane and propane in an area near the Port of Los Angeles in San Pedro, California. The facility, which has two 12.5 million-gallon refrigerated tanks and five 60,000-gallon horizontal storage tanks, has operated since 1973.[2] The two larger tanks store butane, which is a byproduct of the petroleum refineries nearby. During the summer months, California Air Resources Board regulations prohibit blending butane into gasoline because of the occurrence of vapor pressure. This regulation results in the need to store the butane until it can be transported to refineries and blended into gasoline in the winter months. Much of the butane that is stored at this facility is transported by a 6" diameter bi-directional pipeline, owned by Valero and regulated by the California Fire Marshal, from local oil refineries.

When it is anticipated that the butane supplied by the refineries will not be sufficient to meet the refineries needs for mixing, additional butane is brought into the facility from other locations by rail, including some out of state sources. Historically, the butane was also transported from the facility to a berth at the Port of Los Angeles through an underground pipeline. However, the pipeline has been shut down and now all additional butane is transported from the facility via rail lines. The smaller tanks store propane, which is brought in through rail and transported out by truck for commercial distribution. For several years, community groups and the public have expressed concerns about the safety of the facility and the transportation of materials to and from the facility.[3] Numerous agencies regulate the facility and its greater operations, including but not limited to:

Federal:
- U.S. Department of Homeland Security
- U.S. Department of Transportation
- U.S. Environmental Protection Agency
- U.S. Defense Logistics Agency
- U.S. Department of Occupational Health and Safety Administration

State:
- California Environmental Protection Agency
- California Emergency Management Agency
- California Department of Toxic Substances Control

[2] http://www.rancholpg.com/questions-and-answers
[3] See: https://www.epa.gov/aboutepa/plainsrancho-lpg-facility-rulemaking-petition-and-attachments; http://www.latimes.com/local/cityhall/la-me-storage-tank-fine-20140725-story.html

- California Department of Industrial Relations, Division of Occupational Safety and Health
- South Coast Air Quality Management District

Local:

- Los Angeles City and County Fire Departments, as the designated Certified Program Agency
- Los Angeles Police Department
- Los Angeles Emergency Management Department
- Los Angeles City Attorney
- City of Los Angeles Bureau of Sanitation Industrial Waste Management Division
- City of Los Angeles Department of City Planning

According to the 2010 Land Use Map from the City's General Plan and the City's zoning map, the facility is located in an area currently zoned as "Heavy Industrial- M3".

The City is in the process of approving a Community Plan for San Pedro, which, as drafted, anticipates this area will continue to be zoned heavy industrial.

STAFF ANALYSIS:

State and Port Jurisdiction

The facility is located on private property, not on land under the Commission's jurisdiction or on land under the Port's jurisdiction. Several decades ago the Port acquired an approximately 20 foot railroad spur that Rancho LPG uses to transport commodities to and from the facility to the Pacific Harbor Line (PHL). In 1974, the Port issued a revocable permit to Petrolane (the first occupant of the Rancho facility) to construct, operate, and maintain an industrial railroad spur track. The track was necessary to connect the Petrolane facility to the existing spur track that ran along Gaffey Street. This spur track pre-dated the Rancho LPG facility. In 1994, through a joint purchase with the Port of Long Beach of rail track in connection with the Alameda Corridor project, the Port acquired an ownership interest in the railroad spur track that runs parallel to Gaffey Street up to the point covered by the revocable permit. After the Alameda Corridor transaction, the Port had an ownership interest in the entire railroad spur track that parallels Gaffey Street and which serves the Rancho LPG facility.

In 2011, the Port entered into revocable permit No. 10-05 (Rancho Permit) with Rancho LPG. This Permit is a successor to the revocable permit issued in 1974.[4] Issues surrounding the Rancho Permit and Rancho LPG's use of the railroad spur track have been brought to the attention of the Commission in the past. In 2014, the Commission

[4] https://www.portoflosangeles.org/Board/2012/June%202012/60712_Item_17_Board_Report.pdf

considered this issue at its June 19, 2014 meeting (Item 91, June 19, 2014) and its October 14, 2014 meeting (Item 109, October 14, 2014).

The rail spur property has never been considered tidelands or submerged lands and is not within the boundaries of the area legislatively granted to the City. The Port owns the property as a separate asset and issued the Rancho Permit in its capacity as a landowner. The Rancho Permit provides the Port with some limited protection from liability through insurance and indemnification requirements. Additionally, Rancho LPG pays the Port annual compensation of $14,244 for its use of the railroad spur track. The Port can revoke the Rancho Permit after providing Rancho LPG with 30 days' notice, but that would not stop the use of the rail spur track to transport Rancho LPG's commodities for the reasons explained below. In the event Rancho LPG can no longer transport materials via rail, the Environmental Impact Report, which was prepared by the Port for the facility in 1973, contemplates up to 100 truck trips a day from the facility.[5] These additional truck trips might require Rancho LPG to register with the California Air Resources Board's Mobile Vehicle Fuels Distributor Program, depending upon Rancho LPG's distribution model.

The Port also has a permit with the common carrier, PHL, for the same property (PHL Permit). The PHL provides rail transportation, maintenance and dispatching services to the Ports of Long Beach and Los Angeles. In addition to switching over 40,000 units of carload freight annually, the PHL provides rail switching service to nine on-dock intermodal terminals and dispatching services for about 140 intermodal or unit trains daily. The PHL Permit allows PHL to provide rail switching services to customers, such as Rancho LPG, on the rail spur track. Rancho LPG is an existing customer of PHL's services. Because PHL is a common carrier, the Port cannot prohibit PHL's use of the rail spur track unless the Surface Transportation Board (STB), a federal agency, approves the discontinuation. According to the Los Angeles City Attorney's Office, the Port may terminate the Rancho Permit, but termination would not end rail service to and from the Rancho LPG facility because the PHL would continue to provide service under the San Pedro Bay Harbor Rail Operating Permit. Additionally, the City Attorney's Office determined that the Port is not authorized to abandon or discontinue the railroad spur track, because that requires approval from the STB.

Surface Transportation Board

Congress established the STB in 1996 to succeed the former Interstate Commerce Commission. The STB recently provided additional clarity on the Port's role related to the regulating use of the railroad spur track.[6] In 2016, the STB considered a petition

[5] Draft Environmental Impact Report, Liquefied Petroleum Gas (Propane) Storage and Distribution Facility with Low Temperature Pipeline, page 6 (1973).
[6] *San Pedro Peninsula Homeowner's United Inc., John Tommy Rosas, Tribal Administrator, Tongva Ancestral Territorial Tribal Nation- Petition for Declaratory Order* (March 3, 2017) Surface Transportation

requesting a declaratory order against the Port for issuing the Rancho Permit without environmental review under the California Environmental Quality Act.[7]

The STB ruled that it had exclusive jurisdiction over the regulation of rail transportation pursuant to the Interstate Commerce Act, as amended by the ICC Termination Act of 1995.[8] The STB noted that federal law broadly preempted state and local regulation to avoid interference with interstate commerce.[9] The ruling acknowledged that state and local entities retained police powers to protect public health and safety.[10] The STB Decision also acknowledged that any exercised police power must be exercised in a way that (1) is nondiscriminatory and generally applied; and (2) does not unreasonably interfere with rail transportation.[11] In summary, the STB found:

(1) The railroad spur track is subject to the exclusive jurisdiction of the STB.
(2) PHL is a common carrier, subject to STB's jurisdiction.
(3) Common carriers such as PHL have an obligation to transport hazardous materials.
(4) Any terms in Port permits attempting to restrict the transportation of hazardous materials are preempted by federal law.[12]

The ruling in this decision is supported by case law. The California Supreme Court recently noted that federal preemption of railroad regulation does not prevent local governments from using their police powers to impose health, safety and environmental regulations that apply to railroads, such as land use planning, the California Environmental Quality Act, or applicable building and fire codes.[13] However, such regulations are not permissible if they discriminate against rail transportation, purport to govern rail transportation directly, or prove unreasonably burdensome to rail transportation. Therefore, a local or state agency with jurisdiction could impose health and safety regulations for rail operations in its jurisdiction, but such regulations could not be overly burdensome so as to effectively stop rail transportation. Additionally, those regulations would need to be general applied and could not target a specific operation or company.

Board Docket No. FD 36065. (STB Decision). Available at: https://www.stb.gov/decisions/readingroom.nsf/9855c1fb354da09b85257f1f000b5f79/3cd389fa1efffdf0852580db0047bff0?OpenDocument

[7] STB Decision at 3.
[8] STB Decision at 3.
[9] STB Decision at 3.
[10] STB Decision at 4.
[11] STB Decision at 4.
[12] STB Decision at 5.
[13] Friends of Eel River v. North Coast Railroad Authority (July 27, 2017, S222472) __P.3d___[2017 WL 3185220]

Compliance

The Los Angeles Certified Unified Program Agency (CUPA) for the Rancho LPG facility is the City of Los Angeles Fire Department. The CUPA permits the facility for the California Accidental Release Prevention Program, Hazardous Waste, and Hazardous Material. According to the CUPA, the facility is inspected every 3 years. According to the CUPA, an inspection was scheduled for July 11, 2017. However, the results from this inspection are not yet public. There were no violations recorded from the previous inspection on August 5, 2017.

In 2014, when this issue was last brought to the Commission's attention, the U.S. Environmental Protection Agency had recently completed a review of the facility. At that time, the U.S. Environmental Protection Agency had found several violations and fined Rancho LPG $260,000. After making approximately $7 million in improvements to the facility, EPA found that Rancho LPG cured the violations. EPA staff is not aware of any new or current violations.

As part of a risk management program, Rancho LPG is required to submit an Offsite Consequence Area determination or "OCA" which must be calculated based on federal regulations to show the area around the facility that would be impacted in the event of an accidental chemical release, before the chemical dissipated. This calculation is used to determine what schools should be notified and which emergency response agencies Rancho LPG should coordinate with in responding to incidents. In May 2016, the U.S. Environmental Protection Agency received a petition from community members requesting a re-examination of the risks associated with the Rancho LPG facility requiring Rancho LPG's parent company to resubmit Rancho LPG's OCA, colloquially referred to as its "blast radius".[14] EPA staff have confirmed that it has completed review of this petition and has confirmed that Rancho LPG's OCA or blast radius was accurately calculated at approximately .5 miles, according to governing federal regulations. EPA staff noted that the Rancho LPG facility's OCA is reduced due to the presence of a passive mitigation system, in the form of a large pit, that would collect most of the butane in the event one of the larger tanks failed. EPA staff also noted that the facility is safer than many other butane storage facilities because the butane is refrigerated and is not stored under pressure. Staff has not been able to locate information estimating a blast radius for a rail car carrying this type of product in this location.

Risk Management/Insurance/Liability

California's major ports typically have risk management departments that handle insurance requirements for transporting hazardous materials. For example, the Port of

[14] https://www.epa.gov/aboutepa/plainsrancho-lpg-facility-rulemaking-petition-and-attachments

San Diego's Risk Management and Safety section has a Risk and Safety Manager, a Risk Management Analyst, and two Safety Specialists. This department handles the Port of San Diego's insurance program, assesses risk to the District, and consults on risk management issues. The Port of San Diego requires trucks entering the terminals to carry $1 million in general liability insurance.

However, not all ports have railroad lines over their property, so comparing insurance requirements is not simple. For example, the Port of Los Angeles does have railroad lines and requires the same coverage amounts as the Port of Long Beach for the railroad companies and the common carrier PHL.

Port of Los Angeles Insurance and Risk Management

Prior to entering into any contract, the Port's Risk Assessment department completes an Insurance Assessment. Risk Assessment specialists at the Port review the scope of work to determine the Port's risk exposure for the contract. Their staff look at a multitude of factors including: the contractor's loss history, what types and amounts of insurance is offered in the insurance market, and the contractor's financial stability. All of this information is used to determine the types and amounts of insurance the Port will require the contractor to carry to protect Port property, assets and employees. In unique situations, like permitting the subject rail spur, the Port consults with their contracted outside insurance broker to determine what the appropriate amount is for a given activity. Such analysis was used to determine the insurance requirements for both Rancho LPG and PHL's permits. The table below shows the minimum insurance requirements stated in the Rancho and PHL permits from the Port, as well as the actual amount of insurance each entity currently carries to cover the use of the Spur Property.

	Required by Permit	Actual Amount Carried
Rancho LPG		
General Liability	$1 Million	$25 Million
Automobile	$1 Million	$1 Million
Worker's Comp.	$ 2 Million	$2 Million
Railroad Protective Liability	$ 2 Million	$ 2 Million
PHL		
General Liability	$25 Million	$25 Million ($10 Million Railroad Liability and $15 Million Excess Liability)
Pollution Liability	$ 5 Million	$10 Million (Included in Railroad Liability)
Railroad Protective Liability	$ 5 Million	$10 Million

Automobile Insurance	$5 Million	$16 Million ($1 Million Automobile and $15 Million Excess Liability)
Federal Employers Liability Insurance	$1 Million	$10 Million (Included in Railroad Liability)
All Risk	N/A	$5 Million
Flood/Earthquake	N/A	$1 Million

The permits require both PHL and Rancho LPG list the Port as an additional insured party in their policies covering operations on the Spur Property. The insurance requirements in the permit are limited to coverage of the Port's liability on the Spur Property. However, PHL also carries general liability coverage in the amount of $150 million. Additionally, the Port has its own excess liability policy in the amount of $150 million and property liability policy ranging 1.5 to 2 billion dollars, which would also cover any damage to Port assets on the Spur Property. These policies cover the Harbor Department, its employees, property damage, and assets. The Port reviews the insurance requirements periodically on an as needed basis. The insurance requirements for the PHL permit were last reviewed in October 2015 and in March 2016.

In the event an incident or damage occurred on the Spur Property, liability would be shared with the class 1 rail cars, Union Pacific and Burlington Northern and Santa Fe Railway Company (BNSF), who receive the materials from PHL. These railroad companies have contracts with PHL absorbing liability. They also have contracts with the Port which require them to carry at least $150 million in general liability insurance, naming the Port as an additional insured. Additionally the Rancho LPG's parent company Plains All American Pipeline carries insurance covering their operations independently of anything related to the Port.

In general, Union Pacific and the BNSF railway, carry about $1 billion in coverage and have self-insurance. These railroads are classified by federal law as "Class 1 railroads" which are railroad carriers that have annual carrier operating revenues of $447,621,226 or more. According to the Port, the $1 billion is what Union Pacific and BNSF estimate is necessary and the Port cannot compel these national rail companies to carry higher levels of coverage. Commission staff have not been able to determine how these coverage levels are calculated. The Port is a beneficiary to the class 1 coverage as an additional insured party.

The Port adopted a Risk Management Plan as an amendment to its Port Master Plan in 1983 and updated the plan in 2014 pursuant to the California Coastal Act. The purpose of the Risk Management Plan is to manage and direct proposed developments in the Port to protect against and minimize the risks of significant adverse impacts from

potential hazards associated with liquid bulk terminals in the Port. The Risk Management Plan is an amendment to the Port Master Plan, which governs Port properties in the coastal zone. Its application is limited to Port properties within the coastal zone. Because the Rancho LPG facility is not on Port property and is not within the coastal zone, application of the Risk Management Plan criteria to the Rancho LPG facility is beyond the Harbor Department's jurisdiction. The Risk Management Plan addresses potential risks of the storage and transfer of hazardous commodities at liquid bulk terminals at the Port; it does not analyze cargo in transit and excludes pipelines and rail.

Environmental Justice

Environmental justice is defined under State law as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies.[15] The Rancho LPG facility is in an industrial area but is near schools and a residential community. CalEnviroScreen 3.0 is a mapping tool created by the California Office of Environmental Health Hazard Assessment to help identify communities most vulnerable to pollution based on environmental, health, and socioeconomic criteria. The CalEnviroScreen 3.0 classifies the area directly north of the Rancho LPG facility as a disadvantaged community. Disadvantaged communities are census tracts with the 25 percent highest score on CalEnviroScreen 3.0 and other areas with high pollution and low populations. According to mapping tools on the California Air Resources Board website, areas north and south of the facility are categorized as low income communities under AB 1550, Chapter 369, Statutes of 2016. AB 1550 requires that 25 percent of the Greenhouse Gas Reduction Fund be spent on projects located within disadvantaged communities and requires that an additional 5 percent be spent on projects that benefit low-income households. Data in CalEnviroScreen 3.0 provides information by census tract.

Based on information from CalEnviroScreen, the communities near the Spur Property and the Rancho LPG facility are disproportionately impacted by various sources of pollution, health hazards, and socioeconomic burdens. Rancho LPG and the Spur Property are within a high pollution area, with a pollution burden percentile of 92. Higher impacts include PM 2.5 emissions, diesel emissions, toxic releases, increased traffic, cleanups, presence of hazardous waste, impaired water, and solid waste. In addition, children, the elderly, and minority populations are affected by health hazards, which include asthma, cardiovascular irregularities, and low birth weights.

Rancho LPG and the railroad spur track are within Census Tract 6037295103. Although the overall CalEnviroScreen cumulative impact score does not seem significant, the

[15] Government Code section 65040.12

adjacent areas that surround this census tract have higher impacts. For example, the region of the Port that line the border of the census tract is a high pollution and low population area. Those areas do not include a cumulative impact score owing to the inaccuracy of population characteristics, but the pollution burden is captured.

RANCHO LPG CENSUS TRACT	
Census Tract 6037295103	
Population	4,875
CalEnviroScreen 3.0 Percentile	41 - 45%
Pollution Burden Percentile	92
Population Characteristics Percentile	17
Ozone	32
PM 2.5	66
Diesel	92
Pesticides	0
Toxic Releases	94
Traffic	71
Drinking Water	44
Cleanups	71
Groundwater Threats	22
Hazardous Waste	97
Impaired Water	76
Solid Waste	74
Asthma	37
Low Birth Weight	34
Cardiovascular Rate	12
Education	15
Linguistic Isolation	38
Poverty	9
Unemployment	29
Housing Burden	44
Information about age	This tract contains 10% Children under 10. The average in California census tracts is 13%. It also contains 20% Elderly over 65. The average in California census tracts is 12%.
White	61.3
Hispanic	24.7
Asian American	10.4
Other	3.4
African American	3
Native American	0.2

Activists and community groups have raised environmental justice concerns related to the operation of the facility. In January 2016, the Los Angeles City Board of Education adopted a resolution supporting the relocation of the facility because of the health and safety risks associated with butane and the facility's close proximity to Taper Avenue Elementary School, Johnston Community Day School, and the Vic and Bonnie Christensen Science Center. From staff's review of the area, it appears the facility is near the following schools and learning centers:

Schools and Learning Centers	**Distance from the Facility**
Taper Avenue Elementary	< ½ Mile
Johnston Community Day School	< ½ Mile
San Pedro Mathematics, Science and Technology Center	< ⅓ Mile
Mary Star of the Sea High School	< ¾ Mile

There are residences directly adjacent to the facility just west of Gaffey Street. In 1980 residents sued Rancho LPG's predecessor, Petrolane, on the basis that the facility was a public and private nuisance but did not prevail. *Brown v. Petrolane, Inc.* 102 Cal.App.3d 720 at 727 (1980). Environmental justice concerns expressed include danger to the nearby communities if the tanks holding hazardous substance leak and if there is fire or explosion from an accident, a terrorist attack, or earthquake. Staff recognizes the enormous concerns nearby residents have about the presence of the facility, the transportation of the facility's products and its proximity to residences and schools.

Pipelines

One of the issues raised in relation to the Rancho LPG facility's risk to the public and the Port is about underground pipelines, and in particular, a pipeline to the Valero refinery from the Rancho LPG site. According to the Office of the State Fire Marshal this pipeline was constructed in 1982 and is approximately 3.78 miles in length. The pipeline is owned by Ultramar-Valero and travels from the facility through the Cities of Harbor City and Wilmington to the Valero refinery. The pipeline is 6" in diameter and transports butane to and from the refinery from the Rancho LPG facility. According to the Port it does not have a permit or lease with Ultramar for this pipeline. Based on the records Commission staff has been able to locate, it appears that Ultramar holds a permanent pipeline and utility corridor easement for a 0.6 mile portion of the pipeline that underlies Port surface property in the Berth 200 area north of the Consolidated Channel.[16]

The Office of the State Fire Marshal does not consider the pipeline to be high risk. Staff confirmed with the Office of the State Fire Marshal that this pipeline is under its jurisdiction for inspection and regulation and that the pipeline was last inspected in 2012. Under a new law,[17] these pipelines will now be inspected annually. The pipeline to the Valero refinery from the Rancho LPG pipeline is slated to be inspected in the last quarter of 2017. These inspections typically last two weeks and include one week of reviewing operations and maintenance records. This inspection process also involves

[16] There is a complicated history involving the title to property in the Berth 200 area near the Consolidated Channel. In the late 1960's there was quiet title litigation involving the Port, the Commission and Union Pacific Railroad which was resolved pursuant to special legislation Chapter 926, Statutes of 1979 involving a title settlement agreement (Item 18, March 19, 1980) whereby the City received the surface estate of 80 acres of land lying north of the Consolidated Channel and Union Pacific retained subsurface easements including a permanent railroad and pipeline easement. The pipeline easement was transferred to Beacon Oil Company in 1988 which became Ultramar, Inc. in 1989. The location of pipeline easement along with other subsurface rights within the Berth 200 area was modified in 2011 to allow for implementation of on-dock rail usage at Berth 200 (Item 115, June 23, 2011).

[17] SB 295 (Jackson), Chapter 607, Statutes of 2015

confirming that the facility is in compliance with state and federal regulations including those set forth Title 49, Part 195 of the Code of Federal Regulations.[18]

The Office of the State Fire Marshal and the California Public Utilities Commission (CPUC) regulate intrastate pipelines. Under the Elder California Pipeline Safety Act of 1981, the Office of the State Fire Marshal exercises safety regulatory jurisdiction over intrastate pipelines used to transport hazardous or highly volatile liquid substances. The Act authorizes the Office of the State Fire Marshal to exercise safety regulatory jurisdiction over portions of interstate pipelines located within the State and subject to an agreement between the U.S. Secretary of Transportation and the Office of the State Fire Marshal. The Act authorizes the Office of the State Fire Marshal to enter, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of any pipeline operator that are required to be inspected and examined to determine whether the operator is in compliance with the Act. The Office of the State Fire Marshal is also authorized to exercise safety regulatory jurisdiction over portions of interstate pipelines located within the State and subject to an agreement between the U.S. Secretary of Transportation and the Office of the State Fire Marshal.

The CPUC ensures that intrastate natural gas and liquid petroleum gas pipeline systems are designed, constructed, operated, and maintained according to safety standards set by the CPUC and the federal government. The CPUC enforces natural gas and liquid petroleum gas safety regulations; inspects construction, operation, and maintenance activities; and makes necessary amendments to regulations to protect and promote public safety, the utility employees that work on the gas pipeline systems, and the environment.

The CPUC endorses the system safety approach in the federal government's regulation of Pipeline and Hazardous Materials Safety Administration. The CPUC and federal regulators are tasked with ensuring that pipeline and hazardous materials operators have risk management programs in place, that those programs are designed in conformance with state and federal laws and regulations, that the programs are effective in enhancing public safety, the operator's employees safety, environmental safety, and that the safety of the entire system and operation continues to improve. The CPUC conducts operation and maintenance compliance inspections, accident investigations, reviews utilities' reports and records, conducts construction inspections, conducts special studies, and takes action in response to complaints and inquiries from the public on issues regarding gas pipeline safety.

[18] Available at: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr195_main_02.tpl

OTHER PERTINENT INFORMATION

1. The facility is located on private property and the Rail Spur Property is considered after-acquired land that the Port holds as an asset of the trust. The State, acting by and through the Commission, is not in the chain of title for the Rail Spur Property and the Attorney General's Office staff has noted in the past that it is unlikely the Commission has any direct liability related to Rancho LPG's operations.

2. The California Legislature, as the representative of the people of California, has primary authority over sovereign public trust lands of the State. A significant portion of the authority over the State's public trust lands is legislatively vested in the Commission. However, the Legislature has granted in trust filled and unfilled sovereign lands throughout the state to local jurisdictions, like the City of Los Angeles, to manage in the best interests of the state. The Legislature, exercising its retained powers as the ultimate trustee of sovereign lands, may enact laws dealing with granted public trust lands and specify uses for particular properties or areas.

   The State has not, by these statutory trust grants, relinquished all authority over these lands; the State has the reserved authority to oversee the administration of these granted lands. The Commission represents the statewide public interest to ensure that the local trustees of public trust lands operate their trust grants in conformance with the California Constitution, granting statutes, and the Public Trust Doctrine. This oversight has ranged from working cooperatively to assist local trustees on issues involving proper trust land use and trust expenditures, to judicial confrontations involving billions of dollars of trust assets.

   The Commission has general oversight authority which may be carried out in a variety of ways; however, the Commission has only limited specific authority that involve the day-to-day management decisions of grantees. In most cases, the Commission staff conducts its oversight by commenting on projects, such as during the CEQA process, or through consultation and advice. In the past the Commission staff has conducted its oversight through financial and management audits of grantees on a case-by-case basis. Unless the legislative trust grant provides for specific duties to the Commission, its only remedies to overturn an action taken by a grantee, which the Commission believes is inconsistent with the grantee's trust responsibilities in managing its granted lands, are through litigation or reporting to the Legislature.

3. Staff has received inquiries regarding why the facility is not regulated by the Commission's Marine Environmental Protection Division. The Lempert-Keene-Seastrand Prevention and Response Act of 1990 authorized the Commission to regulate marine oil terminals to protect public health, safety and the environment. However, this authority is specifically limited to marine terminals, which are defined by statute as: "any marine facility used for transferring oil to or from tankers or barges." The Commission has a Memorandum of Understanding with the Office of the State Fire Marshal defining where Commission jurisdiction ends at marine oil terminals. Since the facility, Spur Property, and pipeline are not within an area regulated by the Commission's Marine Environmental Protection Division under the Memorandum of Understanding, the Lempert-Keene-Seastrand Prevention and Response Act of 1990 is not applicable here.

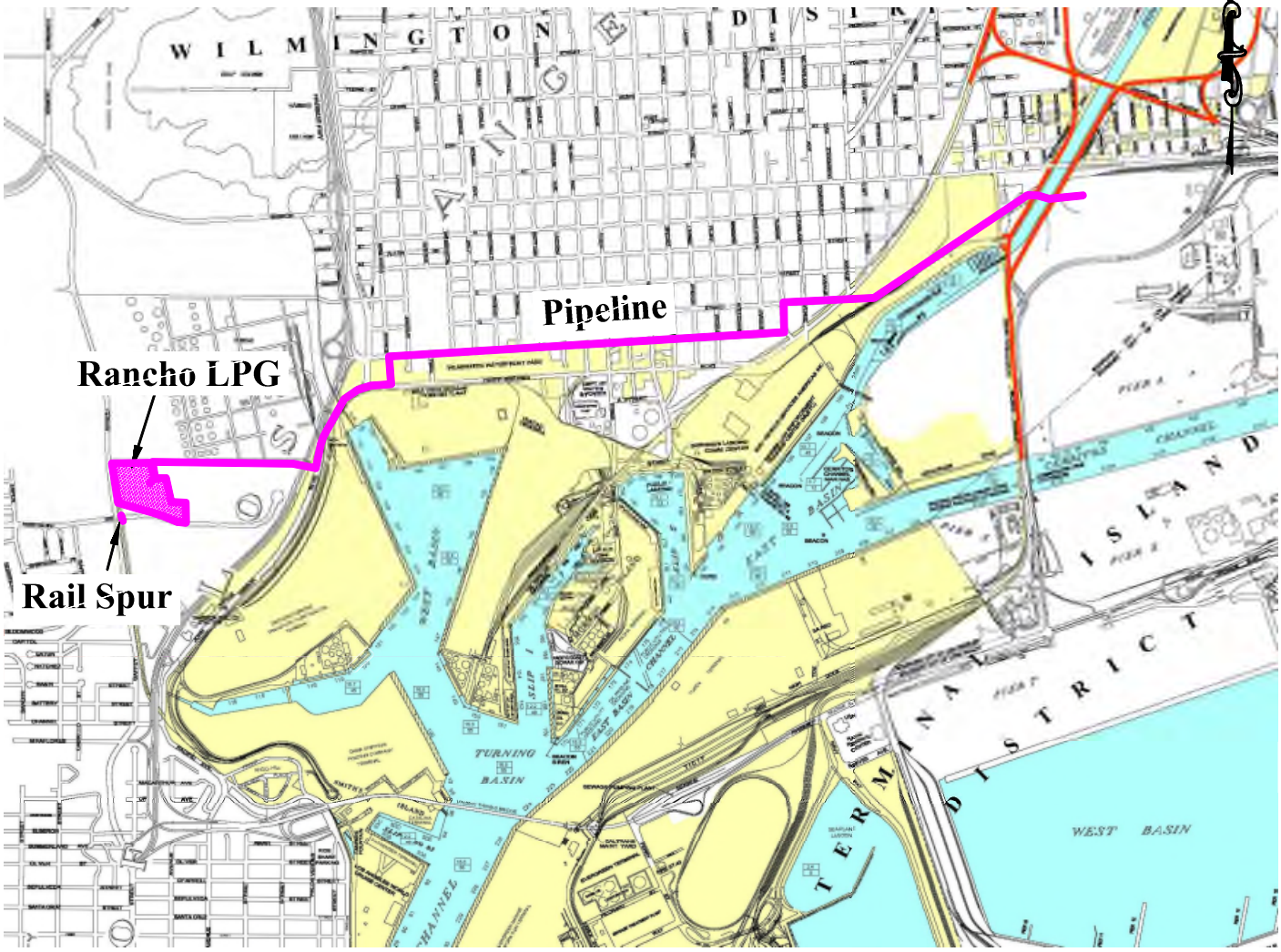
4. In 2014, in an effort to address the community's concerns about the facility, former U.S. Representative Henry Waxman held a community meeting with concerned residents. At the meeting, federal officials from anti-terrorism and environmental protection departments informed the residents that Rancho LPG was in full compliance with all federal regulations.

EXHIBITS:

A. Location and Site Map
B. Surface Transportation Board Decision
C. Revocable Permit 10-05 Rancho LPG Holdings LLC
D. Operating Permit Agreement 1989 Pacific Harbor Line

NO SCALE

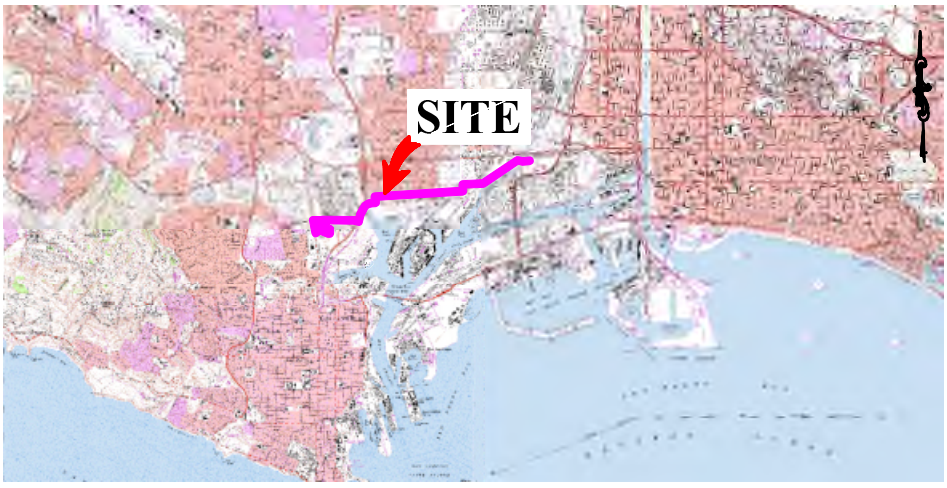
SITE



CITY OF LOS ANGELES

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

CITY OF LOS ANGELES
RANCHO LPG
FACILITY
LOS ANGELES
COUNTY

TS 08/10/17

EXHIBIT B

45603 SERVICE DATE – MARCH 6, 2017
EB

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36065

SAN PEDRO PENINSULA HOMEOWNER'S UNITED INC., JOHN TOMMY ROSAS, TRIBAL ADMINISTRATOR, TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION—PETITION FOR DECLARATORY ORDER

Digest:[1] The Board denies the petition of San Pedro Peninsula Homeowner's United Inc. and John Tommy Rosas for a declaratory order regarding certain rail movements associated with the Port of Los Angeles Harbor Department and Rancho LPG Holdings, LLC, but provides guidance on application of federal preemption under 49 U.S.C. § 10501(b).

Decided: March 3, 2017

On September 12, 2016, San Pedro Peninsula Homeowner's United Inc. and John Tommy Rosas, Tribal Administrator, Tongva Ancestral Territorial Tribal Nation (collectively, SPPHU), filed a petition requesting that the Board issue a declaratory order addressing a "temporary rail permit" issued by the Port of Los Angeles Harbor Department to Rancho LPG Holdings, LLC (Rancho LPG), a corporate affiliate and subsidiary of Plains All-America Pipeline (Plains) (collectively, Rancho), which SPPHU states governs the use of a rail spur to access a liquefied petroleum gas storage facility owned by Rancho LPG. SPPHU seeks a Board finding regarding Rancho's transportation of hazardous materials on the rail spur and whether a permit was used without required state environmental review. (See SPPHU Pet. 1, 5.)

Letters in support of SPPHU's petition were filed by Congresswoman Janice Hahn, on October 25, 2016; San Pedro and Peninsula Homeowners Coalition on October 28, 2016; and June Burlingame Smith on October 28, 2016. Pacific Harbor Line, Inc. (PHL), and Rancho filed replies to SPPHU's petition on October 31, 2016.[2] Also on October 31, 2016, the City of Los Angeles (City), acting by and through the Board of Harbor Commissioners (Harbor

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] By decision served September 30, 2016, the deadline for replies to SPPHU's petition was extended to October 31, 2016.

Department),[3] replied to SPPHU's petition, requesting clarification on its understanding that federal preemption under 49 U.S.C. § 10501(b) applies to actions taken by the Harbor Department that affect rail transportation. Replies to City's Reply were filed by SPPHU, PHL, and Rancho. On December 7, 2016, SPPHU submitted a supplemental filing.[4]

For the reasons discussed below, the Board will deny SPPHU's request for a declaratory order but will provide guidance on the issue of § 10501(b) preemption.

BACKGROUND

Rancho LPG owns and operates a liquefied petroleum gas storage facility located in the Port of Los Angeles area of San Pedro, Cal. The storage facility is used to store butane and propane and includes two 12.5 million gallon refrigerated tanks and five 60,000 gallon horizontal storage tanks. (Rancho Reply 2, Oct. 31, 2016.) PHL provides rail service to the facility over tracks owned by the City,[5] including the subject track that was constructed by the original owner of the facility (the Track). (City Reply 7.) The Track is now used by Rancho LPG, pursuant to a permit, Revocable Permit No. 10-05 (RP 10-05), issued by the Harbor Department.[6] Under the terms of RP 10-05, "[Rancho LPG] may not handle, use, store, transport, transfer, receive or dispose of, or allow to remain on the premises . . . any substance classified as a hazardous material under any federal, state, local law or ordinance . . . in such quantities as would require

[3] In its petition, SPPHU refers to the City and Harbor Department as "the Port of Los Angeles." For the purposes of this proceeding, the Board will refer to the Port of Los Angeles as the Harbor Department.

[4] Under 49 C.F.R. § 1104.13(c), a reply to a reply is not permitted. However, in the interest of a more complete record, the Board will accept the November 8, 2016 and December 7, 2016 filings of SPPHU and the November 21, 2016 filings of PHL and Rancho into the record.

[5] See Pac. Harbor Line, Inc.—Operation Exemption—Port of Los Angeles, FD 33411 (STB served Dec. 2, 1997); City of Los Angeles—Acquis. Exemption—Rail Lines of Atchison, Topeka & Santa Fe Ry., FD 32427 (ICC served Jan. 12, 1994).

[6] The petition pertains to track covered by a "Temporary Rail Permit" issued by the Harbor Department to Rancho LPG. SPPHU cites "Revocable Rail Spur Permit No. 110" (SPPHU Pet. 5, SPPHU Reply 2, Nov. 8, 2016), but the record contains no evidence of, or other reference to, such a permit. However, SPPHU refers to a permit that has been extended for 42 years and attaches as an exhibit Revocable Permit No. 1212 (RP 1212), which was issued by the Harbor Department in 1974 to Petrolane, Inc., a predecessor company to Rancho LPG, and which governed the construction and use of the Track. The record shows that RP 10-05 is a successor to RP 1212 (SPPHU Pet., Ex. 3 at 2) and is the only existing contractual agreement between the Harbor Department and Rancho LPG. (Id.; City Reply 7; Rancho Reply 3, Nov. 21, 2016.) Both RP 1212 and RP 10-05 pertain to the Track, described in both permits as "Parcel No. 1" depicted in Harbor Engineering Drawing No. 5-4327. Further, only RP 10-05 contains language governing the transportation of hazardous materials. Accordingly, the Board will view RP 10-05 as the permit that pertains to the Track.

the reporting of such activity to any person or agency having jurisdiction thereof without first receiving written permission of City." (City Reply, Ex. 5, City of Los Angeles Harbor Department Revocable Permit No. 10-05, at 6.)

SPPHU contends that, in violation of the permit's terms, Plains and Rancho LPG have continually moved hazardous materials on the Track. (SPPHU Pet. 1.) SPPHU further asserts that, by not submitting this "temporary" revocable permit to the Board "for a ruling," the Harbor Department and Rancho have evaded the duty to assess the risk of transporting hazardous materials in a "Risk Management Plan" and through an updated California state Environmental Impact Report (EIR).[7] (Id. at 1, 2, 4, 5.) Thus, it appears that SPPHU is requesting that, because the Board has exclusive jurisdiction over the Track, the Board issue a declaratory order finding that the transportation of hazardous materials over the Track "without an updated EIR" violates the terms of the revocable permit. (See SPPHU Pet. 5.)

In its reply, Rancho asserts that SPPHU has failed to present a specific controversy for the Board to resolve. (Rancho Reply 3-4, Oct. 31, 2016.) Both Rancho and PHL assert that the Track is not subject to state or local environmental regulation because the Track is subject to the Board's exclusive jurisdiction. (Rancho Reply 4-5, Oct. 31, 2016; PHL Reply 2-4, Oct. 31, 2016.) The City likewise asserts that the Board has jurisdiction over the Track and that PHL, the operator of the Track, is a common carrier. (City Reply 9.) The City seeks clarification on whether it is therefore preempted from taking any action that would unreasonably interfere with rail service, including terminating or suspending rail service to the facility, adding additional regulation of rail tank cars that move product from the facility through the area beyond that imposed by federal law, or taking any other action that would improperly burden interstate commerce. (City Reply 10.)

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate a controversy or remove uncertainty. See Intercity Transp., Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C. 2d 675 (1989). For the reasons explained below, the Board will deny SPPHU's request for a declaratory order, but will provide guidance on the preemption issues that are relevant to the circumstances presented here.

The Interstate Commerce Act, as amended by the ICC Termination Act of 1995, provides that the Board's jurisdiction over "transportation by rail carriers" is "exclusive" and that "the remedies provided under 49 U.S.C. §§ 10101-11908 with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b); see Ass'n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist., 622 F.3d 1094, 1097-98 (9th Cir. 2010). The primary purpose of § 10501(b)'s broad preemption

[7] According to Exhibit 3 of SPPHU's petition, an EIR is an Environmental Impact Report, which, under the California Environmental Quality Act (CEQA), is required for certain state and local activities or construction. (SPPHU Pet., Ex. 3 at 1.)

provision is to prevent a patchwork of state and local regulation from interfering with interstate commerce. See H.R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 807-08 (noting the need for "uniformity" of federal standards for railroads and the risk of "balkanization" from state and local regulation). The preemptive effect of § 10501(b) is broad and sweeping, and "'[i]t is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations.'" City of Auburn v. United States, 154 F.3d 1025, 1030 (9th Cir. 1998) (quoting CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996)).

Courts and the Board have found that state or local actions that "'have the effect of managing or governing,' and not merely incidentally affecting, rail transportation are expressly or categorically preempted" under § 10501(b). Tex. Cent. Bus. Lines Corp. v. City of Midlothian, 669 F.3d 525, 532 (5th Cir. 2012) (quoting Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 410 (5th Cir. 2010) (en banc)).[8] Two broad categories of state and local actions are subject to this per se form of preemption: (1) state or local permitting or preclearance requirements (including environmental requirements generally) that could be used to deny a railroad the ability to conduct some part of its operations or proceed with activities that the Board has authorized; and (2) state or local regulation of matters that are directly regulated by the Board—such as the construction, operation, and abandonment of rail lines (see 49 U.S.C. §§ 10901-07); railroad mergers, line acquisitions, and other forms of consolidation (see 49 U.S.C. §§ 11321-28); and railroad rates and service (see 49 U.S.C. §§ 10501(b), 10701-47, 11101-24). Franks, 593 F.3d at 410-11; City of Auburn, 154 F.3d at 1027-31.

State or local actions that are not categorically preempted still may be preempted "as applied" if they would have "the effect of unreasonably burdening or interfering with rail transportation." Franks, 593 F.3d at 414. This requires a fact-specific determination based on the circumstances of each case. See Adrian & Blissfield R.R. v. Vill. of Blissfield, 550 F.3d 533, 540 (6th Cir. 2008). Preemption applies to attempted regulation of railroad operations and facilities even where the Board does not license and/or actively regulate the activity involved. See Port City Props. v. Union Pac. R.R., 518 F.3d 1186, 1188-89 (10th Cir. 2008); Green Mountain R.R. v. Vermont, 404 F.3d 638, 642 (2d Cir. 2005).

Although preemption is broad, it is not unlimited. States and localities retain their police powers to protect the public health and safety. Ass'n of Am. R.Rs., 622 F.3d at 1098; Green Mountain, 404 F.3d at 643. Thus, nondiscriminatory regulations of general applicability (e.g., building, fire, and electrical codes) are not preempted, as long as they do not unreasonably interfere with rail transportation. Id. Federal statutes, including environmental statutes and statutes regulating hazardous materials by rail, are also given effect unless they irreconcilably

[8] See also City of Auburn, 154 F.3d at 1027-31; DesertXpress Enterprises, LLC—Pet. for Declaratory Order, FD 34914, slip op. at 5 (STB served June 27, 2007) (holding that CEQA is preempted as it relates to a project within the Board's jurisdiction); CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 7 (STB served Mar. 14, 2005) (finding that § 10501(b) preempted a local act that sought to govern the transportation of hazardous materials by rail through Washington, D.C.).

conflict and cannot be harmonized with the Interstate Commerce Act. Ass'n of Am. R.Rs., 622 F.3d at 1097; Tyrrell v. Norfolk S. Ry., 248 F.3d 517, 523 (6th Cir. 2001) (Federal Railway Safety Act not preempted).

Here, it is uncontested that the track at issue is subject to the exclusive jurisdiction of the Board under § 10501(b).[9] (See SPPHU Pet. 1, 4; Rancho Reply 4, Oct. 31, 2016; PHL Reply 3, Oct. 31, 2016; City Reply 7, 9.) It is also uncontested that PHL is a common carrier railroad operating on track subject to the Board's jurisdiction. As a result, state entities such as the City and the Harbor Department are preempted from imposing requirements that could be used to restrict these rail operations. The Board has also made clear that rail carriers have not only a right, but a statutory common carrier obligation, to transport hazardous materials upon reasonable request. See Union Pac. R.R.—Pet. for Declaratory Order, FD 35219, slip op. at 4 (STB served June 11, 2009); see also Strohmeyer—Acquis. & Operation Application—Valstir Indus. Track in Middlesex & Union Ctys., N.J., FD 35527, slip op. at 2 (STB served Oct. 20, 2011), aff'd sub nom. Riffin v. STB, 733 F.3d 340 (D.C. Cir. 2013) (upholding Board's determination that railroads have a common carrier obligation to carry hazardous materials). Therefore, any terms in the temporary rail permit that attempt to restrict rail operations, including the transportation of hazardous materials, are preempted.[10] Lastly, SPPHU suggests that the Harbor Department was required to submit the permit to the Board. However, while RP 10-05 pertains to track subject to the Board's jurisdiction, the Harbor Department was not required to submit the permit to the Board, as SPPHU suggests. (SPPHU Pet. 1.)

For these reasons, SPPHU's request for a declaratory order is denied.

It is ordered:

1. SPPHU's petition for declaratory order is denied.

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[9] SPPHU describes the track at issue as a "rail spur line." The relevant permits also refer to the track at issue as an "industrial rail spur track." However, Rancho contends that the Track is a line of railroad subject to entry and exit licensing under 49 U.S.C. § § 10901 and 10903, as opposed to excepted spur track under 49 U.S.C. § 10906, by virtue of the Board's having authorized PHL to operate over the Track. (Rancho Reply 2-5, Nov. 21, 2016.) The Board has jurisdiction over both railroad lines subject to Board licensing and excepted spur track. 49 U.S.C. § 10501(b)(2). Thus, federal preemption applies regardless of whether the track at issue is a line of railroad or a spur under § 10906.

[10] This does not leave the transport of hazardous materials over the Track unregulated. Other federal agencies, including the Federal Railroad Administration, the Transportation Security Administration, and the Pipeline and Hazardous Materials Safety Administration, have statutory responsibilities to regulate the transportation of hazardous materials by rail, and that regulation typically applies notwithstanding § 10501(b) preemption. See Tyrrell v. Norfolk S. Ry., 248 F.3d at 523; Canadian Nat'l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 7 (STB served May 15, 2015).

2. This decision is effective on the date of service.

By the Board, Board Members Begeman, Elliott, and Miller.

EXHIBIT C

CITY OF LOS ANGELES HARBOR DEPARTMENT
Port of Los Angeles

REVOCABLE PERMIT

No. 10-05

The General Manager of the Harbor Department (hereinafter called "Executive Director") of the City of Los Angeles (hereinafter called "City") HEREBY GRANTS PERMISSION TO RANCHO LPG HOLDINGS, LLC, a Delaware limited partnership, 607 8th Avenue S.W., Suite 1400, Calgary, Alberta, Canada T2P 0A7 (hereinafter called "Tenant") to occupy and use certain lands, waters and/or facilities within the Harbor District owned or under the control of City acting through its Board of Harbor Commissioners (hereinafter called "Board"), subject to the following terms and conditions:

1. Premises. The premises subject to this Agreement (hereinafter called "premises") is designated as Parcel No. 1 and is delineated and more accurately described on the preliminary Harbor Engineering Drawing No. 5-4327. A final drawing shall be substituted for Harbor Engineering Drawing No. 5-4327 when prepared by the Chief Harbor Engineer, Engineering Division, of the Harbor Department, and shall be marked Exhibit "A-1." A copy of said drawing is attached hereto as Exhibit "A." By mutual agreement of Executive Director and Tenant, land and water not exceeding ten percent (10%) of the area granted or 20,000 square feet, whichever is greater, may be permanently added to or deleted from the premises granted herein without further approval of the Board subject to the following conditions: (1) so long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor), the compensation set forth in Section 4 shall be increased or decreased pro rata to reflect any such addition or deletion; (2) if the change involves the addition or deletion of any improvement, the adjustment to the compensation shall also take into account this change in the same manner in which the compensation was originally calculated; (3) if permanent changes in area are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) or 20,000 square feet, whichever is greater, of the originally designated area, and (4) the change in area shall not result in the annual compensation changing by more than One Hundred Thousand Dollars ($100,000). The Executive Director is authorized to execute amendment(s) to this Permit to effect the foregoing adjustments to area and compensation without further action of the Board.

2. Purpose. The premises shall be used for the purpose of operation and maintenance of existing industrial rail spur tracks and not for any other purpose without the prior written consent of Executive Director.

3. Effective and Termination Dates. This Revocable Permit shall be month-to-month, commencing upon the date of execution by Executive Director and shall thereafter be revocable at any time by Tenant or by Executive Director, upon the giving of at least thirty (30) days' written notice to the other party stating the date upon which this Permit shall terminate. The right of Executive Director to revoke this Permit is and shall remain unconditional. Neither City, nor any board, officer or employee thereof, shall be liable in any manner to Tenant because of such revocation.

4. Compensation.

(a) Amount. Each month, in advance, Tenant shall pay to Board the sum of One Thousand One Hundred Eighty-seven Dollars ($1,187.00) as rental for the use of the premises. Use of the premises for purposes not expressly permitted herein, whether approved in writing by Executive Director or not, may result in additional charges, including charges required by Port of Los Angeles Tariff No. 4, as amended or superseded. Tenant agrees to pay such additional charges. Executive Director may change the amount of rental required herein upon giving at least thirty (30) days' written notice to Tenant.

(b) Delinquency Charge. Rental payments which have not been paid within ten (10) days of the due date ("grace period") shall be subject to a service charge of one-thirtieth (1/30) of two percent (2%) of the invoice amount remaining unpaid each day. The service charge shall accrue from the first day after the original due date and shall be imposed even if all or a portion of any sum on deposit as a guarantee against delinquent rent is applied to the amount due. For the administrative convenience of both City and Tenant, City will not apply Tenant's deposit, which is described below, to unpaid rent until Tenant's occupancy is terminated or a notice to terminate the occupancy has been provided. The City has the unqualified right, upon thirty (30) days' prior notice to Tenant, to change the level of the delinquency service charge provided the rate shall not exceed the maximum permitted by law.

(c) Deposits. Prior to the issuance of this Permit, Tenant shall deposit with the Harbor Department the sum of Two Thousand and Five Hundred Dollars ($2,500.00) as a guarantee to cover delinquent rent and its other obligations under this Permit. If the rent is thereafter changed, Tenant shall modify its deposit as necessary to assure that Tenant at all times has on deposit a sum equal to two months of the current rental payments. If all or any part of said deposit is used to pay any rent due and unpaid or to meet other Tenant obligations, including, but not limited to, maintenance expenses, Tenant shall then immediately reimburse said deposit so that at all times during the life of this Permit said deposit shall be maintained. Failure to maintain the full amount of said deposit shall subject this Permit to forfeiture. In the sole discretion of the Executive Director, Tenant may post other forms of security but only if in a form acceptable to the City Attorney. If for any reason City has not initially required a deposit from Tenant, City may at any time and for any reason require a deposit in an amount the Executive

Director determines necessary to secure performance of the Permit. Tenant agrees to post such deposit with City within ten (10) days of written request from City and agrees that its failure to do so constitutes a material breach of this Permit. No interest is payable by City on deposits if the deposits are subsequently refunded.

(d) No Right of Set-Off. Notwithstanding any other provision of this Permit, Tenant's obligation to pay all rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which Tenant may have against City.

(e) Deposits for Disputed Payments. Tenant recognizes that disputes may arise over monies due the City in accordance with this Permit. Tenant and City shall make a good faith effort to resolve any disputes as expeditiously as possible. Tenant agrees, upon receiving a billing from City which it disputes, to deposit with the City the disputed amount in the form of cash, certificate of deposit in the City's name or other security acceptable to City within thirty (30) days of the date of billing. City shall hold the deposit pending the resolution of the dispute. If the dispute is resolved in the City's favor, City shall retain the money and all interest earned on it. If the dispute is resolved in favor of Tenant, said deposit shall be returned to Tenant with all accumulated interest. Tenant understands that its failure to provide a deposit acceptable to City within thirty (30) days shall be considered a material default of this Permit and City shall be entitled to cancel this Permit upon seven (7) days' written notice. If Tenant is required under this Revocable Permit to pay City any sums in accordance with City's tariff, Tenant's failure to provide a deposit shall require Tenant to make all payments in accordance with Item 265 of the Tariff and Tenant shall be removed from the Credit List authorized by Item 260 of the Tariff or as amended or superseded. If the billing for any one disputed amount exceeds One Hundred Thousand Dollars ($100,000), Tenant shall be required to deposit One Hundred Thousand Dollars ($100,000) with City; if City prevails in the dispute and the amount due City exceeds One Hundred Thousand Dollars ($100,000), Tenant shall pay the difference due within fifteen (15) days with interest at the rate set forth in Section 4(b) from the date of City's initial billing to Tenant.

(f) Records and Accounts. All books, accounts and other records showing the affairs of Tenant with respect to its business transacted at, upon or over the premises shall be maintained locally, and shall be subject to examination, audit and transcription by Executive Director or any person designated by her; and in the event it becomes necessary to make such examination, audit or transcription at any place other than within fifty (50) miles of the premises, then all costs and expenses necessary, or incident to such examination, audit or transcription shall be paid by Tenant. These records shall be retained during the term of this Permit so that the records for the four (4) most recent years are available. After this Permit terminates, Tenant shall maintain the records for the four (4) most recent years for at least two (2) years. Upon request in writing by Executive Director or his or her designated representative, Tenant shall furnish a statement of the exact location of all records and the name and telephone number of the custodian of these records. The statement shall be submitted within fifteen (15) days of the request and shall contain such detail and cover such period of time as may be specified in any such request. From time to time Executive Director or designee shall audit Tenants' records and accounts. Information to be provided by Tenant will include, but not be limited to, general ledgers, charts of accounts, subledgers including cash receipts journals, cash disbursement journals, and all original receipts and documents which support the information provided to City.

(g) Promotion of Los Angeles Harbor Facilities. Tenant shall in good faith and with all reasonable diligence use its best efforts by suitable advertising and other means to promote the use of the premises granted by this Permit.

(h) Supervision of Business Practices. The nature and manner of conducting any and all business activities on the premises shall be subject to reasonable regulation by Board. In the event such business is not conducted in a reasonable manner as determined by Board, it may direct that corrective action be taken by Tenant or its sublessees to remedy such practices and upon failure to comply therewith within thirty (30) days of Tenant receiving such written notice, Board may declare this Permit terminated.

Pursuant to the provisions of the Los Angeles City Charter and of the tide and submerged land grant, Tenant and its sublessees shall use the premises in such a manner so that there shall be no discrimination made, authorized or permitted in the rates, tolls, or charges or in the facilities provided for any use or service in connection therewith.

Tenant shall also conduct its business and cause the businesses of its sublessees upon the premises (if any have been expressly authorized by City in writing) to be conducted in a first-class manner. Tenant shall furnish and maintain a standard of service at least equal to that of the better class of similar businesses providing similar services and facilities in the City of Los Angeles and adjacent communities during the entire term of this Permit.

Board reserves the right to have access to and inspect the schedule of rates and prices for services and facilities performed or provided upon the premises. In the event that after Tenant has been advised and given a

reasonable opportunity to confer with Board and to justify any rate or price challenged by it as unreasonable or noncompensatory, and Board has determined such rate or price to be unreasonable or inappropriate for the services rendered or the facilities provided, such rates or prices shall be modified by Tenant as directed by Board.

5. Restoration Bond. Tenant shall provide a cash deposit, certificate of deposit in the name of the City, surety bond, irrevocable letter of credit or other form of security in the name of the City and acceptable to the Executive Director and City Attorney in the amount of _____ ($_____) payable to the City of Los Angeles, to guarantee, upon any termination, revocation or forfeiture of this Permit, the restoration of premises and the removal of works, structures and other improvements by Tenant as required by this Permit. Said deposit, or other form of security bond, shall be in a form acceptable to and subject to the approval of the City Attorney. No interest is payable by City on deposits if the deposits are subsequently refunded. If Executive Director becomes aware of facts which lead him or her to believe that the financial condition of Tenant has substantially changed such that Tenant may not be able to meet its restoration obligation, Executive Director may increase the restoration bond or deposit requirement, and where no restoration bond or deposit is initially required, Executive Director may require such a bond or deposit. If any property of any kind is on the premises at the request or with the permission of Tenant, its officers, agents, employees, sublessees, licensees or invitees, including vessels, machinery or equipment, and such property sinks in any channel or water area (hereafter "sunken property") and Tenant fails to remove such property within ten (10) days of a request by City to do so, Executive Director may require a restoration deposit or bond in the amount of the reasonable cost of removal as determined by Harbor Engineer. If Executive Director in his or her sole discretion determines sunken property is a safety hazard and so notifies Tenant, failure to remove the property may result in termination of this Permit upon three (3) days' notice.

6. Rights-of-Way. This Permit shall at all times be subject to such rights-of-way over the land embraced therein for such sewers, pipelines, conduits, and for such telephone, telegraph, light, heat or power lines as may from time to time be determined by Board; and shall also be subject to rights-of-way for streets and other highways and for railroads and other means of transportation as shall have been duly established, or as shall be reserved herein; and shall also be subject to rights-of-way as Board requires to drill and explore new or maintain existing oil, gas or mineral wells. This Permit shall at all times be subject to all prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same appear of record in the Office of the Recorder of Los Angeles County, California, or in the official records of City or any of its various departments.

7. Premises Satisfactory to Tenant/Required Modifications. Tenant has inspected the premises and agrees that they are suitable for the uses permitted herein. No officer or employee of City has made any representation or warranty with respect to the premises, except as described in writing and attached hereto as an addendum, and in entering into this Revocable Permit, Tenant agrees it relies only on the provisions of the Permit. Any modification, improvement, or addition to the premises and any equipment installation or removal required by the Fire Department, Department of Building and Safety, South Coast Air Quality Management District, Regional Water Quality Control Board, U.S. Coast Guard, Environmental Protection Agency, or any other agency in connection with Tenant's operations, shall be constructed, installed, or removed at Tenant's sole expense. Tenant shall obtain a Harbor Engineer's General Permit before making any modifications to the premises.

8. Use of Premises. Tenant agrees not to use the premises in any manner, even if the use is for the purposes enumerated herein, that will cause cancellation of any insurance policy covering any such premises or adjacent premises provided Tenant may in City's discretion remain if it pays the increase in City's insurance costs caused by its operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Tenant to be or remain, and Tenant shall prevent any such material or matter from being or accumulating upon said premises. Tenant further agrees not to keep on the premises or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the premises or any structure erected thereon.

9. Repair and Maintenance. The repair and maintenance obligations of the parties are as follows (if Tenant's premises do not include wharves, maintenance provisions related to wharves shall not apply):

(a) Maintenance Performed by City at City's Expense (Except as Noted). Except as provided in subsections 9(c), 9(d), 9(g) and 9(h), City will maintain at its expense the roofs and exteriors of all buildings owned by City and the structural integrity of wharf structures (if any) and buildings owned by City. The "wharf structure" (if any) for purposes of this subsection means the beams, girders, subsurface support slabs, bulkheads and prestressed concrete or wood piling, joists, pile caps and timber decking (except as noted below), and any and all mooring dolphins. The wharf structure does not include the paving, the surface condition of timber decking or the fendering system. City will maintain and repair at its expense all fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, and other fire protective or extinguishing systems or appliances (portable fire extinguishers and hoses excluded) which have been or may be installed in buildings or structures City owns on the premises. City shall also perform at its expense all electrical substation and switchgear preventive maintenance.

(b) Maintenance Performed by City at Tenant's Expense. Subject to the provisions of subsections 9(c), 9(d), 9(g) and 9(h), City shall maintain and repair at Tenant's expense the wharf fender system for wharves owned by City, (in accordance with City's wharf damage procedures, a copy of which will be provided to Tenant upon its request), refrigerated receptacle outlets, backflow devices and potable water systems and heating and air conditioning systems, so long as City forces are available. If, however, Tenant fails to pay City in accordance with City's wharf damage procedure (which contains depreciation criteria favorable to Tenant), then City reserves the right to collect the actual cost of repair based on actual depreciation factors as established by City in court.

(c) Maintenance Performed by Tenant at its Expense. Tenant shall be responsible for performing and paying for all maintenance and repairs not expressly covered above. Tenant shall be responsible at its expense for inspecting and assuring that all necessary portable fire extinguishers are present on the premises and maintained in an operable condition. Notwithstanding subsections (a) and (b) above, all modifications or repairs to the electrical, plumbing or mechanical systems resulting from "call outs" (Tenant-requested repairs requested on weekends, holidays or other than 7:45-4:15 Monday-Friday or such other times as City adopts as its maintenance force work hours) are at Tenant's expense. Tenant shall also be responsible at its expense for inspecting the premises and keeping the premises, [including, but not limited to, the surface of timber decking, all paving, landscaping, irrigation systems, fencing, signage, and striping (if any) and relamping] and all works, structures and improvements thereof, whether a part of the premises or placed by Tenant, in a safe, clean, sanitary and sightly condition. All maintenance performed by Tenant shall assure the premises are maintained in a first-class operating condition and in conformance with all applicable federal, state, regional, municipal and other laws and regulations. The appearance, safety and operational capability of the premises shall be maintained to the satisfaction of the Executive Director. Tenant shall make all efforts necessary to immediately discover and guard against any defects in all surfaces of timber decking, paving, buildings, structures and improvements on the premises without request from City. Tenant shall also completely maintain at its expense all buildings, structures, improvements, timber decking surfaces and paving it erects, owns, or installs. All modifications and repairs which Tenant makes to City-owned or Tenant-owned buildings, structures, improvements, timber decking and paving require a Harbor Department Engineering permit. Sample permits are available upon request from the Harbor Engineer. Tenant agrees to strictly comply with all the terms and conditions of the Harbor Engineer's permit. Tenant shall maintain in its offices at the premises at all times the Harbor Engineer's permit allowing the work performed and proof that the work has been performed in accordance with all terms and conditions of the permit. Modifications and repairs shall be made in a first-class manner using materials of a kind and quality comparable to the items being replaced (in-kind replacement shall be utilized if material still manufactured). Tenant is obligated at its expense to take both such preventive and remedial maintenance actions as are necessary to assure that premises are at all times safe and suitable for use regardless of whether Tenant is itself actively using all of the premises. Tenant shall provide notice to the Director of Port Construction and Maintenance and Harbor Engineer five (5) work days before any paving work is performed; provided, however, Tenant shall immediately repair any condition creating a risk of harm to any user of the premises. All materials used and quality of workmanship shall be satisfactory to the Harbor Engineer.

(d) Tenant's Responsibility for Damage. Notwithstanding the foregoing, if damage to the wharf structure or any other building, structure, improvement or surface area is caused by the acts or failure to act of Tenant, its officers, agents, employees or its invitees, (including, but not limited to, customers of Tenant and contractors retained by Tenant to perform work on the premises -- hereafter collectively "invitees"), Tenant shall be responsible for all costs, direct or indirect, associated with repairing the damage and the City shall have the option of requiring Tenant to make the repairs or itself making the repairs. If City makes the repairs, Tenant agrees to reimburse City for the City's cost of repair. All damage shall be presumed to be the responsibility of Tenant and Tenant agrees to be responsible for such damage unless Tenant can demonstrate to the satisfaction of City that someone other than its officers, agents, employees, or invitees caused the damage. Tenant agrees to reimburse City for the cost of repair to City's wharf for any damage to the wharf resulting from a collision between a vessel and the wharf while docking or undocking unless Tenant demonstrates that such damage was caused by the sole active negligence of City or demonstrates that such damage was caused by an invitee of some other Tenant to which the premises are also assigned. The sufficiency of proof presented by Tenant to City shall be determined by City in its sole judgment. Tenant's obligations as a vessel owner or operator pursuant to City's Tariff Item 305 (or its successor) or pursuant to any pilotage contract Tenant may have with City are not altered by the provisions of this subsection.

(e) City's Option to Perform Work at Tenant's Expense. If Tenant fails to repair, maintain and keep the premises and improvements as above required, Executive Director may give thirty (30) days' written notice to Tenant to correct such default, except that no notice shall be required where, in the opinion of Executive Director, the failure creates a hazard to persons or property. If Tenant fails to cure such default within the time specified in such notice, or if Executive Director determines that a hazard to persons or property exists due to such failure, Executive Director may, but is not required to, enter upon the premises and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and overhead cost, to be charged against Tenant. Such charges shall be due and payable with the next rent payment. During all such times, the duty shall be on Tenant to assure the premises are safe and Tenant shall erect barricades and warning signs to assure

workers and the public are protected from any unsafe condition. None of City's remedies described above shall preclude City from terminating this Permit if City is not satisfied with Tenant's compliance with the maintenance provisions of this Permit.

(f) Inspection of Premises and Tenant Repairs. Tenant shall be responsible for inspecting the premises (including all surfaces of timber decking, paving, structures, buildings and improvements) and at all times maintaining the premises in a safe condition. Executive Director and/or his or her representatives shall have the right to enter upon the premises and improvements constructed by Tenant at all reasonable times for the purpose of determining compliance with the terms and conditions of this Permit or for any other purpose incidental to the rights of City. This right of inspection imposes no obligation upon City to make inspections nor liability for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damages to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. City assumes no responsibility for any shortages of cargo handled by Tenant. If City requests drawings and/or specifications showing the location and nature of repairs to be made or previously made by Tenant (including by its invitees), Tenant agrees to provide to City the material requested in writing within ten (10) days of request by City.

(g) City's Access to Maintain and Repair Premises. If City deems it necessary to maintain or repair the premises, Tenant shall cooperate fully with City to assure that the work can be performed timely and during City's normal working hours. If City is required to perform any work outside its normal working hours, even work which would otherwise be at City's expense, the entire cost of such work shall be at Tenant's expense.

(h) Maintenance/Repair Obligations Dependent on Indemnity/Insurance Provisions. City's agreement to perform certain repairs and to pay for certain repairs is expressly conditioned on the indemnity and insurance provisions of this Permit remaining in force and effect. If Tenant fails to comply with the indemnity and insurance provisions or if these provisions are ever deemed not applicable, then Tenant shall be obligated to perform and pay for all maintenance and repairs to the premises without exception at its own expense. Tenant shall perform such maintenance and repairs only after it has secured the Harbor Engineer's General Permit. Such work shall be deemed completed only when all terms of the permit have been satisfied. If City inspects any work performed by Tenant and finds it unsatisfactory, Tenant shall be obligated to correct the work to City's satisfaction at Tenant's expense.

(i) Definition of City's Actual Costs. Whenever this Section requires Tenant to reimburse City for the City's cost of maintenance, the City's cost of maintenance is agreed to include all direct and indirect costs which City incurs whether with its own forces or with any independent contractor. These costs include salary and all other costs City incurs from its employees ("salary burden"), all material and equipment costs and general overhead costs.

(j) Exhibit Listing More Common Maintenance Items. Attached as Exhibit "B" is a detailed description of items which is intended to describe the more common maintenance work which may be necessary at the premises. Not all items listed will be present at all premises within the Port. Costs and responsibilities shall be apportioned as set forth in this Exhibit except as may otherwise be required by the provisions above.

10. Defaults. Upon the neglect, failure or refusal of Tenant to comply with any of the terms or conditions of this Permit within the time stated in the written demand of Executive Director, the Executive Director may declare this Permit forfeited, and may forthwith enter upon said premises, using all reasonable force so to do, and exclude Tenant from further use of said premises and all improvements thereon. Upon such forfeiture, Tenant shall immediately surrender all rights in and to the premises and all improvements. Upon any such forfeiture, any and all buildings, structures and improvements of any character whatsoever, erected, installed or made by Tenant under, through, or because of, or pursuant to the terms of this Permit, or any prior permit, shall immediately ipso facto either become the property of City free and clear of any claim of any kind or nature of Tenant or its successors in interest without compensation to Tenant or become removable by Executive Director at the sole expense of Tenant, at the option of Executive Director. In the event this Permit is forfeited as set forth above, Executive Director may enforce all of City's rights and remedies under this Permit. In addition to any other remedy available to City, City shall be entitled to recover from Tenant rent as it becomes due pursuant to the terms of this Permit and, in addition thereto, the damage that City may recover includes the worth at the time of the award of the amount by which the unpaid rent for the balance of the term of this Permit exceeds the amount of such rental loss for the same period that Tenant proves could have been reasonably avoided. Any default in Tenant's obligations to make payments to City under the terms of any berth assignment, lease, permit or other agreement, when such default involves the sum of Five Hundred Dollars ($500.00) or more, shall constitute a material default on the part of Tenant with respect to this Permit. At any time Tenant has defaulted on payments due under other agreements with City, City may give Tenant a default notice and this Permit may be forfeited if the default in rental payments of such other agreements, including, but not limited to, berth assignments, leases and permits, is not cured within the time stated in said notice.

11. Effect of Nonuse. Tenant shall commence using the premises for the purposes permitted herein within thirty (30) days from the effective date hereof. If Tenant shall fail thereafter to use the premises or any substantial portion

thereof for a period of thirty (30) consecutive days, this Permit shall cease and terminate and be forfeited unless Tenant, prior to the expiration of any such period of thirty (30) consecutive days, notifies Executive Director in writing that such nonuse is temporary and obtains the written consent of Executive Director to such nonuse.

12. Restoration and Hazardous Materials Management. Upon the termination of this Permit other than by forfeiture, Tenant shall quit and surrender possession of the premises to City and shall, without cost to City, remove any and all works, structures and other improvements located thereon, except works, structures or other improvements owned by City, and restore the premises to the same or as good condition, ordinary wear and tear excepted, as the same were in at the time of the first occupancy thereof by Tenant or its assignors, if any, under this or any prior permit or lease. "Ordinary wear and tear" does not permit Tenant to damage paving or to contaminate the premises with any material handled at the premises. Executive Director may, at his or her option, accept all or a portion of the works, structures, or other improvements on behalf of City in lieu of all or a portion of the removal or restoration required herein. Tenant shall leave the premises free from contamination of hazardous substance or hazardous waste including hazardous liquid bulk products and petroleum products (hereinafter sometimes collectively referred to as "hazardous materials") as defined below. Tenant shall leave the surface of the ground in a level, graded condition with no excavations, holes, hollows, hills or humps.

13. Hazardous Materials. Tenant may not handle, use, store, transport, transfer, receive or dispose of, or allow to remain on the premises (hereinafter collectively referred to as "handle") any substance classified as a hazardous material under any federal, state, local law or ordinance (hereinafter sometimes collectively referred to in this Permit as "law") in such quantities as would require the reporting of such activity to any person or agency having jurisdiction thereof without first receiving written permission of City. If Tenant has handled material on the premises classified by law as hazardous [Tenant's attention is particularly called to the Resource Conservation and Recovery Act of 1967 ("RCRA"), 42 U.S.C. Sec. 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Sec. 9601, et seq.; the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7901 et seq.; California Health & Safety Code Sec. 25300 et seq. and Sec. 25100 et seq.; California Water Code Sec. 13000 et seq.; California Administrative Code, Title 22, Division 4, Chapter 30, Article 4; Title 49 CFR 172.101; Title 40 CFR Part 302 and any amendments to these provisions or successor provisions] and such material has contaminated or threatens to contaminate the premises or adjacent premises (including structures, harbor waters, soil or groundwater), Tenant, to the extent obligated by law and to the extent necessary to satisfy City, shall at its own expense perform soil and groundwater tests to determine the extent of such contamination, and shall immediately remediate from the premises any such material. If in the determination of the Executive Director such hazardous material cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all contaminated soil, material or groundwater and replace such soil or material with clean soil or material suitable to City.

If during Tenant's occupancy hazardous materials are discovered on the premises or such materials have migrated to or threaten to contaminate adjacent premises (including structures, harbor waters, soil or groundwater), Tenant shall immediately notify the City, and Tenant, at its sole expense, shall perform such soil and groundwater testing as required by law and as City deems necessary and take immediate steps to remediate the premises to the satisfaction of City.

If Tenant disposes of any soil, material or groundwater contaminated with hazardous material, Tenant shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles shall not appear on any manifest document as a generator of such material.

Any tests required of Tenant by this Section shall be performed by a State of California Department of Health Services certified testing laboratory satisfactory to City. By signing this Permit, Tenant hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data gathered. As used in this Permit, the term "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

14. Rent During Restoration. Tenant understands and agrees it is responsible for complete restoration of the premises, including the clean up of any hazardous material contamination on or arising from the premises before the expiration or earlier termination of this Permit. If, for any reason, such restoration is not completed before such expiration, then Tenant is obligated to pay City compensation during such restoration as determined by the then fair market value of the land and the Harbor Department's then established rate of return; however, the new rent shall not be less than provided in Section 4. Tenant also agrees to provide City a surety bond to assure removal of hazardous material from the premises if at any time City demands such bond. Tenant's breach of any of the provisions of this Section shall entitle City to forfeit this Permit.

15. Site Restoration Plan. Upon request of Executive Director, Tenant shall provide City a site characterization study and site restoration plan in a form acceptable to City and at Tenant's expense as directed by City.

The study and plan shall demonstrate to City's satisfaction that the premises have not been contaminated or that, if contamination exists, Tenant will remove it to the satisfaction of City.

16. Tanks. Within thirty (30) days from the commencement of the term of this Permit, Tenant, at its expense, shall submit to City an inventory of all storage tanks located on the premises indicating the number of tanks, type (atmospheric, etc.), contents, capacity, past historical use, location and the date each tank was last tested for structural integrity and leaks. Tenant shall also, at its sole expense, when required by law or when deemed necessary by the Executive Director or his or her designee, test all storage tanks located on the premises for structural integrity and leaks. Upon written request, Tenant shall make available to City the results of all such tests. Testing required herein shall be to the satisfaction of City and in conformance with applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during Tenant's occupancy of the premises a tank or the pipelines servicing a tank containing hazardous material are discovered to be leaking, Tenant shall immediately notify the City and take all steps necessary to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of City and in accordance with all applicable law.

17. Use for Tideland Purposes. This Permit is subject to the limitations, conditions, restrictions and reservations of the Tidelands Act, Stats. 1929, Ch. 651, as amended and/or reenacted, and the Charter of City relating to such lands, including particularly Article VI. Tenant agrees to use the premises only in such manner as will be consistent therewith.

18. Federal Maritime Commission. Tenant shall not use the premises or furnish any facilities or services thereon for or in connection with a common carrier by water as that term is defined in the Shipping Act of 1916 and 1984, as amended, unless and until this Permit has been submitted to the Federal Maritime Commission and has become effective or determined not to be subject to said Acts.

19. Improvements. Tenant shall not construct on or alter the premises, including a change in the grade, without first submitting to Harbor Engineer a complete set of drawings, plans and specifications of the proposed construction or alteration and obtaining his approval in a written Harbor Engineer's General Permit. Harbor Engineer shall have the right to reject or order changes in said drawings, plans and specifications. Tenant, at its own expense, shall obtain all permits necessary for such construction. All construction by Tenant pursuant to this Permit shall be at Tenant's sole expense. Tenant shall keep the premises free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto.

20. Construction. Tenant shall give written notice to Harbor Engineer, in advance, of the date it will commence any construction. Immediately upon the completion of the construction, Tenant shall notify Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with Harbor Engineer, in a form acceptable to Harbor Engineer, a set of "as built" plans for such construction.

21. Indemnity. As partial consideration for City's grant of the premises to Tenant, Tenant agrees to at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused directly or indirectly by:

(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Permit or otherwise;

(c) Any act, omission or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Permit or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (a), (b), (c) and (d) above, existing or conducted upon or arising from the use or occupation by Tenant or its invitees of any other premises within the Harbor District, as defined in the Charter of City.

Tenant also agrees to indemnify City and pay for all damage or loss suffered by City and the Harbor Department, including, but not limited to, damage to or loss of property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (a), (b), (c), (d) and (e) above. The term "persons" as used herein shall include, but not be limited to, officers and employees of Tenant. Tenant acknowledges that the City has set the compensation payable under this Permit in consideration of the indemnity and insurance obligations which Tenant assumes by this Permit.

Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of value of the premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Permit term as a result of contamination of the premises by hazardous materials for which Tenant is otherwise responsible for under the terms of this Permit. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency because of hazardous material present in the soil or groundwater on or under the premises. The foregoing indemnity shall survive the expiration or earlier termination of this Permit.

22. Insurance. Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Permit broad form comprehensive general liability and property damage insurance including automobile and contractual liability assumed coverages written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Tenant's normal limits of liability but not less than One Million Dollars ($1,000,000) combined single limit for injury, death or property damage arising out of each accident or occurrence unless Executive Director allows or requires a different limit of liability. If the submitted policy contains an aggregate limit, this limit must be satisfactory to Executive Director or his or her designee. Said limits shall be without deduction, provided that Executive Director or his or her designee may permit a deductible amount in those cases where, in his or her judgment, such a deductible is justified. The insurance provided shall contain a severability of interest clause assuring that damage to City property or injury to City personnel are covered by the insurance. In all cases, regardless of any deductible, said insurance shall contain a defense of suits provision which assures the carrier will defend the City if any suit arises related to Tenant's occupation of the premises or such suit is within the scope of Tenant's indemnity allegation as set forth in Section 21. If Tenant operates watercraft or incurs other marine liability exposures or operates vehicles as part of its business in the Port, liability coverage for such watercraft or vehicles must be provided as above. The submitted policy shall contain endorsements substantially as follows:

(a) "Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Board of Harbor Commissioners, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under its revocable permit issued by the City, and under any amendments, modifications, extensions or renewals thereof regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the named insured or a combination of the named insured and the additional insured. It is understood that the additional insured will not be responsible for the payment of premium under the policy;

(b) "The policy to which this endorsement is attached shall not be cancelled or reduced in coverage until after the Executive Director and the City Attorney of City have each been given thirty (30) days' prior written notice by certified mail addressed to P.O. Box 151, San Pedro, California 90733-0151;

(c) "The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess of this insurance and shall not contribute with it;

(d) "If one of the named insureds incurs liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

(e) "Notice of occurrences or claims under the policy shall be made to [This information is to be supplied by the Tenant's insurance carrier when submitting the Endorsement to the Harbor Department. The information to be supplied is the name, address and phone number of the person representing the carrier to be notified at the time of any accident.]"

The Executive Director and City Attorney shall have the discretion to modify the insurance requirements as they deem appropriate if the circumstances warrant a modification.

23. Fire Legal Liability Insurance. Tenant shall also secure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance covering legal liability of Tenant for damage or destruction to the works, structures and improvements owned by City. This policy shall be in an amount sufficient to cover the replacement value of the City structure occupied by Tenant but need not exceed the value of the deductible in the City's fire insurance policy provided, that upon thirty (30) days' prior written notice to Tenant, said minimum limits of liability shall be subject to adjustment by Executive Director to conform with the deductible amount of the fire insurance policy maintained by Board. Currently this deductible is Two Hundred Fifty Thousand Dollars ($250,000). So long as City's insurance policy permits City to waive any cause of action it and the City's insurance carrier would otherwise have for a fire caused by Tenant, City agrees to such waiver provided Tenant provides the insurance required by this Section. City should not be named as an additional insured in Tenant's fire legal policy.

24. Duplicate Insurance Policies. Tenant shall furnish two (2) signed copies of each policy or certificate required herein for approval by the Risk Manager of City.

25. Modifications to Insurance. Executive Director, based upon advice of independent insurance consultants of City, may increase or decrease the amounts and types of insurance coverage required herein by this Permit by giving sixty (60) days' written notice to Tenant.

26. Assignments/Subleases. No assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance of this Permit, or any interest therein or any right or privilege thereunder, whether voluntary or by operation of law, shall be valid for any purpose. For purposes of this subsection, the term "by operation of law" includes:

(a) The placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee;

(b) An assignment by Tenant for the benefit of creditors.

27. Transfer of Stock. If Tenant is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of Tenant is traded during any calendar year after filing its application for this Permit, Tenant shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of Tenant is listed on either the American Stock Exchange, the New York Stock Exchange, or the NYSE Arca Options. If more than twenty-five percent (25%) of the Tenant's stock is transferred, regardless of whether Tenant is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of the preceding paragraph. Any such transfer shall void this Permit. Such a transfer is agreed to be a breach of this Permit which shall entitle City to evict Tenant on at least seven (7) days' notice.

28. Signs. Tenant shall not erect or display, or permit to be erected or displayed, on the premises any signs or advertising matter of any kind without first obtaining the written consent of Executive Director. Tenant shall post, erect and maintain on the premises such signs as Executive Director may direct.

29. Termination for Misrepresentations This Permit is granted pursuant to an application filed by Tenant with Board. If the application or any of the attachments thereto contain any misstatement of fact which, in the judgment of Executive Director, affected his or her decision to grant said Permit, Executive Director may terminate this Permit. Termination pursuant to this Section shall not be termination by forfeiture.

30. Laws and Directives. Tenant shall comply with all applicable laws, ordinances and regulations. In addition, Tenant shall comply immediately with any and all directives issued by Executive Director or his or her authorized representative under authority of any such law, ordinance or regulation. This Permit shall be construed in accordance with California law

31. Possessory Interest. THIS PERMIT MAY CREATE A POSSESSORY INTEREST BY TENANT WHICH MAY BE SUBJECT TO PROPERTY TAXATION. TENANT SHALL PAY ALL SUCH TAXES SO ASSESSED, AND ALL OTHER ASSESSMENTS OF WHATEVER CHARACTER LEVIED UPON ANY INTEREST CREATED BY THIS PERMIT. TENANT SHALL ALSO PAY ALL LICENSE AND PERMIT FEES REQUIRED FOR THE CONDUCT OF ITS OPERATIONS.

32. Utility Charges. Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the premises or used in connection with its occupancy, including, but not limited to, heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City

33. Termination by Court. If any court having jurisdiction in the matter renders a final decision which prevents the performance by City of any of its obligations under this Permit, then either party hereto may terminate this Permit by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations) shall thereupon terminate.

34. Conflict of Interest. It is understood and agreed that the parties to this Permit have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Permit. Notwithstanding any other provision of this Permit, it is further understood and agreed that if such a financial interest does exist at the inception of this Permit, City may immediately terminate this Permit by giving written notice thereof. Termination pursuant to this Section shall not be termination by forfeiture.

35. Service of Notice. In all cases where written notice including the service of legal pleadings is to be given under this Permit, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid or delivered to the Permit premises. When so given, such notice shall be effective from the date of mailing. Unless changed by notice in writing from the respective parties, notice to City shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Tenant shall be addressed to it at the address stated in the preamble or at such address designated by Tenant in writing. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this Permit refer to calendar days unless otherwise specifically stated.

36. No Waivers. No waiver by either party at any time of any terms or conditions of this Permit shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of late rent by Board shall not be deemed a waiver of any other breach by Tenant of any term or condition of this Permit other than the failure of Tenant to timely make the particular rent payment so accepted.

37. Immediate Access to Repair/Maintain Premises. Tenant is aware that the City Department of Water & Power or Harbor Department maintenance personnel may need to service or repair facilities on the premises. If such repair is necessary, Tenant agrees to relocate, at its expense, all of its cargo equipment or personal property to provide Department of Water & Power or Harbor Department personnel adequate access. Tenant agrees to complete such relocation within six (6) hours of receiving notice from City. Tenant agrees neither Department of Water & Power nor City shall be responsible for any loss Tenant may suffer as a result of such maintenance or repair.

38. Time of the Essence. Time is of the essence in this Permit.

39. Nondiscrimination and Affirmative Action Provisions. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All subcontracts awarded under or pursuant to this Permit shall contain this provision.

The applicable provisions of Section 10.8 et seq. of the Los Angeles Administrative Code are set forth in the attached Exhibit "C" and are incorporated herein by this reference.

40. Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Outreach Program. It is the policy of the City to provide minority business enterprises (MBEs), women's business enterprises (WBEs), and all other business enterprises (OBEs) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. The Tenant or Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including MBEs, WBEs, and OBEs, have an equal opportunity to compete for and participate in any such participation opportunity which might be presented under this Permit.

41. Wilmington Truck Route. It is recognized by both parties that Tenant does not directly control the trucks serving the terminal. However, Tenant will make its best effort to notify truck drivers, truck brokers and trucking companies, that trucks serving the terminal must confine their route to the designated Wilmington Truck Route of Alameda Street and Harry Bridges Boulevard; Figueroa Street from Harry Bridges Boulevard to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached hereto and marked Exhibit "D," which may be modified from time to time at the sole discretion of the Executive Director with written notice to Tenant.

42. Paragraph Headings. Paragraph headings used in the Permit are merely descriptive and not intended to alter the terms and conditions of the paragraphs.

43. Prior Permits. This Revocable Permit shall supersede Revocable Permit No. 1212. From and after the effective date of this Revocable Permit, said permit shall have no further force or effect except to the extent either party has accrued any rights or obligations under said permit.

44 Business Tax Registration Certificate. The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in business within the City of Los Angeles, is required to obtain the

necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department.

45. Additions. There is attached to this Permit an addendum, consisting of numbered Sections 47-52, inclusive, the provisions of which are made a part of this Permit as though set forth herein in full.

46. Deletions. Section five (5) is deleted and is not to be considered as constituting a part of this Permit, and it is so marked.

DATED: 2/23/2011

CITY OF LOS ANGELES,
HARBOR DEPARTMENT

Executive Director

(SEAL)

APPROVED:

BOARD OF HARBOR COMMISSIONERS

Secretary

The undersigned Tenant hereby accepts the foregoing Permit and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted.

DATED: 2/24/11

RANCHO LPG HOLDINGS, LLC

(SEAL)

By: Lawrence J. Ruisi
Vice President

Type/Print Name and Title

Attest: Ann Gullion
Assistant Secretary

Type/Print Name and Title

APPROVED AS TO FORM

2/10, 2011

CARMEN A. TRUTANICH, City Attorney

By: Heather M. McCloskey
HEATHER M. McCLOSKEY, Deputy

HMM:aw
6/17/10

47. Service Contractor Worker Retention Policy and Living Wage Policy Requirements. The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Tenant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Permit and otherwise pursue legal remedies that may be available.

48. Wage and Earnings Assignment Orders/Notices of Assignments. The Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees.

The Tenant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Tenant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code §§ 5230 et seq. The Tenant will maintain such compliance throughout the term of this Permit.

49. Equal Benefits Policy. The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any agreement with Tenant and pursue any and all other legal remedies that may be available. See Exhibit "E."

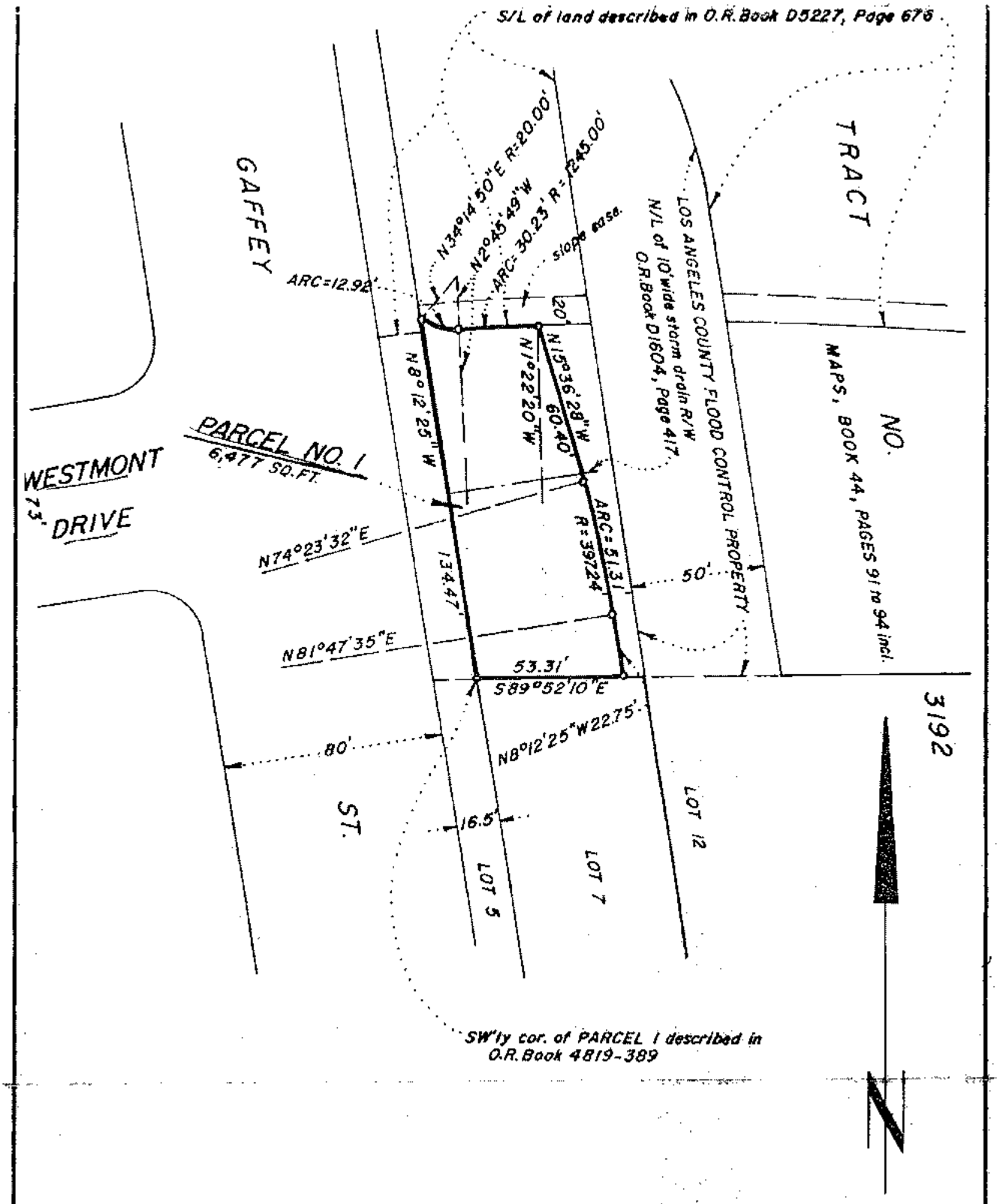
50. State Tidelands Grants. This Permit is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Permit is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Tenant agrees that any interpretation of this Permit and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

51. Workers' Compensation. Tenant shall secure the payment of compensation to employees injured while performing work or labor necessary for and incidental to performance under this Permit in accordance with Section 3700 of the Labor Code of the State of California. Tenant shall file with the City one of the following: 1) a certificate of consent to self-insure issued by the Director of Industrial Relations, State of California; 2) a certificate of Workers' Compensation insurance issued by an admitted carrier; or 3) an exact copy or duplicate thereof of the policy certified by the Director or the insurer. Such documents shall be filed prior to delivery of premises. Where Tenant has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act, Tenant shall furnish proof of such coverage to the City. It is suggested that Tenant consult its insurance agent to determine whether its proposed construction methods will render its employees subject to coverage under the Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against the City.

52. Railroad Protective Liability Insurance

The Contractor shall also provide a policy of Railroad Protective Liability Insurance in which Pacific Harbor Line (PHL) acting for itself and its railroad users are named insureds and the City of Los Angles, its boards, officers, agents and employees are included as additional insureds with Contractor. The minimum limits of Railroad Protective Liability Insurance shall be the limits normally carried by the Contractor but not less than Two Million Dollars ($2,000,000) combined single limit for property damage and bodily injury including death. If the submitted policies contain aggregate limits the Contractor shall provide evidence of insurance protection for such limits so that the required coverage is not diminished in the event that the aggregate limits become exhausted. Said limit shall be without deduction, provided that the Executive Director or designee may permit a deductible amount when it is justified by the financial capacity of Contractor. Any deductible amount permitted by the Executive Director shall be paid solely by Contractor.

Contractor's comprehensive general liability coverage shall also have the railroad exclusion deleted.



SCALE 1"=50'	DATE	RECOMMENDED FOR APPROVAL	PERMIT MAP FOR PETROLANE
DRAWN Rdd	9-26-74	CHIEF OF DESIGNS	
CHECKED VEH	9-27-74		
DESIGNED			
ENGR/ARCH		ASSISTANT CHIEF HARBOR ENGINEER	
		APPROVED CHIEF HARBOR ENGINEER	PORT OF LOS ANGELES ENGINEERING DIVISION P.O. BOX 151 SAN PEDRO, CALIF.
			DRAWING NUMBER 5-4327

PRINTED ON DIETERICH POST CLEARPRINT 1000H-8

EXHIBIT A

MARINE TERMINAL MAINTENANCE PROVISIONS
FOR ALL LEASE AGREEMENTS

I. Structural Maintenance & Repair Performed by City at City's Expense* Within Lease Area

1. Roofs
2. Exteriors of structures, including exterior painting
3. Wharf structure (as defined)
4. Wharf bulkheads
5. Rock slopes
6. Maintenance dredging
7. Replacement of deteriorated electrical conduit and pipeline system
8 High and low voltage systems, including switchgear and crane power trench
9. Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems

II. Maintenance & Repair Performed by City at Tenant's Expense Within Lease Area

1. Fender system repair (wharf damage procedure)
2. Refrigerated receptacle outlet (reefer) maintenance
3. Backflow devices and potable water systems
4. HVAC servicing and repair

III. Operational Maintenance & Repair to be Performed by the Tenant. Port Will Perform if Forces Available by Accommodation Work Order Within Leased Area at Tenant's Expense. Tenant, However, Remains Responsible for Sufficiency of All Work.

This portion of the Exhibit describes the maintenance and repair of items commonly found on terminal premises granted to Tenants. Not all items listed below may be present on all terminal premises. This list is only illustrative of the items which Tenant must maintain.

1 All landscaping, including irrigation systems
2. Daily janitorial service***
3. Relamping of terminal wharf and backland light standards**
4. Interior painting
5. Elevator and escalator maintenance**
6. Clarifier maintenance & servicing***
7. All toxic waste removal***
8. Storm drain inlet maintenance and cleaning
9 Cleaning clogged drains, including toilet/urinal stoppages
10. Pneumatic tube system maintenance**
11. Emergency generator unit maintenance**
12 Mooring capstans
13. Mechanical ramps and loading dock boards
14. Passenger gantries**, baggage systems**, conveyor systems**
15 Replacement of all light bulbs
16 Traffic and backland area striping (requires permit & approval by Harbor Engineer)
17. Weigh scales**
18. Wheel stop maintenance
19. Fence and gate maintenance
20. Rolling and sliding door maintenance
21. Window, door glass replacement
22. Carpet, tile, and vinyl floor replacements
23. All mechanical, electrical, hydraulic and air equipment and devices used by Tenant to maintain Tenant-owned machinery and equipment
24. Gate house equipment, including gate arms and mechanical/electrical equipment therein
25. Recharging and servicing of fire extinguishers
26 Surface paving, wharf and backland (as defined in Permit)
27. All underground and above ground tanks, pipelines and appurtenances unless the Permit specifically otherwise provides

* To be maintained at Tenant's expense, if damaged by Tenant

** To be maintained to Port's standards and subject to periodic audits and inspection by the Port of Los Angeles

*** At no time does Port provide or perform

IV. City May, But is Not Obligated to, Maintain or Repair Items Tenant Fails to Maintain or Repair at Tenant's Expense

EXHIBIT B

AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is $100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is $5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.

C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.

D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

AFFIRMATIVE ACTION PROGRAM PROVISIONS

E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.

F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS ($10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.

H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.

J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of $5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

2. Classroom preparation for the job when not apprenticeable;

3. Pre-apprenticeship education and preparation;

4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.

P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.

Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

EXHIBIT D

SAN PEDRO BAY HARBOR RAIL

OPERATING PERMIT

by and among

THE CITY OF LOS ANGELES,
acting through its Board of Harbor Commissioners

and

PACIFIC HARBOR LINE, INC.,
a Delaware corporation

dated as of

December 1, 1997

TABLE OF CONTENTS

SAN PEDRO BAY HARBOR RAIL OPERATING PERMIT

THIS SAN PEDRO BAY HARBOR RAIL OPERATING PERMIT (this **"Agreement"**) is made and entered into as of December 1, 1997, by and among **THE CITY OF LOS ANGELES**, a municipal corporation, acting through its Board of Harbor Commissioners (**"Owner"**) and **PACIFIC HARBOR LINE, INC.**, a Delaware corporation (**"Operator"**).

A. The Port of Los Angeles (the **"Port"**) is a major, economically important seaport which provides public dock and wharf facilities to handle the shipment and transportation of international cargo, freight and other goods.

B. The Port is presently serviced by The Burlington Northern and Santa Fe Railway Company (**"BNSF"**), Southern Pacific Transportation Company (**"SPT"**) and Union Pacific Railroad Company (**"UP"**), (collectively, the **"Railroads"** and each, individually, a **"Railroad"**).

C. Operation and maintenance of the rail facilities, and switching of Railcars, at the Port are generally performed by the Harbor Belt Line Railroad (**"HBL"**). HBL is a railroad operating entity governed by a board of control representing Owner and the Railroads.

D. In anticipation of substantially increased volume of traffic to and from the Port and to ensure the efficient and competitive operation of the Port, Owner determined that the existing maintenance and operating system should be replaced by a system utilizing a single independent third-party operator.

E. Owner and Operator desire to set forth herein the terms and conditions of Operator's rights and obligations with respect to the Port Rail Facilities, the Rail Property, the Additional Port Rail Facilities and other portions of the Port Complex Area.

F. Initially capitalized terms used and not otherwise defined herein have the meanings given such terms in Article 29.

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

ARTICLE 1
APPOINTMENT OF OPERATOR AND USE OF PORT RAIL FACILITIES AND ADDITIONAL PORT RAIL FACILITIES AND PIER A YARD

1.1 Appointment of Operator. On and subject to the terms and conditions of this Agreement, Owner hereby appoints

Operator to perform the duties specified in this Agreement to be performed by Operator with respect to the Port Rail Facilities and the Rail Property and, subject to the provisions of Article 9, the Additional Port Rail Facilities and the Additional Rail Property.

1.2 Use of Port Rail Facilities and the Additional Port Rail Facilities and Pier A Yard.

1.2.1 Operator is hereby authorized to use the Port Rail Facilities for the term of this Agreement (a) to the extent necessary to perform its duties and obligations hereunder, (b) to provide Unit Train and other rail services to the Railroads over the Port Rail Facilities (to the extent requested by a Railroad) and (c) for the purposes set forth in Articles 9 and 25 hereof, and for no other purpose. Without limiting the foregoing, in no event shall Operator operate, or shall Operator permit others to operate, over the Interim Trackage to serve the Port of Long Beach or tenants or customers of the Port of Long Beach without the prior express written permission of Owner, which permission may be given or withheld in Owner's sole and absolute discretion.

1.2.2 Subject to the provisions of Article 9, Operator is hereby authorized to use the Additional Port Rail Facilities to the extent necessary to perform its duties and obligations under (a) Article 9 hereof and (b) any additional agreements with tenants at the Terminal Facilities in which the Additional Port Rail Facilities are located under Article 25 hereof, and for no other purpose.

1.2.3 To the extent not covered by Section 1.2.1, Owner hereby authorizes Operator to occupy and use Pier A Yard to fulfill Operator's obligations hereunder on the terms and conditions contained in Article 2.

1.3 Limitations on Operator's Rights.

1.3.1 The appointment and authorization contained herein give Operator a license to operate on the Port Rail Facilities and the Additional Port Rail Facilities and to use Pier A Yard on the terms and conditions contained herein; such appointment and authorization however do not, and shall not be construed to, give or grant Operator any right, title or interest of any kind or character in or to the Port Rail Facilities, the Additional Port Rail Facilities, Pier A Yard or any other portions of the Port Complex Area or any other property of Owner, and Operator specifically acknowledges that it has no leasehold, easement or other interest in any of such real or personal property.

1.3.2 Operator shall have no right to grant, convey, enter into, modify, extend or renew leases, licenses, easements or conveyances of all or any portion of the Port Complex Area, or any right or interest therein. Owner retains all rights

to modify, extend, renew and manage, and shall retain all income from, all leases, licenses, easements, conveyances and the like of the Port Complex Area, other than fees payable to Operator (a) by the Railroads under that certain Permit to Use Tracks among Owner and the Railroads (the "Railroad Agreement"), those certain Interchange Agreements between Operator and the Railroads ("Interchange Agreements") and any other agreement between Operator and one or more Railroads pursuant to which Operator performs Unit Train or other rail services for such Railroad over the Port Rail Facilities, (b) under any tariff, exempt quotation, transportation contract or rate schedule published by Operator (c) pursuant to separate agreements between Operator and third parties relating to rail operations or service (including, without limitation, intra-plant switching, rail facility construction, maintenance, locomotive and car repair and rail logistics consulting services performed for tenants of Owner) within any Terminal Facilities and (d) lease payments and payments for other services pursuant to the leases and agreements described in Exhibit J (the "Assumed Agreements"). Owner hereby authorizes Operator to assume, and Operator shall assume all rights and obligations of HBL under the Assumed Agreements pursuant to a separate assignment and assumption agreement between Operator and HBL which will become effective on the Commencement Date and Owner further authorizes Operator to amend the Assumed Agreements upon written notice to Owner.

1.4 Use by Owner and Others.

1.4.1 Owner may use or grant additional rights to third parties in and to all or any portion of the Port Complex Area in such manner as Owner deems appropriate, so long as such rights and the actual use of the Port Complex Area by Owner or by others authorized by Owner do not directly conflict with the authority given Operator hereunder or materially interfere with Operator's ability to perform its duties and obligations hereunder.

1.4.2 Owner may sell, transfer or encumber all or any portion of the Port Complex Area provided that any such sale, transfer or other encumbrance shall be subject to Operator's rights or obligations hereunder.

1.4.3 If Owner grants any Railroad other than the Railroads the right to operate Unit Trains over the Port Rail Facilities, such rights will be subject to substantially the same terms and conditions as those contained in the Railroad Agreement, including, without limitation, fees payable pursuant to Article V hereof.

1.5 Additions to, Modifications of and Deletions Rail Facilities in the Port Complex Area by Owner.

1.5.1 Subject to Section 12.4, Owner may at any time in its sole discretion construct new rail facilities in the Port Complex Area and may, in its sole discretion, designate such

new rail facilities as Port Rail Facilities, Additional Port Rail Facilities or Terminal Rail Facilities, or make any other designation of such facilities. Where reasonably practicable, Owner shall consult with Operator prior to commencing construction of such new rail facilities if Owner intends to include such facilities in the Port Rail Facilities hereunder. When new rail facilities that support the Railroads' and Operator's operations in the Port Complex Area and that Owner intends to include in the Port Rail Facilities are completed, connected to the existing Port Rail Facilities and accepted by Operator and any necessary regulatory approvals or exemptions have been obtained, such new rail facilities will, upon being made available to Operator, become part of the Port Rail Facilities and subject to the terms of this Agreement. Operator shall promptly inspect such new Port Rail Facilities and may reject the same only if Operator determines that the facilities are in an unsafe condition. Unless the Railroad Oversight Committee designates a higher maintenance standard, the maintenance standard for new facilities added to the Port Rail Facilities under this Agreement shall be FRA Class 3 for main line tracks and FRA Class 2 for other tracks or, if Owner has constructed the new facilities to a lower maintenance standard, such lower maintenance standard shall apply.

1.5.2 Subject to Owner obtaining any necessary regulatory approvals or exemptions, with 30 days' prior written notice to the Operator, Owner may remove from service a Port Rail Facility, either temporarily or permanently.

(a) With regard to any permanent removal of a Port Rail Facility from service, such removal shall not substantially increase Operator's costs in serving or, without the affected customer's consent, prevent Operator from serving any then-existing rail service customers located in Terminal Facilities (including, for these purposes, Borax, even though Borax is not located at a Terminal Facility) at levels equal to the lesser of levels existing on the Commencement Date and levels existing on the date such Port Rail Facility is removed from service. The provisions of this Section 1.5.2(a) shall not apply with respect to any of the following customers: (i) customers not regularly using rail service on the Commencement Date; (ii) customers not regularly using rail service on the date of removal of the applicable Port Rail Facility at or above 50% of the levels existing on the Commencement Date and (iii) customers not located at Terminal Facilities other than U.S. Borax. In addition, this Section 1.5.2(a) shall not apply to removal of Pier A Yard or the Replacement Railyard from rail service. Removal of Pier A Yard and the Replacement Railyard from rail service shall be governed by Article 2 hereof.

(b) With regard to any temporary removal of a Port Rail Facility from service which will have the effect of cutting off rail access to a then-existing customer of Operator

located at a Terminal Facility regularly using rail service or, if U.S. Borax then regularly uses rail service, U.S. Borax, Owner shall be solely responsible for providing whatever alternative arrangements (i) the Railroads, Operator or Owner are legally required to provide to such shipper during the interruption of rail service and (ii) are reasonably necessary to meet the needs of such shipper during interruption of rail service that otherwise would have been met by rail service. Operator shall cooperate with Owner in Owner's efforts to provide any alternative arrangements that Owner is required to provide under the preceding sentence. Notwithstanding the foregoing, Owner shall not be obligated to take any of the actions described in this clause (b) for removals that are of less than 72 hours' duration. When practicable, Owner shall give Operator 7 days' prior written notice of any temporary removal of a Port Rail Facility from service.

The provisions of this Section shall not apply to any removal of Pier A Yard or the Replacement Railyard from rail service. Removal of Pier A Yard and the Replacement Railyard from rail service shall be governed by Article 2. Owner may remove from service any Additional Port Rail Facilities or Terminal Rail Facilities, either temporarily or permanently without notice to Operator and without obligation to take any of the actions described in clauses (a) and (b) of this Section.

1.6 No Changes to Port Rail Facilities by Operator. Operator shall not take out of service, embargo or remove any of the Port Rail Facilities or Additional Port Rail Facilities (other than temporarily in the course of its maintenance and repair activities, in an emergency or as a result of a hazardous condition), without the prior written approval of Owner, which approval may be given or withheld in the reasonable discretion of Owner.

1.7 No Assurances Regarding Continued Rail Use. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be deemed or construed (i) to require any tenant or occupant of the Port Complex Area to use rail services, or to continue to use rail services, or (ii) to require that Owner lease space in the Port Complex Area only to tenants who will use rail service.

ARTICLE 2
RAILYARDS

2.1 Maintenance of Pier A Yard.

2.1.1 This Section 2.1 relates to Operator's maintenance obligations for all portions of Pier A Yard other than the Port Rail Facilities located within Pier A Yard (which Operator

shall maintain in accordance with the provisions hereof for maintenance of all other Port Rail Facilities).

2.1.2 Operator shall, at Operator's sole cost and expense, maintain all components of Pier A Yard other than Port Rail Facilities, but including all buildings and other structures and improvements located within Pier A Yard, and all systems, including, electrical, plumbing, mechanical, fire protection and other systems, located in or on such buildings, structures or other improvements (collectively, **"Pier A Yard Structures"**), in their current operating condition, at a minimum, and in accordance with all applicable laws and the provisions of this Section 2.1.2. Operator shall take such preventive and remedial actions as are necessary to ensure that the Pier A Yard Structures are at all times safe and suitable for the uses to which such Pier A Yard Structures are put to the extent the costs of such actions are included in an Approved Train Control and Maintenance Plan. Operator shall include such actions and costs in the initial proposed train control and maintenance plans and budgets submitted to the Railroad Oversight Committee hereunder for each Traffic Year after 1998.

(a) Operator shall obtain a Harbor Department Engineering permit prior to making any material modifications or repairs to any Pier A Yard Structures and shall strictly comply with all terms and conditions of such permits. Operator shall maintain in its offices at Pier A Yard at all times any Harbor Engineer's permits allowing work to be performed and proof that the work has been performed in accordance with all terms and conditions of the permit.

(b) All modifications and repairs to Pier A Yard Structures will be made in a first class manner using materials of a kind and quality comparable to the items being replaced which materials must be in compliance with all applicable building codes.

(c) Owner shall have the right, without obligation, to inspect Pier A Yard to ensure compliance with this Section 2.1 and for any other purpose incidental to the rights to Owner.

2.2 Removal of Pier A Yard from Rail Service. Operator acknowledges that, notwithstanding any provision to the contrary contained herein, Owner has the right, subject to Section 30.21, to remove Pier A Yard from rail service and require Operator to vacate Pier A Yard on sixty days' prior written notice delivered to Operator provided that as of the date specified by Owner for removal of Pier A Yard from rail service, Owner has (a) caused construction of the replacement railyard (the **"Replacement Railyard"**) described on Exhibit H substantially in accordance with the plans and specifications described in Exhibit H (the **"Plans and Specifications"**) and made the Replacement Railyard available to

Operator for use by Operator in fulfilling its obligations hereunder, on the general terms described in Section 2.1 hereof, Exhibit H attached hereto and any additional terms regarding maintenance and insurance as are reasonably required by Owner to protect its investment in the Replacement Railyard and (b) has made available to the Railroads, in the terms contained in the Railroad Agreement the necessary real property within or adjacent to the Transfer Yard to construct an additional 5500 lineal feet to track. Upon demolition of Pier A Yard, the Railroads may, at their option, select and collect salvage materials for use in constructing the additional 5500 lineal feet of track. Immediately thereafter, Operator shall be entitled to select remaining salvage material from Pier A Yard for use in maintaining and repairing the Port Rail Facilities in accordance with the terms of the Operating Agreement. All materials salvaged from the removal of Pier A Yard and not selected by Railroad or Operator under the preceding two sentences shall remain the property of Owner and Owner shall be entitled, at Owner's sole election, to retain, store, sell, or dispose of such materials. From and after the date the Replacement Railyard, the supplemental facilities and the additional 5500 lineal feet of track are constructed, they shall be deemed part of the "Port Rail Facilities" hereunder. Owner shall use reasonable efforts to complete the supplemental facilities listed on Exhibit H prior to removal of Pier A Yard from rail service and upon removal of the Pier A Yard, Owner shall promptly complete such supplemental facilities to the extent not already completed. Owner shall obtain such governmental approvals as are necessary (if any) in connection with removal of Pier A Yard from rail service and Operator shall support any applications filed by Owner with any governmental entities in connection with such removal.

2.3 Owner's Obligation to Keep Replacement Railyard Available. So long as the Railroads are not in default in their obligations to pay the "Base Fee" under Exhibit D of the Railroad Agreement, Owner shall not remove the Replacement Rail Yard from rail service during the term hereof, without first causing a railyard of substantially similar utility as the Replacement Railyard to be constructed and made available to Operator for Carload Switching Operations on the terms contained herein for Operator's use as the Replacement Railyard. In the event that a Railroad defaults in its obligation to pay the Base Fee, then upon written notice by Owner to Operator and the defaulting Railroad, the defaulting Railroad shall be prohibited access to and service from the Replacement Railyard until all such defaults have been cured. Operator shall not have the right or authority to provide service from the Replacement Railyard or access to the Replacement Railyard to a defaulting Railroad. From and after a Railroad has been declared in default in the payment of the Base Fee, the nondefaulting Railroad(s) shall be responsible for the entire Base Fee under Exhibit D of the Railroad Agreement (but not for any amounts owing from the defaulting Railroad for periods prior to such notice of default). Upon the occurrence of any default in payment of the entire Base Fee by all of the Railroads, Owner, at

its election, shall be entitled to remove the Replacement Railyard from service. Operator has the right, without obligation, to cure any Railroad's default in payment of the Base Fee. In connection with removal of the Replacement Railyard from service in accordance herewith, Owner shall obtain such governmental approvals as are necessary (if any) and Operator shall support any applications filed by Owner with any governmental entities in connection with such removal.

2.4 Limitation on Use of Railyards. Unless Owner consents to another use in writing, Pier A Yard, the Transfer Yard and any Replacement Railyard may only be used (a) to serve Terminal Facilities and the following entities not located at Terminal Facilities: DiCarlo Bakery, America Gas, Tosco (Unocal), G&S Roofing and Southern California Truck and Tank Company, Potential Industries and, with respect to Pier A Yard and the Transfer Yard, Borax, and successor entities to the identified entities so long as the successor entity is located at the same location as the identified entity on the Commencement Date and the nature of the business and level of rail service of the successor entity is consistent with the nature of the business and level of rail service of the identified entity on the Commencement Date; (b) to serve entities served from the Avalon Team Track (other than entities located in the Port of Long Beach); and (c) to process Carload Traffic destined to terminals in the Port of Long Beach. Use of Pier A Yard, the Transfer Yard and any Replacement Railyard to serve customers other than tenants at Terminal Facilities pursuant to the preceding sentence shall be limited to space available after service to Terminal Facilities. Operator acknowledges that the Avalon Team Track is not a Terminal Facility. All other railyards included in the Port Rail Facilities may only be used to serve Terminal Facilities except that if excess storage capacity is available in such yards, Operator may serve the entities described in clause (a) from such yards. Operator shall in no event use or permit the Railroads to use any railyards included in the Port Rail Facilities, including, without limitation, Pier A Yard, the Transfer Yard and the Replacement Railyard, for (a) storage or assembly of Unit Trains or railcars that were part of a Unit Train (or would be a Unit Train if handled by a Railroad rather than Operator), or (b) through traffic of Unit Trains or storage of railcars (empty or loaded) that are traveling to or from the ICTF or locations in the Port of Long Beach without the prior written permission of the Executive Director of Owner.

2.5 Second Hand Materials/Modifications to the Plans and Specifications. Owner shall be entitled to use second hand rail in construction of the Replacement Railyard provided that Operator shall have the right to review and approve the type of second hand materials, which approval will not be unreasonably withheld or delayed. In addition, Owner shall be entitled to complete any portion of the Plans and Specifications that is incomplete as of the date hereof without Operator's consent so long as such modifications will not materially interfere with the utility or

efficiency of operations at the Replacement Railyard as shown on the Plans and Specifications. If the Railroads or Operator request a modification to the Plans and Specifications for the Replacement Railyard, the entity requesting such modifications shall bear the entire cost thereof. Any modifications to the Plans and Specifications required under the preceding sentence shall be subject to the prior written approval of Owner which will be given or withheld in Owner's sole discretion.

2.6 Replacement Railyard Fees. Operator shall pay directly to Owner when due all fees or other amounts payable in connection with the Replacement Railyard in accordance with Exhibit I.

2.7 Limitation on Use of Railyards included in Additional Port Rail Facilities. Railyards included in the Additional Port Rail Facilities may only be used to provide service to tenants at Terminal Facilities whose leases with Owner permit use of such railyards.

ARTICLE 3
AS-IS; WARRANTY DISCLAIMER

3.1 Acknowledgement Regarding Investigations. Operator acknowledges that prior to its execution hereof, Operator had the opportunity to investigate and determine (a) the physical aspects and condition of all portions of the Port Complex Area, (b) past and present rail operations in the Port Complex Area, (c) traffic projections (including carload and Unit Train projections), and (d) such other matters as Operator deemed relevant to analyze the proposed transaction, to discover any risks and to determine whether the transaction is economically viable for Operator. Operator's investigations have included, among other things, meetings with Owner, the Railroads, shippers and tenants and other operators of Terminal Facilities in the Port Complex Area. Operator further acknowledges that Operator's entry into this Agreement is based solely on the results of its own investigations and examinations, or its election not to investigate some or all of such matters as may be relevant, and not on any representation, warranty, promise or statement by Owner, any Railroad or any representative or agent thereof (other than those expressly provided in this Agreement). Operator agrees that, except as otherwise expressly set forth in this Agreement, Owner has not made any representation, warranty, promise or statement, express or implied, to Operator, or to anyone acting for or on behalf of Operator, concerning or regarding such matters.

3.2 Acceptance of Port Complex Area As-Is. Subject to Section 22.3, Operator hereby accepts the Pier A Yard, the Port Rail Facilities, the Terminal Rail Facilities, the Additional Rail Facilities and all other Trackage in the Port Complex Area, and each component thereof, in THEIR AS IS CONDITION AND IN THEIR AS IS

STATE OF REPAIR ON THE DATE OF THIS AGREEMENT. Operator hereby waives, and Owner hereby disclaims, all warranties of any type or kind whatsoever with respect to the Port Complex Area, or any component thereof, including, without limitation, those of fitness for a particular purpose or use.

3.3 No Representations or Warranties Regarding Materials or Documents. Operator acknowledges that the delivery of materials and documents (including, without limitation, the **"Request for Proposal for Rail Operator"** and the related Data Package) to Operator by or on behalf of Owner has been made solely to facilitate Operator's investigations relating to this transaction, and Owner makes no representations or warranties of any kind regarding the accuracy or thoroughness of the information contained in such materials and documents, which matters have been independently reviewed and accepted or rejected, as the case may be, by Operator.

ARTICLE 4
COMMENCEMENT DATE TERM

4.1 Commencement Date and Conditions to Commencement. The term of this Agreement, and Operator's duties hereunder, shall commence on the later of (i) February 15, 1998 and (ii) the date of satisfaction or waiver by Operator and Owner of the conditions set forth in Section 4.2 (in either event, the **"Commencement Date"**). Owner and Operator shall execute a Memorandum of Commencement Date within five business days after the Commencement Date. Unless it is terminated earlier in accordance with any provision entitling a party to terminate, this Agreement will automatically terminate on the tenth anniversary of the Commencement Date.

4.2 Conditions to Commencement Date. The obligations of Operator and Owner to commence operations under this Agreement on the Commencement Date are subject to the satisfaction on or prior to the Commencement Date of each of the following conditions:

(a) The STB shall have approved Operator's applications made under 49 C.F.R. § 1150.31 and 49 C.F.R. § 1180.2(d)(2) to exempt the transactions contemplated herein, and such exemption (i) shall have become final or effective and (ii) shall not include any condition (including without limitation labor protective condition) that is unacceptable to Operator or Owner in their respective reasonable discretion.

(b) Owner, Operator and the Railroads shall have executed the Related Agreements and such documents shall be in full force in effect.

(c) Prior to the Commencement Date, (i) no statute, rule, regulation, order, decree, directive, injunction, writ or judgement enacted, adopted, issued, promulgated or rendered at

any time after the date of this Agreement by any governmental authority or court, and (ii) no litigation shall have been commenced or threatened after the date of this Agreement, which, in either case, would (w) prevent the commencement of operations under this Agreement (x) invalidate the transactions contemplated by this Agreement; (y) materially interfere with or prohibit the continued effectiveness of this Agreement, or (z) have a material adverse effect on Operator's ability to operate the Port Rail Facilities and the Rail Property pursuant to this Agreement.

(d) There shall have been no material adverse changes since the date of this Agreement in the condition of the Port Rail Facilities and the Rail Property.

If one or more of the above conditions have not been satisfied by February 15, 1998, then Owner and Operator each shall use reasonable efforts to attempt to satisfy such failed conditions as soon as reasonably possible, and the Commencement Date shall be extended until the failed conditions are satisfied, or waived by Owner and by Operator, provided, however, that if such failed conditions have not been satisfied (or waived) by the date which is 120 days after the date of this Agreement, then either Owner or Operator may terminate this Agreement by written notice to the other party (with a copy to the Railroads). Upon such termination, this Agreement shall immediately and automatically be deemed cancelled effective retroactively to the date of execution hereof and neither Owner nor Operator shall have any liability of any kind to each other or to any other party as a result of such termination. The conditions listed in this Section 4.2 are for the benefit of both Operator and Owner and to be effective, a waiver of any such condition must be in writing and signed by an authorized officer of the party waiving the condition.

4.3 Term of Agreement. Unless earlier terminated in accordance herewith, this Agreement shall terminate on the date which is three years after the Commencement Date provided that if the City Council of the City of Los Angeles (the "City Council") approves this Agreement and the Operating Agreement without modification, the termination date shall automatically be extended to the 10th anniversary of the Commencement Date, unless this Agreement is earlier terminated in accordance with its terms.

4.3.1 If the City Council approves this Agreement or the Railroad Agreement subject to conditions or modifications, Owner shall promptly deliver written notice of such conditions or modifications to the Railroads and Operator. The Railroads and Operator shall be entitled to approve or disapprove any such conditions or modifications by delivering written notice of such approval or disapproval to Owner within 30 calendar days after receipt of notice of the conditions or modifications from Owner. A party's failure to approve the conditions or modifications within

such 30-calendar day period shall be deemed such party's disapproval of the conditions or modifications.

4.3.2 If the City Council fails to approve this Agreement or the Railroad Agreement, or approves this Agreement and the Railroad Agreement subject to conditions or modifications which are disapproved by any party in accordance with Section 4.2.1, this Agreement shall remain in effect (unmodified) for its three year term as provided in Section 4.2 unless earlier terminated in accordance with a provision allowing earlier termination.

ARTICLE 5
FEES AND APPROVED PLAN

Operator shall be entitled to charge the Railroads the fees described in this Article in connection with Operator's performance of its duties hereunder.

5.1 Switching Fees for the Port Rail Facilities. All loaded freight cars interchanged between a Railroad and Operator, other than Unit Trains, shall be referred to herein as "**Carload Traffic**". Prior to the Commencement Date, Operator shall establish a switching tariff, rate quote and/or circular that incorporates the following per carload charge for Carload Traffic over the Port Rail Facilities: $102. The amount of the charge for Carload Traffic over the Port Rail Facilities shall be adjusted annually in accordance with Section 5.2 below (the per carload charge, as adjusted, shall be referred to herein as the "**Switching Charge**"). Each empty car that is interchanged by Operator back to a Railroad empty, shall be treated as one loaded car. Each Railroad shall absorb the full amount of the Switching Charge for Carload Traffic that it interchanges to or from Operator on the Port Rail Facilities. Notwithstanding the foregoing, Operator's charges for Special Requirements Traffic (as defined in Section 5.1.1 below) may be established in tariffs, rate quotes and/or circulars or in transportation contracts entered into from time to time between Operator and each of the Railroads.

5.1.1 The Switching Charge shall not apply to any Carload Traffic over the Port Rail Facilities that imposes any performance burden, cost burden, operating requirement, service obligation or liability exposure on Operator over and above the obligations, requirements and liabilities normally incurred by common carriers ("**Special Requirements Traffic**"). Special Requirements Traffic includes, without limitation, loads of non-standard dimensions, traffic requiring in-transit services and hazardous materials that cannot be handled in regular train service. Operator and each Railroad interchanging Special Requirements Traffic shall from time to time negotiate reasonable and equitable per car fees for Special Requirements Traffic.

5.1.2 In the event that a Railroad determines to handle any of the Carload Traffic on the Port Rail Facilities identified on Exhibit B-1 hereto as Unit Train traffic, and not to interchange such Carload Traffic to Operator, such Railroad shall pay to Operator a per carload fee with respect to the subject traffic equal to 80% of the Switching Charge (the "Conversion Fees"). Each Railroad shall keep records, in a format agreed upon by the parties, that identifies all carloads of traffic subject to the Conversion Fee, and such reports shall be submitted to Operator on a monthly basis.

5.1.3 Operator shall bill each Railroad monthly for all (a) Switching Charges, (b) fees, if any, in connection with Special Requirements Traffic, and (c) Conversion Fees, if any, accruing during the immediately preceding month.

5.1.4 Each Railroad and Owner shall have the right from time to time, at its expense, to audit the books and records of Operator that pertain to the matters addressed in this Article 5. All such audits shall be conducted during regular office hours and with reasonable prior notice.

5.2 Cost Adjustment. On January 1, 1998, and each January 1 thereafter during the term hereof (the "Adjustment Date"), the Switching Charge (and all other charges that make reference to this Section 5.2) for all Carload Traffic over the Port Rail Facilities shall be increased or decreased in an amount equal to the increase or decrease in the most recently published Rail Cost Adjustment Factor (Unadjusted) ("RCAF") published by the Surface Transportation Board ("STB") as of the Adjustment Date, compared to the then most recently published RCAF as of the immediately preceding Adjustment Date (or, in the case of the first Adjustment Date, as of January 1, 1997).

The adjustment formula shall be:

(1) $\frac{B - A}{A} = D$

(2) (D x C) + C = Adjusted Switching Charge to become effective as of the Adjustment Date in question.

Where:

A = the index number for the most recent RCAF published as of the Adjustment Date for the year immediately preceding the Adjustment Date in question (or, in the case of the first Adjustment Date, January 1, 1997)

B = the index number for the most recently published RCAF as of the Adjustment Date in question

C = Switching Charges (as adjusted, if previously adjusted)

D = percent increase or decrease

In the event the RCAF ceases to be published, the parties agree to select a comparable, mutually acceptable index as a replacement.

5.3 Maintenance Fees.

5.3.1 The Maintenance Fee for the Port Rail Facilities each Traffic Year (as hereinafter defined) during the term of the Agreement shall be the aggregate maintenance budget contained in the Approved Train Control and Maintenance Plan for such Traffic Year (the "Maintenance Fee").

5.3.2 The Maintenance Fee for each Traffic Year other than the first and last Traffic Years shall be divided into 12 equal installments, and the Maintenance Fee for the first and last Traffic Years shall be divided by the respective number of full or partial calendar months in each such Traffic Year (which amount, for each month during the Term, shall be referred to herein as a "Monthly Maintenance Amount"). Each Railroad shall pay its pro rata share of the Monthly Maintenance Amount, determined as follows:

5.3.2.1 For the first month of the first Traffic Year, each Railroad shall pay an equal share of the Monthly Maintenance Amount payable each month during such Traffic Year. In the event that UP and SPT are merged, the merged carrier shall pay 2/3 of the Monthly Maintenance Amounts and BNSF shall pay 1/3. For the second month of the first Traffic Year, and each month of the first Traffic Year thereafter, each Railroad's respective share of the Maintenance Fee for such month shall be the amount equal to (x) the applicable Monthly Maintenance Amount, multiplied by (y) the fraction the numerator of which is the car miles of its Unit Trains and Carload Traffic over the Port Rail Facilities during the already completed months of the first Traffic Year, and the denominator of which is the total car miles of the Unit Trains and Carload Traffic of all of the Railroads over the Port Rail Facilities during the already completed months of the first Traffic Year. To the extent that a Railroad's total payments toward the Maintenance Fee for all of the months of the first Traffic Year exceeds its allocation for the year based upon the formula in the immediately preceding sentence (assuming such formula applied to the first month in the same manner as the subsequent months), Operator shall bill or credit the amount of the difference to such Railroad, as appropriate. For purposes of this Section 5.3, a Railroad's Carload Traffic and Unit Trains over the Port Rail Facilities shall include (a) all loaded rail cars interchanged by such Railroad with Operator (including, without limitation, Special Requirements Traffic) over the Port Rail Facilities, and (b) all loaded Unit Train cars handled by such Railroad over the Port Rail

Facilities or interchanged by such Railroad to Operator. The payment of the first Monthly Maintenance Amounts shall be made within 3 days after Operator commences operations, and all subsequent payments shall be made within 30 days after receipt by each Railroad of an invoice.

5.3.2.2 For the first month of each Traffic Year other than the first Traffic Year, each Railroad shall pay an amount equal to (x) the applicable Monthly Maintenance Amount, multiplied by (y) the fraction the numerator of which is the car miles of its Unit Trains and Carload Traffic handled over the Port Rail Facilities during the immediately preceding Traffic Year, and the denominator of which is the aggregate car miles of the Unit Trains and Carload Traffic of all of the Railroads over the Port Rail Facilities during the immediately preceding Traffic Year. For all subsequent months of the Traffic Year in question, each Railroad's respective share of the Maintenance Fee for such month shall be determined based upon cumulative annual car miles using the formula set forth in Section 5.3.2.1 hereof for the second through the twelfth months of such Traffic Year. To the extent that a Railroad's total payment toward the Maintenance Fee for all the months of a Traffic Year exceeds its allocation for that year based upon the formula set forth in Section 5.3.2.1 hereof (assuming such formula applied to the first month of the Traffic Year in question in the same manner as the subsequent months of such Traffic Year), Operator shall bill or issue a credit to each such Railroad.

5.3.2.3 For purposes of this Section 5.3, the term "car miles" shall be based on mutually agreed-upon per car averages developed by multiplying the number of loaded cars by the average miles such locomotives, cars and containers are moved over the Port Rail Facilities, as reflected in the books and records of Operator. Articulated cars for doublestacks or trailers shall receive one car count for each platform; articulated cars that are not capable of double-stack operation, other than trailers, shall receive one-half car count for each platform.

5.3.3 The Maintenance Fee shall be adjusted in the event unit prices for materials identified in the Approved Maintenance and Train Control Plan are lower than the unit prices actually paid by Operator for such materials.

5.3.4 In the event Operator does not complete any project or repair contemplated in the Approved Train Control and Maintenance Plan (as the same may have been modified with the approval of the Railroad Oversight Committee), the Maintenance Fee over the Port Rail Facilities in question, during the next Traffic Year, shall be reduced by the dollar amount of labor and materials attributable to such project or repair (less the amounts expended by Operator, if any, over and above the amounts required to be expended in the Approved Train Control and Maintenance Plan).

5.3.5 Each Railroad shall have a one-time right to convert the basis for allocation of the Maintenance Fee from car miles to gross ton miles, commencing the first day of the immediately succeeding Traffic Year, by providing written notice of such conversion to the other Railroads, Operator and Owner, no less than 60 days prior to the commencement of each such Traffic Year. In the event a Railroad elects to effect a conversion as set forth in this Section 5.3.5, (a) this Agreement shall be amended to reflect the conversion, and (b) the Maintenance Fee shall be allocated based on gross ton miles for all of the Railroads for the remainder of the term of this Agreement.

In the event the Railroad Oversight Committee modifies the switching, dispatching and maintenance standards on the Port Rail Facilities to be observed by Operator pursuant to Article 13 of the Railroad Agreement, appropriate corresponding modifications shall be made to the maintenance and/or dispatching budget, as appropriate, in the Approved Train Control and Maintenance Plan.

5.4 Dispatching Fees for the Port Rail Facilities.

5.4.1 The Dispatching Fee for each Traffic Year during the term of this Agreement shall be the aggregate train control budget contained in the Approved Train Control and Maintenance Plan for such Traffic Year.

5.4.2 The Dispatching Fee for such Traffic Year other than the first and last Traffic years shall be divided into 12 equal installments, and the Dispatching Fee for each of the first and last Traffic years shall be divided by the respective number of full or partial calendar months in such Traffic year (which amount, for each month during the Term, shall be referred to herein as a "Monthly Dispatching Amount"). Each Railroad shall pay its pro rata share of each Monthly Dispatching Amount determined as follows:

5.4.3 For the first month of the first Traffic Year, each Railroad shall pay an equal share of the Monthly Dispatching Amount payable each month during such Traffic Year. In the event UP and SPT are merged, the merged carrier shall pay 2/3 of the Monthly Dispatching Amounts and BNSF shall pay 1/3. For the second month of the first Traffic Year, and each month of the first Traffic Year thereafter, each Railroad's respective share of the Dispatching Fee for such month shall be the amount equal to (x) the Dispatching Fee for such Traffic Year, multiplied by (y) the fraction the numerator of which is the number of train miles within the Port Rail Facilities, during the already completed months of the first Traffic Year, attributable to the Carload Traffic interchanged by such Railroad to/from Operator within the Port Rail Facilities and the Unit Trains of Railroad handled by such Railroad or by Operator within the Port Rail Facilities, and the denominator of which is the aggregate number of train miles within the Port

Rail Facilities, during the already completed months of the first Traffic Year, attributable to the Carload Traffic interchanged by all the Railroads to/from Operator within the Port Rail Facilities and the Unit Trains of all the Railroads handled by the Railroads or by Operator within the Port Rail Facilities. To the extent that a Railroad's total payments toward the Dispatching Fee for all the months of the first Traffic Year exceeds its allocation for the year based upon the formula in the immediately preceding sentence (assuming such formula applied to the first month in the same manner as subsequent months), Operator shall bill or credit the amount of the difference, as appropriate, to each such Railroad. The payment of the first Monthly Dispatching Amounts shall be made within 3 days after Operator commences operations, and all subsequent payments shall be made within 30 days after receipt by each Railroad of an invoice.

5.4.4 For the first month of each Traffic Year other than the first Traffic Year, each Railroad shall pay an amount equal to (a) the Monthly Dispatching Amount, multiplied by (b) the fraction the numerator of which is the number of train miles within the Port Rail Facilities, during the immediately preceding Traffic Year, attributable to the Carload Traffic interchanged by such Railroad to/from Operator and the Unit Trains of such Railroad handled by Railroad or by Operator within the Port Rail Facilities, and the denominator of which is the aggregate number of train miles within the Port Rail Facilities, during the immediately preceding Traffic Year, attributable to the Carload Traffic interchanged by all the Railroads to/from Operator and the Unit Trains of all the Railroad handled by the Railroads or by Operator within the Port Rail Facilities. For all subsequent months of the Traffic Years other than the first Traffic Year, each Railroad's respective share of the Dispatching Fee for such month shall be determined based upon cumulative annual train miles using the formula set forth in Section 5.4.3 hereof for the second through twelfth months of such Traffic Year. To the extent that a Railroad's total payments toward the Dispatching Fee for all the months of a Traffic Year exceeds its allocation for that year based upon the formula set forth in Section 5.4.3 hereof (assuming such formula applied to the first month of the Traffic Year in question in the same manner as the subsequent months of such Traffic Year), Operator shall bill or issue a credit to each such Railroad, as appropriate, based upon the actual percentage train miles of such Railroad during the preceding Traffic Year.

5.4.5 For purposes of Sections 5.3.4.2 and 5.3.4.3 above, train miles shall be based on averages developed from the dispatching records of Operator.

5.5 Tax Reimbursement by Railroads. Railroads will reimburse Operator for all amounts paid by Operator, if any, for California Possessory Interest Tax ("Tax"), pursuant to California Revenue & Taxation Code Section 107 et seq. or any similar or substitute tax assessed against Operator for its possession or use

of the Port Rail Facilities. Operator will bill each Railroad annually for its proportional share of the Tax, in an amount equal to (x) the total Tax assessment made against the Operator, multiplied by (y) the fraction, the numerator of which is the car miles within the Port Rail Facilities, during the tax year in question, attributable to Carload Switching Operations interchanged by such Railroad to/from Operator and the Unit Trains of such Railroad handled by the Railroad or by Operator, and the denominator of which is the aggregate car miles within the Port Rail Facilities, during the Traffic Year in question, attributable to the Carload Traffic interchanged by all of the Railroads to/from Operator and the Unit Trains of all of the Railroads handled by a Railroad or by Operator during the same period.

5.6 Modifications to the Switching, Dispatching and Maintenance Standards. In the event the Railroad Oversight Committee modifies the switching, dispatching, or maintenance standards, or scope thereof, to be observed by Operator pursuant to Article 13 of the Railroad Agreement, appropriate corresponding modifications shall be made to the maintenance budget in the Approved Train Control and Maintenance Plan.

5.7 Other Charges. Operator may contract with any Railroad (or with any customer, with the prior written consent of a Railroad) to handle some or all of such Railroad's Unit Train traffic over the Port Rail Facilities, the Additional Port Rail Facilities, or in the Terminal Rail Facilities and to perform other rail services over the Port Rail Facilities, the Additional Port Rail Facilities or the Terminal Rail Facilities. Operator shall not discriminate among the Railroads in establishing fees or service levels for comparable functions. Except for rail services for Dow Chemical, Operator shall have the exclusive right to establish tariffs and rate quotes, enter into transportation contracts and publish exempt circulars, and to retain all charges, in connection with rail traffic other than Unit Train traffic moving between stations located solely within the Port Complex Area and for rail services performed solely within the Port Complex Area that are not part of a movement for interchange with a Railroad (including, without limitation, charges for like) ("Local Service"). Effective on the Commencement Date, Operator will adopt all HBL tariffs relating to Local Service, which may be modified by Operator from time to time.

5.8 Maintenance and Train Control Plans. During the period beginning on the date of execution hereof and ending on January 15, 1998, Operator, Owner and the Railroads shall meet and agree on the Approved Train Control and Maintenance Plan for the Traffic Year 1998. At least 90 days prior to the beginning of each Traffic Year after 1998, Operator shall provide to Owner and the Railroads proposed maintenance and train control plans and budgets for the Port Rail Facilities for the coming Traffic Year, as applicable, which plans shall be in such detail as Owner, UP or BNSF may reasonably request. The proposed maintenance and train

control budgets for the Port Rail Facilities shall be developed based on the following principles.

5.8.1 The proposed budgets shall be direct budgets based on specified levels of labor costs and fringe benefits, material costs, purchased services and other out-of-pocket costs.

5.8.2 The proposed maintenance, operation and dispatching budgets shall include all items necessary for Operator to comply with the maintenance, dispatching and operational requirements and standards established under this Agreement for the Port Rail Facilities and Rail Property.

5.8.3 Notwithstanding modifications, if any, to (a) the maintenance plans in terms of the facilities to be maintained by Operator, the standard of maintenance, the amount of the Maintenance Fee or otherwise, or (b) the train control budget in terms of the rail facilities dispatched by Operator, the standard of dispatching, the amount of the Dispatching Fee or otherwise, the total combined overhead amount included in the annual maintenance budgets and the annual train control budgets for the Port Rail Facilities, and if Operator performs services for the Port of Long Beach under a separate agreement, the rail facilities located within the Port of Long Beach shall be $890,000 per year (prorated on a daily basis, based upon a 365-day year, for partial calendar years), adjusted annually in the manner set forth in Section 5.2 hereof, except that the [Rail Cost Recovery Index (Annual Indexes of Chargeout Prices and Wage Rates - 1977 = 100) (Western Railroads)], published by the Association of American Railroads, shall be substituted for the RCAF(U).

5.8.4 The proposed maintenance budget shall not include any costs in connection with maintenance of any facilities other than the Port Rail Facilities and the Rail Property. All maintenance costs for the Additional Port Rail Facilities and the Additional Rail Property shall be included in fees assessed under Exhibit K.

5.9 Approval of Annual Train Control and Maintenance Plans. Within 45 days after receipt of Operator's proposed annual train control and maintenance plan and budget for the Port Rail Facilities under Section 5.8, the Railroad Oversight Committee shall approve or disapprove of such plan and budget. The Railroad Oversight Committee's failure to disapprove of the proposed train control and maintenance plan and budget within such 45-day period shall be deemed the Railroad Oversight Committee's approval of the proposed plan and budget. If the Railroad Oversight Committee approves or is deemed to have approved the proposed annual train control and maintenance plan and budget for the Port Rail Facilities, such plan will become the "Approved Train Control and Maintenance Plan" for the applicable Traffic Year. If the Railroad Oversight Committee disapproves the proposed annual plan and budget

for the Port Rail Facilities and Rail Property, the Railroad Agreement provides that the Railroad Oversight Committee shall, within the 45-day period provided for above, deliver to Operator a written detailed explanation of the reasons for its disapproval, whereupon, Operator shall, within 15 days after its receipt of such disapproval, deliver to the Railroad Oversight Committee a revised annual plan and budget for the Port Rail Facilities and Rail Property which shall reflect all comments made by the Railroad Oversight Committee to the original proposed plan. If the Railroad Oversight Committee does not disapprove of the revised annual train control and maintenance plan and budget for the Port Rail Facilities and Rail Property within ten business days after receipt of the same, such revised plan and budget shall become the **"Approved Train Control and Maintenance Plan"** for the Traffic Year. If the Railroad Oversight Committee disapproves of the revised annual train control and maintenance plan and budget for the Port Rail Facilities and Rail Property, Operator shall be required, within 10 business days after its receipt of such disapproval, to deliver to the Railroad Oversight Committee a revised plan and budget which shall include all comments made by the Railroad Oversight Committee and such revised plan and budget for the Port Rail Facilities shall again be subject to approval by the Railroad Oversight Committee in accordance with the preceding sentence. The process described in the preceding two sentences shall continue until the Railroad Oversight Committee approves or is deemed to have approved a revised annual train control and maintenance plan and budget for the Port Rail Facilities and Rail Property proposed by Operator. Such revised plan shall then be the **"Approved Train Control and Maintenance Plan"** for the Traffic Year. The 45-day period provided for above shall be automatically tolled during the pendency of any arbitration commenced by Owner or the Railroads with respect to disputes over approval of any train control or maintenance plan proposed by Operator. If a proposed train control and maintenance plan for the Port Rail Facilities and Rail Property for a Traffic Year has not been approved by the Railroad Oversight Committee by January 1 of such year, then to reduce any disruption to maintenance and operations within the Port Rail Facilities and Rail Property the prior Traffic Year's Approved Train Control and Maintenance Plan shall apply to the maximum extent practicable or necessary and Operator shall conduct its operations in accordance therewith and the Railroads shall pay fees in accordance therewith until a final train control and maintenance plan and budget for the Port Rail Facilities and Rail Property for such year is approved by the Railroad Oversight Committee. The Railroad Oversight Committee shall have no obligation to approve, review or comment on any maintenance plans or budgets for the Additional Port Rail Facilities, the Additional Rail Property or the Terminal Rail Facilities.

5.10 Plan Dispute. If the Railroad Oversight Committee changes Operator's proposed budget for the Port Rail Facilities for the upcoming Traffic Year in the Approved Train Control and Maintenance Plan without a commensurate change in Operator's

applicable responsibilities, then Operator may, within 15 days after the adoption of such Approved Train Control and Maintenance Plan, notify Owner and the Railroads in writing (a "Deficiency Notice") that in Operator's judgment the approved plan will not enable Operator to meet the standards required of Operator under this Agreement with respect to the Port Rail Facilities and the Rail Property, specifying in detail the areas in which Operator believes deficiencies exist. Operator and the Railroad Oversight Committee shall promptly meet after delivery of the Deficiency Notice to attempt to resolve any differences. If the parties are unable to resolve their differences within 20 days after deliver of the Deficiency Notice, then any of Operator, Owner or the Railroads may invoke the arbitration procedures specified in Article 27. Should such dispute not be resolved prior to the beginning of the applicable Traffic Year, then to reduce any disruption to maintenance and operations within the Port Rail Facilities the Approved Train Control and Maintenance Plan shall apply and Operator shall conduct its operations on the Port Rail Facilities in accordance therewith and the Railroads shall pay fees in accordance therewith until the dispute is resolved; provided that if the arbitrator determines that the Approved Train Control or Maintenance Plan was not sufficient to meet the standards required of Operator hereunder with respect to the Port Rail Facilities, Operator shall not be deemed in default under this Agreement for failing to meet such standards if such failure resulted from deficiencies in the Approved Train Control and Maintenance Plan. Failure by Operator to deliver a Deficiency Notice within the 15-day period shall be deemed to be Operator's agreement that the Approved Train Control and Maintenance Plan enables Operator to perform its duties hereunder with respect to the Port Rail Facilities and the Rail Property.

5.11 Adjustment Resulting from Alterations. Upon the effective date of any material addition, modification or deletion of Trackage to the Port Rail Facilities pursuant to Sections 1.5, 21.1 or 30.20, the current Approved Train Control and Maintenance Plan shall be equitably adjusted by the Railroad Oversight Committee (after consultation with Operator) to take into account any increase or decrease in maintenance obligations and expenses as a result of the addition, modification or deletion in question, and the Maintenance Fees and Dispatching Fees payable pursuant to this Article 5 shall be similarly adjusted. For the purpose of this Section 5.11, Owner's removal from service of a Port Rail Facility for less than 90 days shall not be considered a "deletion" of Trackage requiring an adjustment to the Approved Train Control and Maintenance Plan.

ARTICLE 6
SWITCHING

6.1 Operator to Perform Carload Switching Operations. Operator shall have the exclusive right to perform, and shall

perform, all spotting and pulling of all Carload Traffic (including the corresponding empty movement of the equipment, if any) receiving or delivering those cars in interchange with the Railroads, all rail freight operations and all other switching operations on the Port Rail Facilities (collectively, "Carload Switching Operations") (except to the extent the foregoing relate to Unit Trains or relate to Dow Chemical). Owner acknowledges that such Carload Switching Operations may be deemed to be provision of common carrier services by Operator. This Section 6.1, however, shall not apply to Carload Switching Operations within Additional Port Rail Facilities, which is governed by Article 9, below.

6.2 Switching Standards. Operator shall perform all Carload Switching Operations on the Port Rail Facilities in an impartial, nondiscriminatory and efficient manner and in accordance with the switching standards attached hereto as Exhibit B.

6.3 Rail Car Demurrage. Each Railroad may, at its own expense, account for, bill and collect, all rail car demurrage charges payable by tenants on cars provided by such Railroad for loading or unloading by such tenants in the Port Complex Area that accrue on or after the Commencement Date.

ARTICLE 7
DISPATCHING AND TRAIN COORDINATION

7.1 Operator as Dispatcher. Operator shall dispatch all rail operations over the Port Rail Facilities, including Unit Train movements.

7.2 Dispatching Standards. Operator shall perform its dispatching obligations on the Port Rail Facilities in an impartial, nondiscriminatory and efficient manner and in accordance with the dispatching protocols attached hereto as Exhibit C.

7.3 Operating Rules and Timetables. In connection with performance of Operator's dispatching obligations on the Port Rail Facilities hereunder, Operator shall comply with the General Code of Operating Rules and shall promulgate timetables, special instructions and general orders not inconsistent with the dispatching protocols attached hereto as Exhibit C.

7.4 Diversions. In the event that there will be a delay to a Unit Train of any Railroad in gaining access to or departing from a Terminal Facility, Operator shall notify such Railroad of the delay and shall make diligent efforts to resolve the matter causing the delay or divert such Unit Train to an alternate route (if available) in order that the Unit Train shall have access to (or be able to depart from) such Terminal Facility as soon as practicable.

7.5 Permit Conditions. Operator shall, to the extent legally obligated to do so, be bound by and shall observe any and all permit or other legal restrictions or conditions in effect from time to time that govern the hours of operation or number of trains that may serve any tenant in the Port Complex Area, whether such matter is contained in a permit or other agreement issued to a tenant or is applicable to a Railroad. In addition, Operator shall observe and enforce such conditions and restrictions in its train control and dispatching functions. Where reasonably practicable, Owner will give Operator prior notice of any proposal to adopt, amend or add any permit restriction which will materially affect Operator's performance of its obligations under this Agreement. Owner shall provide written notice to Operator of any such new restrictions or conditions, or modifications to existing restrictions or conditions, that have been adopted by Owner. As of the date hereof, there are no permit restrictions affecting hours of rail operations on property owned or controlled by Owner.

7.6 Operations by Certain Tenants. To the extent certain tenants of Owner currently operate engines or other rail equipment on portions of the Port Rail Facilities and such operations continue after the Commencement Date, Owner shall reasonably cooperate with Operator's efforts to have such tenants' operations comply with Operator's regulations and applicable laws.

ARTICLE 8
MAINTENANCE OF THE PORT RAIL FACILITIES

8.1 Maintenance Obligations on the Port Rail Facilities. Except as may be provided otherwise in Article 11, Operator shall maintain and repair all of the Port Rail Facilities and the Rail Property. Maintenance activities on the Port Rail Facilities shall include inspection, maintenance, repair, replacement and servicing of the Port Rail Facilities and the Rail Property, including, without limitation, (a) replacement of all or any portion of the Trackage as part of its maintenance activities with materials of equal or greater quality as the quality of the existing materials except to the extent provided otherwise in the Approved Train Control and Maintenance Plan, (b) 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; (c) payment of utility charges, fees and/or assessments in connection with or for the benefit of rail services on the Port Rail Facilities other than utility charges related solely to the operation of the Badger Avenue Bridge, and (d) work legally required to be performed with respect to Trackage originally included in the Port Rail Facilities but later taken out of service by Owner. Should invoices for the charges, fees and assessments described in clause (c) above be paid by Owner, Operator shall promptly reimburse Owner for such amount to the extent that such amount was contained in an Approved Train Control and Maintenance Plan plus any reasonable costs and expenses incurred by Owner or on

Owner's behalf in processing and paying such charges, fees and assessments.

8.2 Replacement of Materials not Capital Improvements. Except as provided otherwise in Section 12.5(c), the replacement of materials on the Port Rail Facilities contemplated under Section 8.1 will not be classified as a Capital Improvement, the cost of which would be borne by Owner, unless Owner specifically agrees, in writing, to such classification and to bear such cost.

8.3 Maintenance Standards. Operator shall maintain the Port Rail Facilities and Rail Property (a) in a manner that does not impair the ability of the Railroads or Operator to have access over the Port Rail Facilities to customers, (b) at a level of utility, maintenance and repair consistent with all applicable FRA, federal, state and local laws, rules and regulations, (c) in the FRA Class condition specified on Exhibit D attached hereto and (d) in accordance with an Approved Train Control and Maintenance Plan. Notwithstanding the foregoing, up to 15% of the track on the Port Rail Facilities may be subject to temporary slow orders from time to time.

8.4 Exceptions to Maintenance Standards. Notwithstanding anything to the contrary in Section 5.11 or 8.3, if after the Commencement Date Owner designates certain Port Rail Facilities as "not in service" tracks for a period of less than 90 days, no adjustment shall be made in the applicable budget line items or Maintenance Fees as a result thereof, but Operator's maintenance responsibilities for such facilities shall be limited to the level of maintenance necessary to comply with laws applicable to such "not in service" facilities.

8.5 Scrap or Salvage Material. Operator shall have the right to reuse at other locations on the Port Rail Facilities any scrap or excess material removed by Operator in connection with replacement or repairs on the Port Rail Facilities and Rail Property. In addition, Operator may sell any scrap material removed by Operator. The net proceeds from any such sale (i.e., the amount remaining after deducting Operator's unreimbursed costs of removing the materials and costs of the sale) shall be the property of Owner and such net proceeds shall be paid to Owner or as Owner directs.

8.6 No Inspection Required by Owner. Owner shall have no responsibility for inspecting, maintaining, servicing or repairing the Port Rail Facilities, the Rail Property, the Additional Port Rail Facilities, the Additional Rail Property, the Terminal Facilities, the Terminal Rail Facilities or any portion thereof or any Trains, Trackage or other equipment or property in the Port Complex Area. Notwithstanding the preceding sentence, Owner and the Railroads shall have the right to inspect any such property or equipment provided that, except in the event of an emergency, (i) such inspection shall be made upon at least 48

hours' prior telephonic notice informing Operator generally of the proposed date and time of such inspection and (ii) such inspection shall not unreasonably interfere with Operator's operations in such areas.

ARTICLE 9
ADDITIONAL PORT RAIL FACILITIES

9.1 Operator's Services. So long as the tenant in whose premises the Additional Port Rail Facilities are located does not elect to perform such services itself or hire another provider to Operator performing the following services, Operator shall (a) perform all Carload Switching Operations on the Additional Port Rail Facilities in accordance with standards acceptable to the Tenant and Operator and (b) inspect, maintain, service and repair the Additional Port Rail Facilities and the Additional Rail Property in accordance with all applicable FRA, federal, state and local laws, rules and regulations and in the FRA class condition specified on Exhibit D attached hereto. If the tenant in whose premises the Additional Port Rail Facilities are located elects to perform or hires another provider to perform some but not all of the foregoing services, Operator shall perform the remaining services not performed by the tenant or by a third party on behalf of the tenant. Operator shall be entitled to charge the Railroads or the tenant in whose premises the Additional Port Rail Facilities are located fees for services rendered under this Section in accordance with Exhibit K.

9.2 Termination of Operator's Services on the Additional Port Rail Facilities. Operator's right and obligation to provide the services described in Section 9.1 hereof, and access to the Additional Port Rail Facilities and the Additional Rail Property, shall terminate upon the earliest to occur of (a) the date this Agreement terminates, (b) the date the lease between Owner and the tenant covering the applicable portion of the Additional Port Rail Facilities terminates and (c) the date that Owner notifies Operator in writing that the tenant in whose premises the applicable portion of the Additional Port Rail Facilities is located has requested that Operator no longer perform the services then being performed by Operator in such tenant's Terminal Facility under Section 9.1.

9.3 Certain Acknowledgements. Operator acknowledges and agrees as follows:

9.3.1 the Additional Port Rail Facilities and the Additional Rail Property are not part of the Port Rail Facilities for purposes of this Agreement or the Railroad Agreement and that Owner has no responsibility to pay for or provide any maintenance thereof or any Capital Improvements thereto, of any kind or character;

9.3.2 Owner has made no representations or warranties to Operator that the tenants or occupants of the Terminal Facilities in which the Additional Port Rail Facilities are located will use Operator as, or consent to Operator as, the provider of the services described in Section 9.1 or that Owner will make any effort to encourage such tenants to use Operator to provide such services;

9.3.3 Owner is not responsible for the payment of any costs or expenses that Operator may incur in connection with the Additional Port Rail Facilities and Owner has no obligation to enforce any Railroad's or other person's obligations with respect to the Additional Port Rail Facilities; and

9.3.4 Operator shall not permit its activities on the Additional Port Rail Facilities to interfere with Operator's ability to perform its obligations hereunder with respect to the Port Rail Facilities.

9.3.5 Nothing in this Article 9 shall be deemed to limit Operator's rights under Article 25 hereof to provide additional intra-facility rail services to tenants at the Terminal Facilities in which the Additional Port Rail Facilities are located upon entry into separate written agreements with such tenants.

ARTICLE 10
DERAILMENTS

10.1 Clearing of Derailments. The Railroad whose Train derails shall be responsible for promptly clearing the derailment, provided that if Operator's Train derails, Operator shall be responsible for promptly clearing the derailment. If a Railroad's Train derails and the Railroad does not promptly clear the derailment, Operator shall clear the derailment, provided that, as between Operator and the Railroads, the costs of clearance shall be borne by the entity or entities whose Train(s) derailed. Operator shall assist in clearing any derailment, regardless of the cause thereof, but shall be entitled to reimbursement of Operator's actual costs incurred in connection with such assistance by the Railroad(s) whose Train(s) derailed. The Railroads and Operator shall be entitled to allocate liability for derailments among themselves but such allocations shall not affect liability to Owner hereunder.

10.2 Repair of Damage Caused by Derailments. Operator shall repair any damage to the Port Rail Facilities resulting from a derailment, regardless of the cause thereof, provided that, as between Operator and the Railroads, the costs of such repairs shall be borne by the entity or entities whose Train(s) derailed. The Railroads and Operator shall be entitled to allocate liability for damage caused by derailments among themselves but such allocations shall not affect liability to Owner hereunder.

10.3 Alternate Access. In the event of a derailment, Operator shall, to the extent possible, re-route trains or put into service alternative means of rail access if the affected portion of the Port Rail Facilities cannot timely be returned to service.

10.4 Repair of Track Damage Caused by Operator or Railroads. Operator shall be responsible for repairing any damage to the Port Rail Facilities resulting from improper train handling (i.e. running through switches, excessive rail burn, etc.) but the cost of such repair shall be borne by the entity or entities whose Train(s) caused the damage. The Railroads shall reimburse Operator for any expenses incurred as a result of improper train handling within 30 days after receipt of billing for such charges. Any damage caused by Operator shall be repaired at Operator's sole cost and expense.

ARTICLE 11
BADGER AVENUE BRIDGE

11.1 Maintenance. Operator shall maintain the rail and ties on the Badger Avenue Bridge and the rail approaches thereto (including the interlocker), and all other rail components of the Badger Avenue Bridge in accordance with Article 8. Operator shall have no maintenance or other obligations (including payment of utility costs for operating the Badger Avenue Bridge) with respect to the structural, mechanical or electrical systems and components for the Badger Avenue Bridge including, without limitation, bridge locking micro switches and Conley joints.

11.2 Operations. Operator shall be solely responsible for operating the Badger Avenue Bridge as a moveable railbridge to allow vessels to pass through the channel and shall provide and train, at no cost to Owner, the personnel necessary to operate the Badger Avenue Bridge during the time periods required by Owner. Operator acknowledges that Owner may require Operator to operate the Badger Avenue Bridge on a twenty-four hour per day, 365 day per year, basis.

ARTICLE 12
CAPITAL AND OTHER IMPROVEMENTS

12.1 Capital Improvements. Operator shall be obligated to make the following Capital Improvements to the Port Rail Facilities: (a) Capital Improvements necessary to ensure that the Port Rail Facilities are operated and maintained in compliance with all federal, state and local laws applicable to or arising from rail operations, the costs of which Capital Improvements will be allocated to and paid by the Railroads on a train mile basis as part of an Approval Train Control and Maintenance Plan; (b) Capital

Improvements necessary to ensure that the Port Rail Facilities are operated and maintained in compliance with federal, state and local laws of general applicability to the public and not covered by clause (a) hereof, the costs of which Capital Improvements shall be borne by Owner as part of an Approved Train Control and Maintenance Plan; (c) Capital Improvements required by the Railroads and approved by Owner, the costs of which will be borne solely by the Railroad(s) requesting the same;(d) Capital Improvements required by Owner that Owner requests be made by Operator, the costs of which will be borne by Owner; (e) Capital Improvements described as **"Extraordinary Replacements"** in Section 12.5 and required under an Approved Train Control and Maintenance Plan, the costs of which will be borne by Owner and the Railroads in accordance with Section 12.5. Operator's obligation to make the Capital Improvements specified in clause (c) above is conditioned upon Operator first receiving satisfactory assurance that the Railroads will pay for the full costs thereof. The Railroads or Owner, as the case may be, shall pay Operator for the full costs of any Capital Improvements made in accordance with this Section within 30 days after delivery to such party of an invoice for such costs. Except as provided otherwise in this Section 12.1, Operator shall have no obligation to make Capital Improvements to the Port Rail Facilities.

12.2 Ownership of Improvements and Alterations. All materials, replacements, substitute items and Capital Improvements installed or made by or on behalf of Operator or any other person on property owned or controlled by Owner shall at Owner's election be the property of Owner unless Owner agrees otherwise in writing.

12.3 Capital Improvements by Owner. Except as provided otherwise in this Article or in Article 2, Owner shall have no obligation whatsoever to make any Capital Improvements or other modifications or additions on or to the Port Rail Facilities or on or to any other portions of the Port Complex Area, including, without limitation, the Additional Port Rail Facilities and the Terminal Rail Facilities. Owner shall be entitled, but shall not be obligated, to make such Capital Improvements and modifications to the Port Rail Facilities, the Additional Port Rail Facilities and the other portions of the Port Complex Area as Owner, in its sole discretion, deems necessary or desirable, and shall be entitled to employ contractors other than Operator or the Railroads to perform such Capital Improvements or other modifications to the Port Rail Facilities, the Additional Port Rail Facilities, the Terminal Rail Facilities and the other portions of the Port Complex Area.

12.4 Construction Work by Owner. Upon at least 45 days' prior written notice to Operator and the Railroads, and subject to the terms and conditions hereof, Owner may elect to construct any modifications, additions or other improvements (including Capital Improvements) to the Port Rail Facilities, or to make any modifications to the Rail Property or other facilities in the Port

Complex Area that require a Port Rail Facility be taken out of service temporarily. If an active rail shipper located in a Terminal Facility or, if U.S. Borax is then an active rail shipper, U.S. Borax will be cut off from rail access and will need alternative shipping arrangements as a result of such construction, as between Owner and Operator, Owner shall be solely responsible for providing any alternative arrangements that (a) Operator or Owner are legally required to provide to such shipper during the interruption of rail service and (b) are reasonably necessary to meet the needs of such shipper during interruption of rail service that otherwise would have been met by rail service. Operator shall cooperate with Owner in Owner's efforts to provide any alternative arrangements that Owner is required to provide under the preceding sentence. In connection with any construction activity, Owner may schedule at least one construction period of at least eight continuous hours during each day to perform its construction activities on or adjacent to the Port Rail Facilities or the Rail Property. The specific construction periods shall be determined by Owner in consultation with Operator and the Railroads, with the goal of not unreasonably interfering with rail operations on the Port Rail Facilities. Owner also may conduct construction and related activities at times outside of the designated construction periods, provided that such activities outside the designated period do not unreasonably interfere with Operator's on-going rail operations on the Port Rail Facilities. Owner shall require its contractors to provide, or shall reimburse Operator's reasonable charges from, any flagging protection that may be necessary in connection with any such construction activities. Any active or inactive tracks may be crossed by Owner or its construction contractors at designated timber or paved crossings. In no event shall Operator or any Railroad be entitled to any sums, damages, fees or other compensation relating to any loss of business or revenues resulting from such construction activities by Owner or as a result of any related closure of any Port Rail Facilities.

12.5 Replacement of Materials as Capital Improvements.

(a) Pursuant to the Existing Rail Operation Agreement, the Railroads have been, and until the Commencement Date will remain, responsible for maintaining and repairing the Port Rail Facilities.

(b) Operator and Owner acknowledge that the annual Approved Train Control and Maintenance Plans are intended to provide for a normalized maintenance and replacement schedule over a period of time that will maintain the Port Rail Facilities and all components thereof in the condition required by this Agreement. The maintenance program set forth in the Approved Train Control and Maintenance Plans shall include the periodic replacement of ties, rail, switches and other components of the Port Rail Facilities with materials of like quality. Operator acknowledges that, except as provided in Section 12.5(c), such replacements of materials are

part of normalized maintenance and, as such, the costs thereof are a part of Maintenance Fees.

(c) Operator and Owner further acknowledge that notwithstanding consistent performance of the normalized maintenance and replacement program described in clause (b), above, at some point in the future major portions or components of the Port Rail Facilities will need to be replaced. During the fourth through ninth years of this Agreement, Operator shall provide to Owner and the Railroad Oversight Committee information regarding annual replacement of ties, rail, switches and other components of the Port Rail Facilities as part of the Approved Train Control and Maintenance Plan. The Railroad Agreement provides that on or before the commencement of the tenth year of this Agreement the Railroad Oversight Committee shall, based on the information described in the preceding sentence, determine the average replacements on an annual basis per each mile of Port Rail Facilities (for example, for each one-mile increment of Port Rail Facilities, an average of *x* ties, *y* feet of rail and *y* switches were replaced). In determining averages, the Railroad Oversight Committee is required under the Railroad Agreement to consider only replacements made as part of maintenance and shall not consider replacements made as part of additions to the Port Rail Facilities. The Railroad Agreement further provides that on or before the commencement of each year after the ninth year of this Agreement, the Railroad Oversight Committee shall establish a baseline replacement schedule for such year by multiplying the average annual replacements during the fourth through the ninth years of this Agreement by the number of miles of rail then included in the Port Rail Facilities. All replacements in excess of the baseline shall be deemed **"Extraordinary Replacements"**. For example, if during years four through nine of this Agreement an average of 10 ties were replaced for each mile of rail included in the Port Rail Facilities each year, and on the tenth year of this Agreement the Port Rail Facilities encompass 50 miles of rail, the baseline for tie replacements would be 500. Therefore, if 510 ties were replaced during the tenth year of this Agreement, 500 ties would be deemed a part of normal maintenance and 10 ties would be deemed "Extraordinary Replacements".

(d) Beginning in the tenth year of this Agreement, if the Railroad Oversight Committee determines that Extraordinary Replacements are necessary, Owner shall, so long as it has first received assurances (acceptable to Owner in its sole and absolute discretion), of the Railroads' payment of their share of the costs of such Extraordinary Replacements, cause such Extraordinary Replacements to be completed and the costs thereof shall be allocated 40% to Owner and 60% to the Railroads jointly. Notwithstanding the foregoing, replacements of materials at Pier A Yard shall, in all events, be deemed normalized maintenance not Extraordinary Replacements and the costs thereof shall be included as part of Maintenance Fees.

(e) Notwithstanding the foregoing provisions of this Section, repair of any damage caused in the future by a Force Majeure Event shall be the sole responsibility of Owner, subject to the provisions of Article 24.

ARTICLE 13
SAFETY AND SECURITY

13.1 Safety Program. Operator shall establish and observe a safety program for all of its activities in the Port Complex Area, in accordance with prevailing industry standards and shall use reasonable care in all of its activities in, on or about the Port Complex Area.

13.2 Encroachers, Trespassers and Other Third Parties; Hazards. Operator shall notify Owner in writing of any trespassers and other operations and activities on the Port Rail Facilities and the Rail Property which interfere with Operator's performance of its obligations under this Agreement, including, without limitation, trespasses by and operations and activities of employees or agents of any tenant operating equipment on the Port Rail Facilities (unless specifically authorized by Owner). Operator shall not allow or authorize any person or entity other than a Railroad, Operator (its contractors and subcontractors) or Owner to operate equipment (including locomotives, hi-rail vehicles and track mobiles) on the Port Rail Facilities and is hereby authorized to take reasonable steps to prevent such operation by unauthorized persons. Operator shall give Owner prompt written notice of any encroachment onto the Port Rail Facilities or the Rail Property by adjoining property owners or tenants which interferes with operations on the Port Rail Facilities.

13.3 Security. Operator shall be solely responsible for providing any security services or measures it deems necessary or desirable for its property and equipment, and all cargo and rail cars and equipment in its possession or control, but shall have no responsibility for providing any other security services or measures in the Port Complex Area including any security services for any Railroad's property and equipment not in Operator's possession or control. Operator acknowledges that Owner shall have no responsibility to provide any security services or measures to protect from theft, vandalism or damage to the Trackage or any other property, equipment or improvements owned or used by Operator or the Railroads.

ARTICLE 14
LOADING, UNLOADING AND STORAGE OF FREIGHT CARS AND EQUIPMENT

14.1 In General. Operator shall place for loading, unloading and storage, and shall require the Railroads to place for

loading, unloading and storage, all Railcars and railroad equipment handled by Operator on the Port Rail Facilities (a) in compliance with all applicable federal, state, and local laws and regulations and all customary and appropriate safety and maintenance procedures, (b) in a manner that does not unreasonably interfere with the activities of Owner, Operator, any Railroad or any tenant in the Port Complex Area and (c) only to the extent of space available with priority given to loading, unloading and storage to serve Terminal Facilities. Operator shall allocate storage and approve requests for storage on the Port Rail Facilities on a reasonable and non-discriminatory basis and in accordance with guidelines approved by the Railroad Oversight Committee. Notwithstanding the preceding two sentences, Unit Trains (including any train that would be a Unit Train if handled by a Railroad rather than Operator) and Railcars that originally were part of a Unit Train may not be placed for loading, unloading or storage anywhere on the Port Rail Facilities for periods in excess of five days without the prior written consent of Owner. Any consent given by Owner for such placement is hereby conditioned upon compliance with the provisions of clauses (a), (b) and (c), above, in addition to any conditions contained in such consent. If Owner does not respond to a request for placement under the preceding sentence within five business days after receipt thereof, Operator shall have the right to provide the necessary consent. Owner may from time to time by written notice to Operator designate certain tracks then part of the Port Rail Facilities (excluding tracks in Pier A Yard (for so long as it remains in rail service), the Replacement Railyard (from and after commencement of operations in the Replacement Railyard hereunder unless the Replacement Railyard has been taken out of service in accordance herewith) or in the Transfer Yard) as storage or staging tracks to be used exclusively for a specific tenant or tenants if such designation will not unreasonably interfere with rail operations serving tenants at Terminal Facilities.

14.2 Dangerous Materials Cars. Dangerous Materials Cars may be loaded, unloaded or stored (or placed for loading, unloading or storage) on property owned or controlled by Owner only at locations specified by Owner, which locations, as of the Commencement Date, are set forth on Exhibit E. Loading, unloading and storage under the preceding sentence must be accomplished in full compliance with all applicable laws. Owner shall be entitled at any time and from time to time to change the locations for loading, unloading and storing Dangerous Materials Cars on property owned or controlled by Owner upon prior written notice to Operator and the Railroads. Operator shall promptly inform Owner of any violation by any Railroad of the foregoing laws, rules, regulation and procedures.

ARTICLE 15
COMPLIANCE WITH LAWS, LICENSING, TAXES AND ASSESSMENTS

15.1 Compliance with Laws. Operator shall comply, at its sole cost and expense, with all applicable federal, state and local laws, rules, regulations, permits and orders that relate to or govern Operator's activities in the Port Complex Area including permits or licenses issued to a tenant. If any failure on Operator's part to so comply results in a fine, penalty, cost or charge being imposed or assessed on or against Owner, Operator shall promptly reimburse, defend, indemnify and hold Owner harmless with respect to such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith.

15.2 Licenses and Permits. Operator shall, at its sole cost, obtain and maintain in full force and effect all governmental licenses, permits, approvals, franchises and other entitlements that are necessary for its operations in the Port Complex Area. Without limiting the generality of the preceding sentence, Operator shall file a 7-day Exemption Notice under 49 C.F.R. § 1150.31 and § 1180.2, on or after November 1, 1997. Operator acknowledges that any approval by or consent of Owner which may be given pursuant to this Agreement with respect to the subject matter hereof shall not be deemed or construed as eliminating or reducing Operator's obligation to obtain any licenses, permits, approvals, franchises or entitlements which may be necessary or required from the City of Los Angeles or from departments or agencies thereof.

15.3 Prohibited Cargo. Notwithstanding any other provision of this Agreement, without the prior written permission of the Executive Director of Owner, Operator shall not knowingly accept or transport over property owned or controlled by Owner any cargo, materials or substances that Owner has notified Operator in writing are prohibited to be transported over property owned or controlled by Owner under Owner's tariff. However, if Operator believes that compliance with the preceding sentence will violate Operator's common carrier obligations under federal law, Operator's knowing transportation of prohibited cargo, materials or substances over property owned or controlled by Owner shall not be deemed a breach of this Agreement, so long as Operator gives Owner 48 hours' prior written notice of any such transportation and Owner does not obtain a court determination or order that it may prohibit the material in question from being so transported.

15.4 Southern California Edison License Conditions. Operator shall comply with all restrictions and conditions related to access across Trackage in Southern California Edison's right of way and vertical clearances for power lines.

ARTICLE 16
PERSONNEL AND EQUIPMENT

16.1 Personnel. Operator shall hire, train and supervise, at its sole cost and expense, all persons necessary to perform its duties and obligations hereunder except to the extent Operator engages subcontractors to perform such duties and obligations. Operator shall ensure that, all persons performing any duties and obligations of Operator hereunder or under any of the Related Agreements, including, without limitation, all contractors and subcontractors hired by Operator and all persons operating the Badger Avenue Bridge, are competent, trained, qualified and, to the extent required by law or by sound business practices in the industry, licensed or certified for the task that they are performing.

16.2 Labor Protective Conditions. As between Owner and Operator, Operator shall be responsible, at no cost to Owner, for all labor protective conditions applicable to its employees and contractors providing services hereunder or in connection herewith.

16.3 Operator's Equipment. Operator shall, at no cost to Owner, provide its own equipment to perform all of its duties and obligations hereunder (except for equipment necessary to operate the Badger Avenue Bridge from the bridge control booth). All of Operator's trains operating on the Port Rail Facilities shall be adequately powered to run at maximum authorized track speeds and otherwise in such condition that the efficient use and operation of the Port Rail Facilities will not be disrupted. Without limiting the generality of the foregoing, Operator shall at all times after the Commencement Date maintain the following equipment at its facilities in the Port Complex Area for use in connection with performance of its obligations hereunder:

1) 5 switcher or road-switcher locomotives;

2) Radio and cellular communication equipment linking Operator's train director's office and all of Operator's train and maintenance crews operating in the Port Complex Area. Such equipment shall be capable of direct communication with the radio communication systems used by each of the Railroads and terminal operators.

3) a RMI IRCS or RS-400 computer system.

4) such other equipment (including, without limitation, tools, vehicles, computers, and supplies) as are reasonably necessary for Operator to perform all of its obligations under this Agreement.

5) Operator shall install such computer hardware and software as necessary to permit Operator to receive and send data described in the following sentence electronically to and from

Owner and Railroads. The data to be exchanged shall include, among other things, information regarding locomotives, railcar numbers (loaded or empty), destinations of trains and crews, weight and length of train, marine terminal operator, container serial number and such other information as Owner may reasonably request to the extent such information is available to Operator on railroad computer databases. Operator will provide to Owner on a periodic basis the foregoing information provided that Operator will not be deemed to have made any representations or warranties with respect to the accuracy of such information. Owner shall reimburse Operator for all incremental expenses incurred by Operator to obtain the information required in this Section. Incremental expenses are only those expenses incurred by Operator over and above what would be incurred by Operator to perform Operator's obligations under this Agreement other than Operator's obligations under this Section 16.3(5).

Operator acknowledges that the foregoing list of equipment is a minimum requirement based on Operator's initial estimates. If additional or different equipment is necessary from time to time for Operator to perform its obligations hereunder, Operator promptly shall obtain and place in service such equipment at its sole cost and expense. Operator shall have no obligation to supply its own freight or other rail cars, or intermodal equipment in connection with performance of its duties and obligations hereunder.

16.4 Operator not Required to Provide Equipment to Railroads. Operator shall not be required to provide freight or other rail cars or intermodal equipment to the Railroads hereunder.

16.5 Radio Frequency. Owner agrees to the use by Operator during the term of this Agreement of the radio frequency currently used by HBL. Upon the expiration or earlier termination of this Agreement, the rights to such radio frequency, as between Owner and Operator, shall belong to Owner.

ARTICLE 17
PROHIBITION AGAINST LIENS; PAYMENT OF TAXES AND ASSESSMENTS

17.1 Liens. Operator shall not cause the filing of any Charge against any or all or any portion of any property owned or controlled by Owner or any improvements therein. However, in the event such filing does occur, Operator shall cause the same to be discharged of record within 30 days after the date of filing of the same provided that Operator shall be entitled to contest the same as provided by law so long as Operator exercises such rights in a manner which prevents foreclosure of any such Charge.

17.2 Taxes. Operator shall promptly pay all taxes of any kind or nature, and any governmental or special district assessments, all bonded indebtedness incurred by Operator, all license fees and other charges, if any, properly levied or assessed against or as a result of this Agreement or Operator's operations on the Port Rail Facilities and the Rail Property, subject to Operator's right to contest same as provided by law, which right shall be exercised by Operator in a manner which prevents the foreclosure of any lien for such taxes. Should Operator elect to contest the taxes and assessments payable by Operator under this Section, Operator shall indemnify, defend and hold harmless Owner, its officers, directors, employees, commissioners, agents, successors and assigns from any and all matters arising therefrom, including, without limitation, any penalties or late charges relating to such taxes and assessments and all costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of such contest.

17.3 Possessory Interest Taxes. WITHOUT DEROGATING FROM THE LIMITATIONS ON OPERATOR'S RIGHTS WITH RESPECT TO THE PORT RAIL FACILITIES, THE ADDITIONAL PORT RAIL FACILITIES AND PIER A YARD PROVIDED FOR HEREIN, OPERATOR ACKNOWLEDGES THAT IT IS AWARE THAT THIS AGREEMENT MAY CREATE A POSSESSORY PROPERTY INTEREST IN OPERATOR FOR TAX PURPOSES AND THAT OPERATOR MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED. Nothing in this Section 17.3 shall be construed as limiting the obligations of the Railroads to reimburse Operator for all amounts, if any, paid by Operator for California Possessory Interest Tax pursuant to California Revenue & Taxation Code Section 107 et seq. pursuant to Section 5.5 hereof.

ARTICLE 18
REPORTS AND NOTICES

18.1 Delivery of Notices. Operator shall promptly deliver to Owner copies of all notices, correspondence and information it receives from any governmental agency, tenant, licensee, shipper, customer, easement holder, or railroad (a) regarding the condition or maintenance of all or any portion of the Port Rail Facilities, Terminal Facilities and any other property owned or controlled by Owner or (b) alleging violation of any law by Operator, any Railroad or Owner, or (c) alleging violation of or default under any agreement to which Owner is a party. In addition, if Operator becomes aware of any unsafe condition in the Port Rail Facilities, Operator shall promptly notify Owner of such unsafe condition.

18.2 Statements. Within 45 days after the end of each calendar quarter Operator shall deliver to Owner quarterly unaudited statements for the immediately preceding calendar quarter in a form acceptable to Owner showing (a) total railcar movements by Operator, (b) total fees due Operator under this Agreement, (c)

total maintenance expenditures on Port Rail Facilities, and if requested by Owner, any other portions of the Port Complex Area, showing the location of all such expenditures, and (d) such other information as Owner may reasonably request.

18.3 Annual Track Usage and Expenditures Reports. Within 90 days after the end of each Traffic Year, Operator shall deliver to Owner and the Railroads an annual report of track use and expenditures for operations and maintenance on the Port Rail Facilities, and, if requested by Owner, any other portions of the Port Complex Area, each in a form acceptable to Owner.

18.4 Inspection Reports. Operator shall perform and document all inspections of the Port Rail Facilities (and, if Operator is maintaining certain Additional Port Rail Facilities under Article 9, such Additional Port Rail Facilities) required under applicable federal, state and local laws and shall submit to the appropriate governmental entities all reports required to be submitted under applicable federal, state and local laws.

18.5 Other Reports and Information. Operator shall make available to Owner any reports prepared by or on behalf of Operator regarding the condition or status of the Port Rail Facilities or any portion thereof or any other Trackage in the Port Complex Area. In addition, from time to time upon Owner's request, Operator shall provide to Owner information, in a form reasonably acceptable to Owner, regarding the number of rail freight cars delivered to or received from each shipper, receiver and/or customer receiving or shipping freight on or from the Port Complex Area or any portion thereof. Operator shall retain all such information for a period of not less than three calendar years or if applicable laws require retention for periods greater than three years, for the period of time provided for by law.

18.6 Records Retention; Review. Operator shall maintain at its office in Los Angeles County full and complete records of all of its activities pursuant to this Agreement, including, without limitation, all permits, licenses, inspection reports, governmental or regulatory notices or approvals, operating, maintenance and dispatching logs and records and reports of any accidents or injuries on the Port Rail Facilities or Rail Property. Owner and the Railroads may at any time during normal business hours and upon reasonable notice review and/or copy (at the expense of the person reviewing and copying the records) any or all of such records and information, which review may be performed by the employees of Owner or the Railroads or by any agent of Owner or the Railroads.

ARTICLE 19
RAILROAD OVERSIGHT COMMITTEE

19.1 Railroad Oversight Committee. The Railroad Oversight Committee established pursuant to Article 13 of the Railroad Agreement shall be entitled to monitor the performance by Operator of its duties and obligations hereunder. Operator may attend meetings of the Railroad Oversight Committee and make presentations to the Railroad Oversight Committee, but the Railroad Oversight Committee may hold executive sessions outside the presence of the Operator.

19.2 Performance Standards. The Railroad Oversight Committee from time to time may, after consultation with Operator, propose modifications to the switching, dispatching, maintenance and other standards to be observed by Operator on the Port Rail Facilities and the Rail Property and, after consultation with Operator, may implement such modifications. Operator also may propose modifications to such switching, dispatching, maintenance and storage standards for consideration by the Railroad Oversight Committee. Operator shall comply with any modifications to such standards implemented by the Railroad Oversight Committee (after any reasonable period that may be necessary to conform its operations thereto) so long as such modifications do not fundamentally change the nature of the transaction contemplated by this Agreement with respect to the Port Rail Facilities. Any good faith disputes over whether a modification fundamentally changes the nature of the transaction contemplated hereby with respect to the Port Rail Facilities may, at the election of Operator or the Railroad Oversight Committee, be submitted to arbitration under Article 27 hereof.

ARTICLE 20
DEFAULT AND REMEDIES

20.1 Defaults.

20.1.1 Operator Defaults Any of the following events shall be deemed a default by Operator hereunder:

(a) Failure to pay any amount provided for herein (including, without limitation, Operator Railyard Fees) within 10 days after receipt of written notice of nonpayment of any amounts payable hereunder;

(b) Failure to maintain insurance as required hereunder;

(c) Failure to perform any other obligation of Operator hereunder within 30 days of receipt of written notice by Owner; provided that if Operator commences to cure such failure but such failure cannot be cured within such 30 day period despite

diligent pursuit of such cure, Operator shall be entitled an extension of the period of time necessary to cure such default if Operator continues to diligently pursue such cure;

(d) Commencement of an insolvency, bankruptcy or other similar proceeding by or against Operator which proceeding is not dismissed within 30 days after commencement thereof;

(e) The making of a general assignment for the benefit of creditors of Operator; and

(f) Violation by Operator of any collective bargaining or other labor agreement to which Operator is a party which violation gives rise to a legal work stoppage, strike or other form of labor slowdown disrupting operations in the Port Complex Area.

20.1.2 Owner Defaults. Owner's failure to perform any obligation of Owner hereunder within 30 days after receipt of written notice by Operator; provided that if Owner commences to cure such failure but such failure cannot be cured within such 30-day period despite diligent pursuit of such cure, Owner shall be entitled to an extension of the period of time necessary to cure such failure if Owner continues to diligently pursue such cure.

20.2 Remedies. The remedies provided for herein shall be cumulative.

20.2.1 Damages. In the event of a default under or breach of any of the terms of this Agreement which default or breach is not cured within the applicable cure period provided for herein, if any, the non-defaulting party shall have all remedies available at law or in equity against the defaulting party. Operator acknowledges and agrees that in no event will Owner have any liability to Operator for any Railroad's or any other person's failure to pay Operator the fees required under this Agreement, the Railroad Agreement or any Related Agreement or for any other breach of the Railroad Agreement or any Related Agreement.

20.2.2 Specific Performance. Operator acknowledges that in the event of a default under or breach of any of the terms of this Agreement by Operator that is not cured within the applicable cure period, if any, provided for herein, damages may not be an adequate remedy, and Owner may, in addition to exercising its legal remedies, seek equitable relief, including, without limitation, the entry of a decree for specific performance against Operator and in favor of Owner. Operator acknowledges that Operator shall have no right to seek equitable relief as a result of a breach by Owner hereunder.

20.2.3 Right to Cure. In the event of a default under or breach of any of the terms of this Agreement which default

or breach is not cured within the applicable cure period provided for herein, if any, Owner shall have the right, but not the obligation, to cure the default hereunder. All sums expended by Owner in exercising its rights under the preceding sentence, including reasonable attorneys' fees, shall be repaid by Operator upon demand therefor. Operator acknowledges that Operator shall have no right to cure defaults by Owner hereunder.

20.2.4 Termination.

20.2.4.1 Termination by Owner for Default. In the event of a default under or breach of any of the terms of this Agreement by Operator which default or breach is not cured within the applicable cure period provided for herein, if any, Owner will have the right to terminate this Agreement by delivery of notice to Operator and the Railroads.

20.2.4.2 No Termination by Operator for Default. Except as provided in Section 21.2, Operator shall not have the right to terminate this Agreement as a result of a default under or breach of any of the terms of this Agreement, the Railroad Agreement or any Related Agreement.

ARTICLE 21
SPECIAL CANCELLATION RIGHTS

21.1 Termination of Dispatching and Maintenance by Owner for Convenience. In addition to its rights under Sections 4.2, 20.2.4.1 and 24.2, on six months' prior written notice to Operator and the Railroads, Owner shall have the right in its sole discretion to terminate this Agreement as to maintenance, dispatching and train control in the Port Complex Area, without joinder by any Railroad, if Operator is not selected as the dispatcher and maintenance provider for the Alameda Corridor.

21.2 Operator Termination for Failure of Railroad to Pay Fees.

21.2.1 Except as expressly provided below in this Section, Operator's obligations and duties under this Agreement shall not be excused by a Railroad's failure to pay any fees or charges due Operator hereunder. If all the Railroads fail to pay Operator an amount with respect to Maintenance Fees and/or Dispatching Fees with respect to the Port Rail Facilities and the Rail Property that, in the aggregate, is in excess of 1/6th of the total of the then current annual budgets for maintenance and dispatching costs in connection with maintenance and dispatching on the Port Rail Facilities and the Rail Property (the "**Delinquency Amount**"), and such amount has been outstanding after written demand therefor submitted to the Railroads for more than 30 days, Operator shall give written notice to Owner, with a copy to the Railroads, of such fact and, if Operator elects, also specify in such notice

that if Operator does not receive funds sufficient to cover the Delinquency Amount within 90 days after the date of the notice, Operator intends to exercise its right under this Section to terminate this Agreement. If Operator does not receive payment of the Delinquency Amount within such 90-day period, Operator may, in addition to any other rights Operator may have against the Railroads, terminate this Agreement by giving a new written termination notice to Owner and the Railroads, provided that if Operator receives payment of the Delinquency Amount from Owner (at Owner's election) or a Railroad prior to the date Operator delivers such termination notice, then Operator may not terminate this Agreement. This Agreement shall be deemed terminated on the date 60 days after the date on which Operator's termination notice is delivered to Owner, provided that Operator shall have 90 days after such date to wind up its affairs and to remove its property from the Port Rail Facilities. If Operator elects to so terminate this Agreement, Owner shall have no liability to Operator in connection therewith.

21.2.2 Any party (or parties) which pays the Delinquency Amount attributable to another party to Operator shall have all rights that Operator may have had to proceed against the delinquent liable for the Delinquency Amount and Operator shall cooperate with such party's efforts to obtain payment from the delinquent Railroad. Should Operator later receive any payment of the Delinquency Amount from the delinquent Railroad, Operator promptly shall forward such sums to the party who paid the Delinquency Amount to Operator.

21.2.3 In no event may Operator terminate this Agreement for a failure by any Railroad to pay any sums due Operator with respect to Carload Traffic, the Additional Port Rail Facilities, the Additional Rail Property or for other services provided to any Railroad or any other person pursuant to a separate agreement between Operator and the Railroad or other person in question.

21.3 Transfer of Rights After Termination. Upon any termination or expiration of this Agreement, Owner, in its sole discretion, shall have the right to require the transfer of all of Operator's rights hereunder and under the Related Agreements (other than the right to receive payments on account of periods prior to the assignment), on terms and conditions acceptable to Owner, to a replacement operator or operators designated by Owner. Upon such transfer Operator shall (a) assign all of its right, title and interest in and to this Agreement and the Related Agreements to such replacement operator(s); (b) immediately cease all activities on the Port Rail Facilities; and (c) remove, within 30 days (or 90 days under Section 24.2) after the termination of this Agreement, all trains and equipment owned by Operator from the Port Complex Area (except for such trains or equipment on which Owner has exercised its purchase option).

21.4 Purchase Option. Upon the expiration or any earlier termination of this Agreement, Owner shall have the option to acquire from Operator any or all of the equipment and material owned or leased by Operator and used in connection with its duties and obligations under this Agreement. The purchase price for any item owned by Operator shall be equal to the fair market value of the item on the date of termination of this Agreement, taking into account its then current condition, but deducting therefrom any liens or encumbrances thereon. If an item is leased by Operator, the fair market value shall be deemed to be equal to an assumption of the Operator's obligations under the lease remaining from and after the date the item is transferred to Owner (Operator shall be responsible for any lease obligations that accrue prior to such date), less the amount of any liens or encumbrances on such item. Owner's right to acquire any leased equipment shall be subject to obtaining any necessary consent from the lessor (Operator agrees to cooperate with Owner in seeking any such consent from equipment lessors).

Within 10 days after Owner's request, Operator shall give Owner a list of all equipment and materials that it owns or leases in connection with its operations under this Agreement, specifying whether each item is owned or leased, identifying the amount of all liens or encumbrances thereon and, in the case of leased equipment or materials, Operator shall deliver to Owner a copy of the lease agreement covering such item or items. Owner shall exercise this option, if at all, by delivering to Operator, within 30 days after the date Owner receives the equipment and materials list specified in the preceding sentence, written notice of Owner's intent to exercise the option, which notice shall identify the specific items to be acquired and Owner's estimation of the fair market value of the items. Within five days after receipt of said notice from Owner, Operator shall (i) accept in writing Owner's estimate of fair market value, whereupon Owner shall within twenty days of Operator's acceptance, pay to Operator the purchase price for the property and Operator shall concurrently deliver to Owner the property along with unencumbered title thereto; or (ii) reject in writing Owner's estimate of such fair market value and submit to Owner Operator's estimate of such fair market value, whereupon Owner shall, within five days after receipt of such notice from Operator elect to (a) accept Operator's estimate, (b) terminate their option to buy such property, or (c) submit the matter to binding arbitration in accordance with the following paragraph. Operator's failure to deliver a written rejection of Owner's estimate of fair market value within the five day period shall be deemed Operator's acceptance of Owner's estimate and an election to proceed under clause (i) above.

Within ten days after delivery by Owner of its election to proceed with binding arbitration, Owner and Operator shall jointly select an appraiser to determine the fair market value of the property to be acquired and the determination of such appraiser shall be binding upon Owner and Operator. If Owner and Operator

are unable to agree upon an appraiser, Owner shall select one appraiser and Operator shall select one appraiser to determine the fair market value of the property. The two appraisers shall make their respective determination in a writing delivered to Operator and Owner as soon as possible but in no event later than fifteen days after their respective appointments. If there is a difference in the fair market values determined by the two appraisers, but such difference is equal to or less than ten percent of the higher value, the average of the values shall be deemed to be the fair market value of the property. If the difference in the appraised values is greater than ten percent of the higher value, the appraisers shall, within ten days of delivery of the second appraisal, appoint in writing a third appraiser. If the two appraisers selected by Owner and Operator cannot agree upon a third appraiser within the ten day period, either may apply to the presiding judge of the Superior Court in Los Angeles County for the appointment of the third appraiser. The third appraiser shall, within ten days of appointment, select one of the original appraisals as more accurate, in the third appraiser's best professional judgment. The appraised value so designated shall be the fair market value for purposes of this Section and the party whose appraisal was not designated by the third arbitrator as the most accurate shall pay all costs of the appraisals obtained hereunder.

ARTICLE 22
INDEMNIFICATION AND LIABILITY

22.1 General Indemnity. To the maximum extent permitted by applicable law, Operator shall indemnify, defend (with counsel reasonably acceptable to the Owner Entities (as hereinafter defined)) and save harmless the City of Los Angeles, the Port of Los Angeles and its Board of Harbor Commissioners, and each of them, and their respective officers, directors, employees, commissioners, agents, successors and assigns (individually and collectively, the "Owner Entities", but excluding from such persons Operator and each of the Railroads and the respective agents and contractors of Operator and each Railroad), from and against any liabilities, losses, actions, penalties, demands, detriments, claims, damages, costs and judgments and all reasonable expenses incurred in connection therewith (collectively, "Losses") (including, without limitation, claims made under the Federal Employer's Liability Act, costs of investigation, attorneys' fees and costs, expenses of arbitration, trial or appeal, and judgments) which may result directly or indirectly from any act or omission of Operator or its affiliates or subsidiaries, or their respective employees, agents, representatives, contractors, invitees or licensees during the term hereof, including but not limited to Losses for (a) damage to property or injury to or death of any person which may result from Operator's activities or equipment or cargo transported by Operator while under the control of or while being transported by Operator, whether within or outside the Port

Complex Area, (b) a breach of the terms of this Agreement or any other agreement affecting or governing the Port Rail Facilities or the Rail Property (including, without limitation, the Related Agreements), or of any law, ordinance or regulation, or a failure by Operator to obtain or maintain in effect any license, permit, approval, franchise or other governmental approval required by law, or (c) the activities during the term hereof of Operator or its affiliates or subsidiaries, or their respective employees, agents, representatives, contractors, invitees or equipment, on or around the Port Complex Area or elsewhere, except to the extent any such Losses result directly from the negligence or willful misconduct of the Owner Entities. This provision shall survive termination of this Agreement.

22.2 Environmental Provisions and Indemnity.

22.2.1 Operator agrees that it shall not release, nor shall its affiliates, subsidiaries, nor its or their respective agents, employees, representatives, invitees or licensees release, any Hazardous Substances in, on or under the Port Complex Area or on any other property and shall comply, at no cost to Owner, with all Environmental Laws in connection with performance of its duties and obligations hereunder and its operations in the Port Complex Area, and shall cause its affiliates and subsidiaries, and its and their respective agents, employees and representatives, to comply with all Environmental Laws. Operator shall not, however, be in breach of this provision if the release is of a de minimis quantity of the Hazardous Substance in question, provided that Operator removes within a reasonable time the Hazardous Substances and repairs any damage caused by the release or its removal that was released. To the maximum extent permitted by law, Operator shall indemnify, defend (with counsel reasonably acceptable to the Owner Entities) and hold harmless the Owner Entities from and against any Environmental Losses arising out of a breach of any obligation under this Section 22.2.1 except to the extent such Environmental Losses result directly from the negligence or willful misconduct of Owner. This provision shall survive termination of this Agreement.

22.2.2 Operator shall promptly send copies to Owner of any material notice, information or request for information it receives from any governmental authority or third party with respect to Hazardous Substances on, in or under the Port Complex Area. For purposes of this Section, a notice shall be deemed material if it concerns an actual or alleged violation of any Environmental Law.

22.3 Owner's Indemnity for Certain Environmental Contamination. Owner shall indemnify, defend and hold harmless Operator and its officers, directors, shareholders, employees, agents, successors and assigns, from and against any and all Losses resulting from either (a) the presence of Hazardous Substances in, on, or under the Port Rail Facilities prior to the Commencement Date or (b) the migration of Hazardous Substances, onto or under the Port Rail Facilities after the Commencement Date and before termination hereof (excluding matters covered by Operator's indemnification in Section 22.2.1) except to the extent any such Losses result directly from the negligence or willful misconduct of Operator. This provision shall survive termination of this Agreement.

22.4 Owner's Indemnity for Certain Shipper Claims. If Owner disconnects or removes from service any Port Rail Facility during the term hereof that results in severing a rail shipper from access to rail transportation and as a result thereof such shipper names Operator as a defendant in a legal action or regulatory proceeding for damages, Owner shall indemnify, defend and hold harmless Operator and its officers, directors, shareholders, employees, agents, successors and assigns from and against all Losses resulting from such actions by Owner. This provision shall survive termination of this Agreement.

22.5 Notifications.

22.5.1 Demand. In the event that any claim, action, proceeding, investigation or demand shall be brought or threatened against any person entitled to indemnification hereunder (an "Indemnitee"), by reason of any matter requiring indemnification (an "Indemnified Matter"), Indemnitee shall give written notice thereof to the person required to make such indemnification (an "Indemnitor") which notice shall contain a reasonably detailed description of the event, occurrence or condition giving rise to the claim for indemnity and shall enclose a true copy of any and all documents served upon or received by Indemnitee.

22.5.2 Payment. In the event Indemnitee shall suffer or incur any Losses arising from or in connection with any Indemnified Matter, Indemnitor shall pay Indemnitee the total of such Losses suffered and incurred by Indemnitee within 90 days following demand therefor and delivery of an account of Losses suffered by Indemnitee and thereafter as such Losses are incurred and reported to Indemnitor by Indemnitee.

22.5.3 Overdue Rate. Any Losses required to be paid by Indemnitor to Indemnitee under this Agreement which are not paid within 90 days after demand therefor, shall be delinquent. In addition to all other rights and remedies of Indemnitee against Indemnitor provided herein, or under applicable law, Indemnitor shall pay to Indemnitee interest accrued on any delinquent payments

at the Overdue Rate (defined below) from the date such payment is due until paid. As used herein the "Overdue Rate" shall be equal to 10% per annum, but in no event shall the Overdue Rate be greater than the maximum rate of interest permitted to be contracted for by California law as of the date of demand.

22.5.4 Defense. Indemnitor shall at its own cost, expense, and risk: (a) defend Indemnitee in all suits, actions, or other legal or administrative proceedings that may be brought or instituted against an Indemnitee on account of any Indemnified Matter with counsel selected by Indemnitor and reasonably acceptable to Indemnitee; (b) pay and/or satisfy any judgment or decree that may be recorded against Indemnitee in any such suit, action, or other legal or administrative proceedings; and (c) reimburse Indemnitee for all Losses incurred by Indemnitee relating to or in connection with any such suit, action, or other legal or administrative proceedings.

22.5.5 Settlement. Notwithstanding anything in this Agreement to the contrary, Indemnitor shall not, without the prior written consent of Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any action, suit, proceeding, or claim relating, directly or indirectly, to any Indemnified Matter or consent to the entry of any judgment therein in excess of $100,000.

22.5.6 Joinder. Without limiting the rights of Indemnitee pursuant to Section 22.5.4 hereof, Indemnitee shall have the right to join and participate in, as a party if it so elects, any suits, actions, or other legal or administrative proceedings that may be brought or instituted against an Indemnitee on account of any Indemnified Matter. In any such case, Indemnitee may, at its own cost and expense, employ its own legal counsel and consultants to prosecute, negotiate, or defend any claim, action, or cause of action, provided that Indemnitee shall not, without the prior written consent of Indemnitor (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any action, suit, proceeding, or claim relating, directly or indirectly, to any Indemnified Matter or consent to the entry of any judgment therein in excess of $100,000.

22.6 Releases.

22.6.1 Except as provided in Section 22.3, to the maximum extent permitted by applicable law, Operator hereby expressly releases, remises and discharges forever Owner and the other Owner Entities from any and all liabilities, losses, actions, penalties, demands, detriments, claims, damages, costs or judgments which may have been or in the future may be incurred or suffered by Operator, or its property, caused or otherwise resulting from the condition or state of repair of, or any defects in, the Port Rail Facilities, the Rail Property, the Additional Port Rail Facilities,

the Additional Rail Property, the Terminal Facilities, the Terminal Rail Facilities and Pier A Yard.

22.6.2 Operator, after having read and been advised by legal counsel regarding the provisions of California Civil Code Section 1542 and in any and all similar statutes, rules and regulations and any other statute of the United States, hereby agrees, represents and warrants that the matters released in this Section 22.6 are not limited to the matters which are known or disclosed. California Civil Code Section 1542 reads as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING A RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

Operator hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and further agrees, represents and warrants that the releases contained in this Section 22.6 have been negotiated and agreed upon in light of that realization and that it nevertheless hereby intends to release and discharge Owner and the other Owner Entities from any such causes of action, claims, demands, controversies, damages, costs, losses and expenses.

Operator: PAG

22.7 Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

22.8 Interpretation.

22.8.1 Each of the parties hereto hereby agrees that this Agreement is not intended to be, and none shall construe it as, a contract or agreement covered by the provisions of California Civil Code Section 2784.5 (which Section concerns certain hauling, trucking or cartage contracts or agreements).

22.8.2 Operator hereby agrees that none of Operator, the Railroads or HBL is, and none is intended to be, the agent, servant or independent contractor of Owner, as such terms are used in California Civil Code Section 2782. In addition, Operator agrees that neither it nor any of its agents or representatives shall claim or assert that the negligence or wilful misconduct of Operator, any Railroad or HBL is or should be imputed to Owner under any agency or other legal theory.

22.8.3 Each of the parties hereby waives, to the extent permitted by applicable law, the provisions of California

Civil Code Section 2782 (which Section places limitations on indemnifications in certain construction contracts).

Owner: _____ Operator: RAG

ARTICLE 23
INSURANCE

23.1 Required Insurance. Operator shall maintain the following types of insurance with insurance carriers having a current A.M. Best rating of not less than A:VII, in the amounts provided for below and otherwise in form and substance acceptable to Owner:

23.1.1 General liability insurance in the amount of at least $25,000,000, on a claims basis, which shall provide coverage for personal injury, bodily injury, death, property damage, Federal Employers Liability Act liability and [bill of lading and foreign rolling stock liability], with respect to all operations of Operator, and which shall include blanket contractual coverage and specific coverage for the indemnity provisions set forth in Article 22;

23.1.2 Pollution liability insurance in the amount of at least $5,000,000, on a claims basis, which shall include specific coverage for the indemnity provisions set forth in Section 22.2;

23.1.3 Railroad protective liability insurance in the amount of at $5,000,000, on a claims basis, which shall provide coverage for liability arising from operations on and maintenance of the Port Rail Facilities;

23.1.4 Automobile liability insurance in the amount of at least $5,000,000, on a claims basis;

23.1.5 Federal employers liability insurance in amounts required by law but in no event less than $1,000,000 on a claims basis; and

23.1.6 Property insurance in an amount and in form acceptable to Owner which shall provide coverage for the indemnity provisions set forth in Article 22.

Owner acknowledges that the policies presented to Owner on the date hereof provide the coverage required under 23.1.3.

23.2 Owner as Additional Insured. Each policy of insurance obtained by Operator shall name Owner as an additional insured.

23.3 Insurance to be Primary. The insurance obtained pursuant to this Article shall be primary with respect to the obligations under this Agreement of Operator and with respect to the interests of all parties added as additional insureds and shall contain a waiver of subrogation clause. Any other insurance maintained by an additional insured shall be excess of this coverage herein defined as primary and shall not contribute with it. Any failure by Operator to comply with reporting or other provisions of the policies of insurance required hereunder, including breaches of warranties, shall not affect coverage to Owner.

23.4 Cancellation or Termination of Insurance. Unless otherwise agreed by Operator and Owner, the insurance required by this Article shall be maintained by Operator for the full term of this Agreement and shall not be permitted to expire or be cancelled or materially changed except upon 60 days' prior written notice to Owner. Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits except after 60 days' prior written notice has been given to Owner.

23.5 Verification of Insurance. Upon execution hereof, Operator shall deliver to Owner original endorsements to the insurance policies required hereunder on forms provided by Owner. Upon renewal of each required insurance policy, Operator shall promptly deliver to Owner original endorsements to such renewal policies on forms provided by Owner.

23.6 Failure to Maintain Insurance. A failure by Operator to maintain the insurance required by this Article shall be a default under this Agreement, but shall not relieve Operator of any of its liabilities or obligations under this Agreement. Furthermore, should Operator fail to maintain the insurance required by this Article, in addition to any of Owner's other remedies under this Agreement, at law or in equity, Owner may, at their sole option, purchase any or all of the insurance required by this Article and Operator shall, immediately upon demand therefor, reimburse Owner for the full cost of such insurance.

23.7 Adjustment of Limits. The policy limits set forth in this Article may be adjusted over time by Owner in Owner's reasonable discretion.

ARTICLE 24
CASUALTY

24.1 Owner Not Required to Repair. Owner shall have no obligation to any party hereto to repair or replace damage to the Port Rail Facilities caused by a Force Majeure Event unless insurance proceeds are available to make such repairs or replacement. In furtherance of the foregoing, Owner will be

entitled to immediately and unilaterally remove from service a Port Rail Facility, without liability to any party hereto, if it is damaged or destroyed as a result of a Force Majeure Event. In such event, Owner shall be responsible for (and shall pay all costs associated with) obtaining any governmental approvals or exemptions that may be necessary in connection with any such removal from service. Nothing in this Section 24.1 shall limit Owner's right to remove from service any Port Rail Facility damaged by a Force Majeure Event under Article 1, Article 2 or Section 24.2, regardless of the availability of insurance proceeds to make necessary repairs or replacements. In no event shall Owner have any liability to Operator for injury to persons or damage to any property other than the Port Rail Facilities resulting from a Force Majeure Event.

24.2 Termination. In the event Owner determines, in its sole and absolute discretion, that damage caused by a Force Majeure Event to all or any material portion of the Port Complex Area renders continuation of operations under this Agreement impracticable, and if such Owner determines not to repair or restore the affected portion of the Port Complex Area, such Owner shall be entitled, unilaterally, without liability therefor, to terminate this Agreement with respect to the entire Port Complex Area by written notice to Operator, with a copy to the Railroads, provided that such notice must be given within 120 days after the occurrence of the Force Majeure Event. In such event, Owner shall be responsible for obtaining any governmental approvals or exemptions that may be necessary in connection with any such removal from service. This Agreement shall be deemed terminated on the later of (a) the date on which such notice is delivered or (b) the date on which the regulatory approvals or exemptions necessary to terminate this Agreement have been obtained, provided that Operator shall have 90 days after the effective date of termination to wind up its affairs and to remove its property from the Port Rail Facilities.

ARTICLE 25
OUTSIDE ACTIVITIES

25.1 Activities at the Terminal Facilities. Operator may separately negotiate with tenants at the Terminal Facilities to perform rail maintenance and other services for such tenants so long as (a) any such agreements expressly provide that upon termination or expiration of this Agreement, Operator's rights and obligations under such agreements shall automatically terminate within 30 days after such termination (unless such agreements have been assigned to and accepted by a new operator designated by Owner), (b) such activities do not interfere with Operator's ability to perform its obligations hereunder, and (c) Operator engages in such activities in an impartial manner to avoid favoring one person (or its tenants or customers) over any other person or persons (or their respective tenants or customers).

25.2 Certain Acknowledgements. Operator acknowledges and agrees as follows:

25.2.1 the Terminal Rail Facilities are not part of the Port Rail Facilities for purposes of this Agreement or the Railroad Agreement and Owner has no responsibility to pay for or provide any maintenance thereof or any Capital Improvements thereto;

25.2.2 Owner has made no representations or warranties to Operator that the tenants or occupants of the Terminal Facilities will use Operator as, or consent to Operator as, the provider of any services or that Owner will make any effort to encourage such tenants to use Operator to provide such services; and

25.2.3 Owner is not responsible for the payment of any costs or expenses that Operator may incur in connection with the Terminal Facilities, including the Terminal Rail Facilities and Owner has no obligation to enforce any Railroads, or any other person, obligations, with respect to the Terminal Facilities or the Terminal Rail Facilities.

25.3 No Right to Use Port Rail Facilities for Customers Outside Port Complex Area. Operator shall not, without the prior written consent of Owner, use the Port Rail Facilities or any other portion of the Port Complex Area to provide services of any kind or character to areas or customers located outside of the Port Complex Area, whether such service or services are performed within or outside the Port Complex Area. Except as expressly prohibited herein, Owner hereby consents to the use of the Port Rail Facilities to process (but not store) Carload Traffic destined for terminals in the Port of Long Beach through Pier A Yard or the Replacement Railyard but only to the extent necessary to process such Carload Traffic through such yards. Owner hereby authorizes Operator to use the Avalon Team Track to serve rail customers of Operator. Operator acknowledges that the Avalon Team Track is leased to Owner pursuant to the Railroad Agreement and that Operator's rights to use the Avalon Team Track are subject to the terms of such lease. Notwithstanding any other provisions contained herein, Owner shall have no liability to Operator for removal of the Avalon Team Track from rail service.

ARTICLE 26
REPRESENTATIONS AND WARRANTIES

26.1 Representation and Warranties of Owner. Owner represents and warrants to Operator that it is fully authorized to enter into this Agreement and that this Agreement is binding and enforceable against it and its respective successors and assigns, in accordance with the terms of this Agreement.

26.2 Representations, Warranties and Covenants of Operator.

26.2.1 Operator represents and warrants to Owner that it is fully authorized to enter into this Agreement and that this Agreement is binding and enforceable against it and its respective successors and assigns, in accordance with the terms of this Agreement.

26.2.2 Quality Service. In performing its obligations hereunder, Operator shall use reasonable efforts throughout the term of this Agreement to provide quality rail service to existing and future tenants of Terminal Facilities and to other rail customers in the Port Complex Area.

ARTICLE 27
ARBITRATION

IN THE EVENT OF A CLAIM OR DISPUTE ARISING OUT OF THIS AGREEMENT, THE DISPUTING PARTIES SHALL MAKE GOOD FAITH EFFORTS TO RESOLVE THE DISPUTE THROUGH NEGOTIATION. FAILING A RESOLUTION OF THE DISPUTE OR CLAIM THROUGH THESE GOOD FAITH EFFORTS WITHIN 30 DAYS AFTER THE COMMENCEMENT OF THE DISPUTE OR CLAIM, ANY DISPUTING PARTY MAY SERVE UPON THE OTHER DISPUTING PARTIES WITHIN SIX MONTHS AFTER EXPIRATION OF THE 30-DAY PERIOD PROVIDED FOR IN THE PRECEDING SENTENCE, A WRITTEN DEMAND FOR ARBITRATION. THE DISPUTING PARTIES SHALL, WITHIN 15 DAYS THEREAFTER, OR WITHIN SUCH EXTENDED PERIOD AS THEY SHALL AGREE TO IN WRITING, ATTEMPT TO AGREE UPON A MUTUALLY SATISFACTORY ARBITRATOR EXPERIENCED IN RAILWAY BUSINESS AND MANAGEMENT. IF THEY ARE UNABLE TO AGREE, A NEUTRAL ARBITRATOR SHALL BE DESIGNATED PURSUANT TO SECTION 1281.6 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. SECTION 1283.05 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE IS SPECIFICALLY MADE APPLICABLE TO THIS AGREEMENT. THE ARBITRATOR SHALL GIVE EACH OF THE PARTIES HERETO TEN DAYS' PRIOR WRITTEN NOTICE OF THE TIME AND PLACE OF THE INITIAL HEARING AND SHALL PROCEED WITHOUT DELAY TO HEAR AND DETERMINE THE MATTERS IN SUCH DISPUTE. THE AWARD OF THE ARBITRATOR SHALL BE SUPPORTED BY LAW AND SUBSTANTIAL EVIDENCE AND MUST COMPLY WITH THE TERMS OF THIS AGREEMENT, AND FURTHER, THE ARBITRATOR SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE MAKING OF AN AWARD WHICH FAILS TO COMPLY WITH THE REQUIREMENTS OF THE IMMEDIATELY PRECEDING SENTENCE SHALL BE DEEMED TO BE IN EXCESS OF THE ARBITRATOR'S POWERS AND THE COURT SHALL VACATE THE AWARD IF, AFTER REVIEW, IT DETERMINES THAT THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED. IF THE AWARD COMPLIES WITH THIS SECTION, IT SHALL BE BINDING ON THE DISPUTING PARTIES SO LONG AS SUCH AWARD IS NOT IN EXCESS OF $50,000. AWARDS IN EXCESS OF $50,000 SHALL BE APPEALABLE TO THE SUPERIOR COURT IN AND FOR LOS ANGELES COUNTY FOR A TRIAL DE NOVO. ANY ARBITRATION PURSUANT TO THIS PROVISION SHALL BE CONDUCTED IN LOS ANGELES COUNTY, CALIFORNIA.

NO PERSON SHALL ACT AS A NEUTRAL ARBITRATOR WHO IN ANY WAY HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULTS OF THE ARBITRATION OR HAS ANY PAST OR PRESENT RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR COUNSEL. FAILURE TO DISCLOSE ANY SUCH INTEREST OR RELATION SHALL BE GROUNDS FOR VACATING THE AWARD.

THE EXPENSES AND FEES OF THE ARBITRATOR SHALL BE PAID IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1284.2 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. ANY AWARD BY THE ARBITRATOR SHALL INCLUDE REASONABLE ATTORNEYS' FEES TO THE PREVAILING PARTY.

OWNER: _____ OPERATOR: PAG

ARTICLE 28
NOTICES

All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or (b) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

Operator:
Pacific Harbor Line, Inc.
c/o Anacostia & Pacific
The Monadnock Building
53 West Jackson Boulevard
Chicago, Illinois 60604
Attention: Mr. Peter Gilbertson
Telecopy No.: (312) 362-1402
Confirmation No.: (312) 362-1888

With a copy to:
Pacific Harbor Line, Inc.
340 Water Street
Wilmington, California 90744
Attention: Mr. Andrew Fox
Telecopy No.: (310) 549-5320
Confirmation No.: (310) 549-5274

Owner:
Port of Los Angeles
425 South Palos Verdes Street
P.O. Box 151
San Pedro, California 90733
Attention: Executive Director
Telecopy No. 310-732-0291
Confirmation No. 310-732-3456

With a copy to:

Port of Los Angeles
425 South Palos Verdes Street
P.O. Box 151
San Pedro, California 90733
Attention: Chief Assistant City Attorney
Telecopy No. 310-831-9778
Confirmation No. 310-732-3750

Any party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other parties.

ARTICLE 29
DEFINITIONS

The following capitalized terms are used in this Agreement with the following meanings:

29.1 **Additional Port Rail Facilities** shall mean the Trackage and railyards generally depicted on Exhibit A as **"Additional Port Rail Facilities"**, as such facilities may be expanded or contracted in accordance with this Agreement. The term "Additional Port Rail Facilities" includes all rail-related systems and equipment and Trackage serving the Additional Port Rail Facilities, even if not located on the Additional Rail Property, excluding, however, the Port Rail Facilities.

29.2 **Additional Rail Property** shall mean the area (a) underlying the Additional Port Rail Facilities, (b) within a railyard included within the Additional Port Rail Facilities, or (c) within the operating clearance area of any Additional Port Rail Facility, provided, however, that if such Additional Port Rail Facility is located at a road crossing the Additional Rail Property shall be deemed to extend only to the area within 2 feet of the outermost rails (or, if greater, to the area required to be maintained under applicable law).

29.3 **Adjustment Date** shall have the meaning given such term in Section 5.2.

29.4 **Approved Train Control and Maintenance Plan** shall have the meaning given such term in Section 5.9.

29.5 **Assumed Agreements** shall have the meaning given such term in Section 1.3.

29.6 **Badger Avenue Bridge** shall mean the bridge identified as the Badger Avenue Bridge on Exhibit A.

29.7 **Base Fee** shall have the meaning given such term in Exhibit D to the Railroad Agreement.

29.8 **Capital Improvements** shall mean any additions, betterments and upgrades.

29.9 **Carload Switching Operations** shall have the meaning given such term in Section 6.1.

29.10 **Carload Traffic** shall mean all loaded freight cars and the corresponding empty movement (other than Unit Trains) and any other rail traffic interchanged or transferred between a Railroad and Operator.

29.11 **Charge** shall mean any mortgage, deed of trust, judgment lien or any mechanic's, materialman's or similar lien.

29.12 **City Council** shall have the meaning given such term in Article 4.

29.13 **Commencement Date** shall have the meaning given such term in Article 4.

29.14 **Conversion Fees** shall have the meaning given such term in Section 5.1.2.

29.15 **Dangerous Materials Cars** shall mean all freight cars (a) carrying Hazardous Substances or (b) which must show a placard pursuant to federal or state laws or regulations.

29.16 **Environmental Laws** shall mean any and all federal, state and local laws, statutes, ordinances, orders, regulations, plans, policies and decrees and the like now or hereafter in effect and applicable to the Port Complex Area which relate to (a) Hazardous Substances; (b) the generation, use, storage, transportation or disposal of Hazardous Substances or solid waste; or (c) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, and the rules, regulations and ordinances of applicable federal, state and local agencies and bureaus, as amended from time to time.

29.17 **Environmental Losses** shall mean all charges, losses, liabilities, damages, fees, demands, claims, proceedings, investigations, actions, judgments, causes of action, disbursements, monetary settlements, assessments, fines, penalties, costs and expenses incurred by Owner in connection with any investigation, characterization, defense of claims, clean-up, remediation, disposal or repairs arising out of or relating to the release of Hazardous Substances that results from, whether directly or indirectly, (a) the activities of Operator, its affiliates, subsidiaries, or their respective agents, representatives,

employees, contractors or invitees on, in, under or around the Port Complex Area or other areas from and after the date hereof.

29.18 **Existing Rail Operation Agreement** shall mean that certain Contract for Unified Operation of Railroad Facilities at Los Angeles Harbor between the Board of Harbor Commissioners of the City of Los Angeles, Southern Pacific Railroad Company, Southern Pacific Company, Pacific Electric Railway Company, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated as of February 1, 1928, as amended or supplemented to date.

29.19 **Extraordinary Replacements** shall have the meaning given such term in Section 12.5.

29.20 **Force Majeure Event** shall mean fire, earthquake, flood, mud slide, washout, storm, blockage, explosion, casualty, strike, riot, insurrection, civil disturbance, act of civil or military authority, act of public enemy, war or act of God. Force Majeure Events shall not include derailments unless the derailment resulted directly from one of the Force Majeure Events described in the preceding sentence.

29.21 **FRA** shall mean the Federal Railroad Administration.

29.22 **Hazardous Substances** shall mean (a) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "infectious waste", "biohazardous waste", "toxic substance", "pollutant" "toxic pollutant", "contaminant" and any other term or terms not mentioned herein intended to define, list, or classify substances by reason of properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "EP toxicity" or "TCLP toxicity"; (b) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (c) "hazardous materials" as defined in Section 2782.6(d) of the California Civil Code; (d) "waste" as defined in section 13050(d) of the California Water Code; (e) asbestos in any form; (f) urea formaldehyde foam insulation; (g) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs) above levels permitted by applicable law; and (h) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to

which is limited or regulated for health and safety reasons by any governmental authority.

29.23 **ICTF** shall mean the Intermodal Container Transfer Facility.

29.24 **Indemnitee** shall have the meaning given such term in Section 22.5.1.

29.25 **Indemnified Matter** shall have the meaning given such term in Section 22.5.1.

29.26 **Indemnitor** shall have the meaning given such term in Section 22.5.1.

29.27 **Interim Trackage** shall mean the Trackage designated as "Interim Trackage" on the map attached hereto as Exhibit A.

29.28 **Interchange Agreement** shall have the meaning given such term in Section 1.3.

29.29 **Local Service** shall have the meaning given such term in Section 5.7.

29.30 **Losses** shall mean liabilities, losses, causes of action, penalties, demands, detriments, claims, damages, costs and judgments and all expenses in incurred in connection therewith.

29.31 **Maintenance Fee** shall have the meaning given such term in Section 5.3.1.

29.32 **Monthly Dispatching Amount** shall have the meaning given such term in Section 5.4.2.

29.33 **Monthly Maintenance Amount** shall have the meaning given such term in Section 5.3.2.

29.34 **Operator Railyard Fee** shall have the meaning given such term in Exhibit I to this Agreement.

29.35 **Overdue Rate** shall have the meaning given such term in Section 22.5.3.

29.36 **Owner Entities** shall have the meaning given such term in Section 22.1.

29.37 **Pier A Yard** means the area generally depicted on Exhibit A as, and commonly known as, "Pier A Yard" including the Port Rail Facilities and the Pier A Yard Structures located within such area.

29.38 **Pier A Yard Structures** shall have the meaning given such term in Section 2.1.

29.39 **Plans and Specifications** shall have the meaning given such term in Section 2.2.

29.40 **Port** shall have the meaning given such term in the Recitals.

29.41 **Port Complex Area** shall mean the area generally depicted on Exhibit A, but shall exclude the Port of Long Beach. If Owner constructs piers, docks and wharves in areas or acquires other Property adjacent to the then current Port Complex Area, such areas will, at Owner's election, become part of the Port Complex Area hereunder. As used herein, unless expressly excluded, the term "Port Complex Area" includes the Port Rail Facilities, the Rail Property, the Additional Port Rail Facilities, the Additional Rail Property, the Terminal Facilities, the Terminal Rail Facilities and all other portions of Pier A Yard.

29.42 **Port Rail Facilities** shall mean the Trackage generally depicted on Exhibit A as "Port Rail Facilities", as such facilities may be expanded or contracted in accordance with this Agreement. The term "Port Rail Facilities" includes all rail-related systems and equipment and Trackage serving the Port Rail Facilities, even if not located on the Rail Property, excluding, however, the Additional Port Rail Facilities and the Terminal Rail Facilities. The Port Rail Facilities includes the Trackage known as the "Avalon Team Track," which is owned by a Railroad.

29.43 **RCAF** shall have the meaning given such term in Section 5.2.

29.44 **Rail Property** shall mean the area (a) underlying the Port Rail Facilities, (b) within a railyard included within the Port Rail Facilities, or (c) within the operating clearance area of any Port Rail Facility, provided, however, that if such Port Rail Facility is located at a road crossing the Rail Property shall be deemed to extend only to the area within 2 feet of the outermost rails (or, if greater, to the area required to be maintained under applicable law).

29.45 **Railcar** shall mean each separate railcar, provided that each platform of an articulated cars for doublestacks or trailers shall receive one car count for each platform; articulated cars that are not capable of double-stack operation, other than trailers, shall receive one-half car count for each platform.

29.46 **Railroad Agreement** shall have the meaning given such term in Section 1.3.

29.47 **Railroad Oversight Committee** shall have the meaning given such term in Section 19.1.

29.48 **Related Agreements** shall mean the Railroad Agreement and all other agreements entered into between Operator and the Railroads, Owner, or any tenant at the Port Complex Area, relating to this Agreement or operations in the Port Complex Area.

29.49 **Replacement Railyard** shall have the meaning given such term in Section 2.2.

29.50 **STB** shall have the meaning given such term in Section 5.2.

29.51 **Special Requirements Traffic** shall have the meaning given such term in Section 5.1.1.

29.52 **Switching Charge** shall have the meaning given such term in Section 5.1.

29.53 **Tax** shall have the meaning given such term in Section 5.5.

29.54 **Terminal Facilities** shall mean any areas owned by Owner in the Port Complex Area and leased or licensed by Owner, now or in the future, to a tenant or other non-railroad occupant other than Operator.

29.55 **Terminal Rail Facilities** shall mean all Trackage located in Terminal Facilities other than the Additional Port Rail Facilities. As of the date hereof, the Terminal Rail Facilities are those depicted as such on the map attached hereto as Exhibit A.

29.56 **Trackage** shall mean all present and future railroad related improvements, systems or equipment, including, but not limited to all tracks (including main line tracks, spur tracks, lead tracks, passing tracks, yard tracks and industry tracks) and related facilities (including rails and fastenings, switches, frogs, bumpers, ties, ballast, signaling devices and systems, interlocking devices and plants, crossing warning devices, crossing surfaces, pole lines and communication facilities and equipment), and all track support structures and related facilities (including roadbed, embankments, bridges, dikes, pavement, culverts, tunnels, drainage systems and, maintenance, access and service roads). The term "Trackage" shall include any tracks located on wharfs, piers and docks, but shall exclude the underlying wharfs, piers and docks.

29.57 **Traffic Year** shall mean each twelve month period commencing on January 1 and ending on December 31 during the term hereof; provided that the First Traffic Year of the term hereof shall commence on the Commencement Date and end on December 31, 1998 and the last Traffic Year of the term hereof shall commence on January 1 of the last year of the term hereof and end on the last day of the term hereof.

29.58 **Train** shall mean one or more freight trains, locomotives, cabooses, railroad cars, track and maintenance equipment , track inspection equipment, and all other rail-related machines and equipment.

29.59 **Transfer Yard** shall mean the yard described as the "Transfer Yard" on Exhibit A.

29.60 **Unit Train** shall mean (a) any Train handling containers, trailers, bulk commodities or steel slabs or empty equipment for such traffic, operated by a crew of a Railroad to or from any facility for handling containers or trailers, bulk commodities or steel slabs; or to or from Berth 142, 143 (Pasha), LAXT, Berth 49, or any successor, replacement, or new bulk or intermodal facilities or storage tracks constructed on property owned by Owner in the Port Complex Area; (b) any movement of empty equipment to/from such intermodal or bulk facilities, or any movements between such facilities, interchange points or storage or staging yards owned by Owner within the Port Complex Area; (c) any Train handled from a rail line outside the Port Complex Area to another rail line outside the Port Complex Area, without the setting out or picking up of any cars within the Port Complex Area (except cars falling within clauses (a), (b) or (d) of this Section 29.60); (d) any loaded freight car(s) that a Railroad determines in its reasonable discretion is time-sensitive and must be handled by Railroad, and not interchanged to Operator, in order to meet the requirements of the shipper/receiver.

ARTICLE 30
MISCELLANEOUS

30.1 Severability. Each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law to the fullest extent possible. In the event, however, that any provision contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, then, in order to effect the purposes of this Agreement it shall be construed as if such provision had never been contained herein.

30.2 Assignment; Agreement Binding on Successors and Assigns.

30.2.1 Assignment.

30.2.1.1 Owner may assign all or a portion of this Agreement, and its rights and obligations hereunder, to an entity in which Owner is a member (including, without limitation, a joint powers authority) and which acquires all of the Port Rail Facilities.

30.2.1.2 Operator may not assign its duties and obligations under this Agreement without the prior written consent of Owner which consent may be given or withheld in the sole discretion of Owner. Notwithstanding the preceding sentence, Operator may employ subcontractors to perform specific duties of Operator hereunder under a subcontract entered into in the normal course solely for performance of some, but not all, of Operator's duties hereunder.

30.2.2 Binding Agreement. Subject to the restrictions on assignment set forth in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of Operator, Owner, the Railroads and their respective successors and assigns.

30.3 Amendments. No modifications, amendments or changes herein or hereof shall be binding upon any party unless set forth in a document, duly executed and delivered by all parties. No provision of this Agreement shall be altered, amended, revoked or waived except by and instrument in writing signed by the party to be charged with such alteration, amendment, revocation or waiver.

30.4 Recordation and Termination. Without the prior written consent of all parties hereto, no party may record this Agreement. Upon termination of the rights granted to Operator hereunder, Operator shall execute, acknowledge and deliver to Owner a copy of any appropriate instrument or instruments evidencing the termination.

30.5 Attorneys' Fees. In any action brought to declare the rights granted herein or to enforce the provisions of any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees, costs and expenses (including fees for services rendered by a party's internal or staff counsel) both at trial and in connection with any appeal, in any amount determined by the court or arbitrator. The provisions of this Section shall survive the entry of any judgment.

30.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except have additional signature pages executed by other parties to this Agreement attached thereto.

30.7 Relationship of Owner, Operator and the Railroads. Notwithstanding anything to the contrary contained herein, neither this Agreement nor any of the Related Agreements shall be deemed or construed to make Owner, Operator and the Railroads partners or

joint venturers, or to render one liable for any of the debts or obligations of the any other unless expressly so provided in this Agreement.

30.8 No Third Party Beneficiaries. It is the intent of each party to this Agreement that each provision of this Agreement inure only to the benefit of the parties hereto, and their permitted successors and assignees and the Railroads, and shall not inure to the benefit of any other person or entity (including, without limitation, any governmental or quasi-governmental agency or authority). Operator acknowledges that the Railroads are express third party beneficiaries of this Agreement and that the Railroads, together or individually, may sue Operator directly for any breach of this Agreement.

30.9 Effect of Agreement. All negotiations relative to the matters contemplated by this Agreement (including, without limitation, negotiations of matters described in that certain Request for Proposal issued by Owner and the City of Long Beach acting by and through its Board of Harbor Commissioners) are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Agreement or agreements expressly referenced in this Agreement or the documents executed in connection herewith.

30.10 Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

30.11 Time of Essence. Time is of the essence of this Agreement and of all parts hereof.

30.12 Governing Law; Forum.

30.12.1 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.

30.12.2 EXCEPT FOR MATTERS SUBMITTED TO ARBITRATION IN ACCORDANCE WITH ARTICLE 27, THE PARTIES HERETO AGREE THAT ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS RELATED TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY MUST BE BROUGHT, FILED, PROSECUTED AND DEFENDED IN EITHER THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES OR THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

30.13 Incorporation of Exhibits. The exhibits attached hereto are incorporated herein by reference.

30.14 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Sections" or "Articles" are to Sections or Articles of this Agreement and references to "Exhibits" are to Exhibits attached hereto, unless otherwise specifically provided.

30.15 No Relocation Assistance. Operator understands and agrees that nothing contained in this Agreement shall create any right in Operator for relocation assistance or payment upon expiration or termination of this Agreement. Operator acknowledges and agrees that it shall not be entitled to 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.) or any similar statute with respect to any relocation of its business or activities upon the expiration or termination of this Agreement. In consideration of the rights given Operator under this Agreement, Operator expressly waives any relocation assistance which such statutes or any future statutes may allow.

30.16 Non-discrimination. Operator agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, disability, sexual orientation, AIDS, HIV status, physical handicap or Vietnam era veteran status. All assignments and transfers of interest permitted hereunder in this Agreement under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the Exhibit F attached hereto are incorporated herein by reference.

30.17 Minority Business Enterprise/Women Business Enterprise. Operator is aware of the Los Angeles Harbor Department's Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Policy (hereinafter "Policy"). Operator shall comply with Owner's Policy for any construction it undertakes on the Port Rail Facilities. Any construction contracts and permitted assignments by Operator involving the Port Rail Facilities shall include the Owner's MBE/WBE policy, set forth in Exhibit G attached hereto.

Operator acknowledges that Owner reserves the right to amend or modify the Policy from time to time. Any such amendment or modification to the Policy shall be binding on Operator from the

date Owner approves such changes at a public meeting after notice and an opportunity to be heard thereon. Any contracts entered into by Operator relating to this Agreement prior to Owner approval of changes to the Policy shall not be affected by such changes.

30.18 Conflict of Interest. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any public officer of employee of the City of Los Angeles or the City of Long Beach relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial or economic interest does exist at the inception of this Agreement, Owner may immediately terminate this Agreement without payment of any termination fee or any other liability therefor by giving written notice thereof. Any termination fee which would otherwise be payable hereunder shall be paid by the party who failed to disclose the financial or economic interest.

30.19 Further Assurances. Each party shall execute all such instruments and documents and shall take in good faith all such actions as are reasonably necessary to carry out the provisions of this Agreement.

30.20 Alameda Corridor.

30.20.1 Operator acknowledges that Owner has not committed to commence or complete all or any portion of the rail infrastructure project commonly known as the "Alameda Corridor" and Operator further acknowledges that neither Owner nor any Railroad has in any manner committed to engage Operator as the operator for the Alameda Corridor in the event the project or any portion thereof is completed; provided, however, that nothing contained herein shall prevent Operator from submitting a proposal to act as operator for the Alameda Corridor.

30.20.2 Operator acknowledges that in order to facilitate the financing, construction and/or operation of the Alameda Corridor, it may be necessary or desirable for Owner to modify the boundaries of the Port Rail Facilities hereunder to reduce or eliminate any overlap or gap between the facilities covered by this Agreement and the facilities covered by the Alameda Corridor agreements. Such modification also may consist of modifying some, but not all, of Operator's specific functions under this Agreement with respect to areas of an overlap or gap between the Alameda Corridor and this Agreement (e.g., a reduction in the area covered by Operator's dispatching obligations, but not its other obligations). In addition, Operator's maintenance and/or dispatching functions may be terminated by Owner and instead provided by the entity(s) providing such services for the Alameda Corridor. If any such modifications are to be made by Owner, Owner

shall give Operator at least 90 days prior written notice thereof, listing the specific functions and Port Rail Facilities affected by the modification. Nothing in this Section shall, however, affect (a) Operator's right to perform Carload Switching Operations or other services for Ports and Port tenants for the Railroads or for occupants of the Port Complex Area, or (b) Operator's rights under its separate agreements with the Railroads regarding interchange of Railcars at the yards specified in such interchange agreements.

30.20.3 Operator acknowledges that upon commencement of operation on the Alameda Corridor, Operator's activities on the Alameda Corridor shall be subject to the Alameda Corridor's operating orders, rules and procedures, including without limitation, dispatching priorities and procedures.

30.21 Persons Authorized to Act as Owner. The Executive Director and all persons designated by the Executive Director of Owner, in writing, to act as Owner shall be entitled, acting alone, to exercise all rights and remedies of Owner hereunder except the following rights which shall be exercised only by the Board of Harbor Commissioners of the City of Los Angeles: the rights to amend this Agreement (other than the amendments described in the following sentence), to remove Pier A Yard from rail service and to approve Capital Improvements or modifications to the Port Rail Facilities involving more than 20,000 square feet of land area and 6000 lineal feet of Trackage or more. The Executive Director of Owner and all persons designated in writing by the Executive Director to act as Owner, acting alone, shall be entitled to amend Exhibits A, B, C, D, E and K of this Agreement and to execute any amendments to this Agreement affecting 20,000 square feet of land area or 6000 lineal feet of Trackage or less.

30.22 Use for Tideland Purposes. This Agreement and Operator's rights hereunder are subject to the limitations, conditions, restrictions and reservations of the Tidelands Act, Stats. 1929, Ch. 651, as amended and/or reenacted, and the Charter of Owner relating to such lands, including, without limitation, Article XI of the Charter.

30.23 Transfer to Operator of Certain Regulatory Obligations. To the maximum extent legally possible, Owner intends to transfer to Operator any maintenance, inspection and repair obligations that Owner may have under applicable federal or state regulations with respect to any Trackage or rail operations with the Port Complex Area, including, without limitation, the requirements contained in 49 C.F.R. § 213.5. Operator agrees to accept such transfer and to fully cooperate with Owner in the preparation and filing of any necessary applications with respect thereto. Upon any termination of this Agreement, Operator will execute such documents and instruments as may be necessary to transfer such responsibilities to another party designated by Owner.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it as of this day and year first above written.

"Operator"

PACIFIC HARBOR LINE, INC.,
a California corporation

By: _____
Name: PETER A. GILBERTSON
Title: CHAIRMAN / CEO

"Owner"

CITY OF LOS ANGELES, acting by and through the Board of Harbor Commissioners of the ~~Port~~ of Los Angeles

By: _____
Executive Director
Los Angeles Harbor Department

Date: Feb. 6, 1997

Attest:
Audrey H. Yamaki
Acting Commission Secretary
Los Angeles Harbor Dept.

Approved as to form this ____ day of _____, 1997.

JAMES K. HAHN, City Attorney

By: _____
Assistant/Deputy