

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE NO. 4345

PORT OF OAKLAND ENVIRONMENTAL ORDINANCE.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 5.1, dated July 23, 2015 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment;

WHEREAS, that acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda material and in testimony received;

WHEREAS, pursuant to Article VII of the Charter of the City of Oakland, the Board has been vested with the exclusive control and management of the Port Department and it shall be its duty to adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration and discharge of its duties and powers, or for the management and government of the Port, and its facilities; now, therefore,

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

- A. The Board hereby finds and determines that in accordance with the requirements of the California Environmental Quality ("CEQA") Guidelines and the Port CEQA Guidelines, general policy and procedure making, such as adoption of this Port Environmental Ordinance, is not a project pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378(b)(2), so no environmental review is required.

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Section 1. Purpose, Intent and Applicability.

The purpose and intent of this Environmental Ordinance ("Ordinance") is to:

- (a) promote the health, safety, and general welfare of citizens;
- (b) protect and enhance the environmental quality of Port property and the San Francisco Bay; and
- (c) support implementation and administration of the Port's environmental programs.

This Ordinance applies to all Accessing Parties.

Section 2. Definitions.

For purposes of this Ordinance, each of the capitalized terms used in this Ordinance, whether in the singular or plural, past or present tense, shall have the meanings specified in this Section 2.

- (a) "Accessing Party" or "Accessing Parties" means any Person or Persons who are accessing any Port property, with or without an Agreement, including any Person or Persons who cause or allow Toxic Materials to come onto the Premises or other Port property.
- (b) "Action" means (i) any verbal or written claim or notice of a claim by a Governmental Authority or any Third Party, (ii) any demand, legal action, arbitration, mediation, proceeding or lawsuit, whether threatened or filed, and (iii) any demand, judgment, order, settlement or compromise, relating to the matters described in Section 2(b)(i) through (iii).
- (c) "Affiliate" means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such specified Person.
- (d) "Agreement" means any agreement between a Person and the Port to occupy or use any Port property, including any assignment, lease, license and concession agreement, right of entry agreement, easement, space/use permit and space assignment.
- (e) "AST" means an above-ground storage tank.
- (f) "Authorization" means any determination, approval, authorization, consent, waiver, variance, exemption,

or permit of any Person that applies to all or any part of the Premises or Operations.

- (g) "Board" means the Board of Port Commissioners of the City.
- (h) "Business Day" means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday, non-operating day, or non-working day by either the Port, the State of California or the United States government.
- (i) "CEQA" means the California Environmental Quality Act as enacted under California Public Resources Code Section 21000, *et seq.* and Port CEQA guidelines, as applicable.
- (j) "City" means the City of Oakland.
- (k) "Clean-Up Standard" means the level of Response Action required by the Governmental Authority having jurisdiction over certain Toxic Materials or Response Action, as more fully described in Section 8.
- (l) "Closure Activities" means any and all activities required to be taken pursuant to Section 10, and applicable Environmental Laws, in order to complete all Response Actions for which any Accessing Party has responsibility under any Agreement or this Ordinance.
- (m) "Closure Plan" means the closure plan for conducting Closure Activities as set forth in Section 10(a).
- (n) "Construction Activities" means and includes all activities in the Premises or other Port property involving physical change to, or construction of, structures, equipment or other features, or involving disturbance of soil.
- (o) "Contamination" means Toxic Materials contamination of the Environment, the Premises or Improvements in, on or under the Premises.
- (p) "Costs" or "fees and costs" means all costs (including fully burdened in-house costs plus overhead and indirect costs) and expenses of any kind, as actually incurred by the Party in question, without discount or deductions.
- (q) "Director" means the Port's Executive Director and his/her designated Representatives.

- (r) "Effective Date" means the date an Agreement becomes effective.
- (s) "Environment" means the natural environmental ecosystem, with a primary focus on land, water and air, including soil; soil vapor; surface waters; groundwaters; land; tidelands; wetlands; surface water drainages; stream, ocean and bay sediments; surface or subsurface strata; habitat; ambient air; and indoor air.
- (t) "Environmental Audit" means the audit, inspection, and testing of the Premises and Operations to determine whether the Premises and Operations comply with this Ordinance and whether there has been any Release or Contamination caused by the Operations.
- (u) "Environmental Indemnification Obligation" means the obligation of any Accessing Party to indemnify, protect, defend, and hold harmless the Indemnitees as said obligation is more fully described in Section 7, below.
- (v) "Environmental Laws" means all Laws adopted, approved, issued, promulgated or enacted by any Governmental Authority in any way relating to or regulating: (i) human health, safety, waste diversion, recycling, waste reduction, energy efficiency and industrial hygiene; (ii) the Environment, environmental impacts and pollution or contamination of the Environment, structures, or subsurface structures; (iii) Toxic Materials; (iv) global warming or generation of greenhouse gases; or (v) noise or light pollution.
- (w) "Future Agreement" shall mean an Agreement duly approved and executed by the Port that became effective after the effective date of this Ordinance.
- (x) "Governmental Authority" means any court, federal, state or local government, department, commission, board, bureau, agency including the Port or other regulatory, administrative, governmental or quasi-governmental authority, including any successor agency.
- (y) "H&S Code" means The California Health and Safety Code.
- (z) "Improvements" means all existing and new, interior and exterior, load-bearing and non-load-bearing, fixtures, buildings, structures, alterations, improvements, or grade change of the Premises, and all substitutions, upgrades or replacements thereto.

- (aa) "Indemnitees" means, in reference to any Environmental Indemnification Obligations, the Port, the Port's Representatives, and Port-designated secondary users of the Premises.
- (bb) "Law" means any resolution, order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, plan, program, permit, statute, code, rule, regulation or CEQA or NEPA decision documents adopted, approved, issued, promulgated or enacted by a Governmental Authority or other authority with oversight of environmental matters, including any such Law adopted, issued, promulgated or enacted subsequent to the Effective Date, as the same may be modified, amended, or reissued.
- (cc) "Loss" or "Losses" means, with respect to any Person, any loss, liability, damage, penalty, charge, or out-of-pocket and documented cost or expense actually suffered or incurred by such Person (including in-house and outside attorneys' fees), but excluding any special, indirect, punitive, and consequential damages.
- (dd) "NEPA" means the National Environmental Policy Act, as set forth at 42 U.S. Code Section 4321, et seq.
- (ee) "NOP" means a Notice of Penalty, as further described in Section 14(c).
- (ff) "NOV" means a Notice of Violation, as further described in Section 14(a).
- (gg) "Operations" means all activities, including any Improvements, Construction Activities, and Response Actions, in the Premises that are performed by, or on behalf of, any Person.
- (hh) "Ordinance" means this Port of Oakland Environmental Ordinance, as may be amended from time to time.
- (ii) "Party" means a party to any Agreement and "Parties" means all of them.
- (jj) "Person" means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), company, corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association, or other entity.
- (kk) "Port" means the City of Oakland, a municipal corporation, acting by and through its Board of Port

Commissioners and is commonly referred to as the "Port of Oakland" or the "Port Department of the City of Oakland".

- (ll) "Port Attorney" means the Port's lead attorney and his/her designated Representatives.
- (mm) "Premises" means the real property and any and all Improvements and equipment located in, on or under the land that an Accessing Party is occupying or accessing.
- (nn) "Prior Non-Tenancy Agreement" shall mean an Agreement other than a Tenancy Agreement duly approved and executed by the Port that became effective prior to the effective date of this Ordinance.
- (oo) "Prior Tenancy Agreement" shall mean a Tenancy Agreement duly approved and executed by the Port that became effective prior to the effective date of this Ordinance.
- (pp) "Project" means any activity as defined under CEQA or NEPA.
- (qq) "Protest" means a request for review of an NOV or an NOP submitted to the Port in accordance with Section 16 of this Ordinance.
- (rr) "Protest Officer" means the individual(s) authorized by the Director to review a Protest of an NOV or NOP, and affirm, modify or reverse any aspect of the NOV or NOP in accordance with Section 16.
- (ss) "Release" means any release, emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Toxic Materials into the Environment.
- (tt) "Representative" means, with respect to any Person, any Board member, director, officer, employee, partner, member, owner, agent, contractor, sub-contractor, sub-lessees, customers, or other Person for whom such Person is at law responsible or other representative of such Person designated by such Person as its "Representative."
- (uu) "Response Action" means all activities related to the inspection, investigation, testing, treatment, clean-up, removal, disposal, or monitoring of Toxic Materials; the preparation and implementation of any plans related to Contamination or a Release; the demolition, reconstruction or construction of any subsurface or surface structures to implement the

Response Action; the restoration of the Premises after the completion of the Response Action; and the Costs associated with any such Response Action.

- (vv) "Scheduled Termination Date" means the scheduled date for completion of Closure Activities as described in Section 10.
- (ww) "Storage Tanks" means USTs, ASTs, or any other equipment used to store, deliver, or process Toxic Materials.
- (xx) "Storm Water Ordinance" means the Port of Oakland Storm Water Ordinance, No. 4311, adopted by the Board on January 15, 2015, and that became effective on April 1, 2015, and any amendments thereto.
- (yy) "Tenancy Agreement" shall mean an Agreement between an Accessing Party and the Port pursuant to which the Accessing Party is granted use of a portion of the Premises for a Term.
- (zz) "Term" has the meaning ascribed thereto in any Agreement, as applicable.
- (aaa) "Third Party" means anyone (including a Governmental Authority, except in cases where the Port is acting as the Governmental Authority) other than an Accessing Party, the Port, any Accessing Party's Representatives, the Port Representatives, or any of their Affiliates.
- (bbb) "Toxic Materials" means: (i) explosives, asbestos, corrosive, or ignitable substances, reactive or radioactive materials, hazardous wastes, sewage, infectious substances, toxic substances or related hazardous materials; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) air pollutants, noxious fumes, vapors, soot, smoke or other airborne contaminants; and (iv) substances that now, or in the future, are defined by Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "contaminants," "reproductive toxins," "carcinogens," or "toxic substances," or are otherwise regulated under Environmental Laws.
- (ccc) "UST" means an underground storage tank.

Section 3. General Prohibitions.

- (a) Storage Tanks. No Accessing Party shall cause or permit the installation, operation, or removal of any Storage Tank on

the Premises or other Port property without the prior written consent of the Port, which approval may be given, conditioned, or withheld at the Port's sole discretion. Any such installation, operation, or removal shall be subject to all of the other applicable provisions of Authorizations from the Port (including obtaining a permit issued by the Board), any Agreement and this Ordinance. Such Accessing Party shall have the sole responsibility to comply with all Environmental Laws concerning Storage Tanks if the Accessing Party, the Accessing Party's Affiliates, predecessors, parent or subsidiaries or Accessing Party Representatives, as set forth herein, installed, used, operated, repaired, maintained or removed such Storage Tanks, even if such Storage Tanks were installed, owned, or permitted by the Port or other Third Party.

(b) Response Action. No Accessing Party shall conduct or permit any Response Action on the Premises without the Port's prior written approval except in the event of an emergency.

Section 4. Compliance With Environmental Laws.

An Accessing Party shall comply, at its sole cost and expense, with all Environmental Laws relating to its Operations, or its occupancy, use, or development of the Premises. Such compliance shall include such Accessing Party's obtaining, maintaining, and complying with the terms and conditions of all applicable Authorizations necessary for its Operations.

Section 5. Third Party Enforcement.

An Accessing Party shall immediately notify the Port of any actual or threatened Action under any Environmental Laws initiated by any Third Party originating from, or associated with, Operations or the Premises and shall promptly deliver, in accordance with Section 9, a copy of each and every notice, order or other document alleging noncompliance, received by the Accessing Party from any Third Party. In the event Action under any Environmental Laws is threatened or taken against the Port concerning an Accessing Party's operation, use, occupancy or redevelopment of the Premises, such Accessing Party shall fully cooperate with the Port in responding to such Action under any Environmental Laws.

Section 6. Entry, Inspection and Oversight.

(a) Port's Entry and Inspection Rights. The Port and authorized Port Representatives, shall have the right, but not the obligation, to enter the Premises at any reasonable time to:

(i) confirm an Accessing Party's compliance, and an Accessing Party's Representatives' compliance, with the provisions of this Ordinance; and

(ii) perform the Port's rights and obligations under this Ordinance, or as required by Environmental Laws or Governmental Authorities.

(b) Port's Costs. All Costs incurred by the Port in determining and overseeing an Accessing Party's and Accessing Party's Representatives' compliance with this Ordinance shall be reimbursed by the Accessing Party.

(c) Environmental Audit. The Port shall have the right, but not the obligation, to require bi-annually during the Term of a Tenancy Agreement, within thirty (30) Business Days after the end of the Term of such Tenancy Agreement, and at any other time reasonably necessary to address or respond to an emergency, that an Environmental Audit be conducted, at the Accessing Party's sole expense. The Environmental Audit shall be conducted by independent, qualified, licensed environmental consultants selected by the Port.

Section 7. Limitation of Liability and Indemnity.

(a) Limitation of Liability. Neither the Port, nor any officer, employee, or Board member thereof, shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by an Accessing Party or an Accessing Party's Representatives arising from or relating to (1) Environmental Laws, (2) any Response Actions, or (3) Toxic Materials at, on, or under the Premises.

(b) Environmental Indemnification Obligation. An Accessing Party shall be solely responsible for and shall fully indemnify, protect, defend (with counsel approved by the Port), and hold harmless the Indemnitees from and against any and all Actions and Losses of every name, kind, and description, that arise during or after the period of access to Port property as a result of: (i) the failure or alleged failure of the Accessing Party or Accessing Party's Representatives to comply with Environmental Laws related to the Premises, Operations, or the terms of this Ordinance; (ii) a Release by the Accessing Party or Accessing Party's Representatives related to the Premises including any residual Toxic Materials left in place after remediation of a Release; (iii) obligations the Accessing Party or Accessing Party's Representatives have for Contamination, as described in Section 8 below; or (iv) any CEQA challenge related to the Accessing Party's or the Accessing Party's Representatives' Improvements, Operations, use of the Premises, or Project. The requirements of this Section 7 shall apply unless the Parties have otherwise agreed to alternate indemnity requirements under an applicable Agreement.

(c) Notice; Defense of Action. If the Port receives a notice of any Action subject to the Environmental Indemnification Obligation, the Port shall, within a reasonable time, give notice to all affected Accessing Parties; however, the failure to do so shall not relieve any Accessing Party of any liability it may have to the

Port under this Ordinance. Upon receipt of such notice, the Accessing Party shall accept tender of defense of the Environmental Indemnification Obligation, except to the extent the Port's failure to give notice substantially prejudices such Accessing Party's ability to defend the Action. The Port and Accessing Party shall cooperate with each other in the defense of such Environmental Indemnification Obligation, including the tendering of claims to appropriate insurance carriers or other Third Parties for defense and indemnity.

(d) Settlements. No compromise or settlement of any Environmental Indemnification Obligation affecting the Premises may be entered into by any Accessing Party without the Port's prior written consent, provided that such Port consent shall not constitute any release or waiver by the Port of any obligation of a Person or Persons or right of the Port under this Ordinance.

(e) Right to Defend. With respect to Actions brought by a Third Party and to any Environmental Indemnification Obligation which may materially and adversely affect the Port in the Port's reasonable discretion, the Port may, by notice to any Accessing Party, assume the exclusive right to defend, compromise, or settle such Action without prejudice to its rights to indemnification hereunder. In such case, the Accessing Party shall be responsible for payment and reimbursement of all Costs incurred by the Port. The defense of an Action shall be deemed to include pre-litigation defense costs, defensive cross complaint Costs, the response to any request, directive or order by a Governmental Authority, and the Costs associated with tendering claims to, and pursuing coverage from, insurance carriers for defense and indemnity.

Section 8. Responsibility for Toxic Materials.

(a) Existing Management Plans. The Accessing Party shall be responsible for compliance with existing management plans impacting the Premises and shall provide the Port access, without limitation, to the Premises for purposes of sampling, management, inspections and maintenance of monitoring wells and environmental caps.

(b) Accessing Party's Obligations for Releases and Contamination. An Accessing Party shall be responsible for undertaking and completing, at no cost or expense to the Port, any and all Response Actions that are required by a Governmental Authority to respond to Releases, threatened Releases, or Contamination, if such Releases, threatened Releases or Contamination on the Premises or other Port property were caused, exacerbated, or allowed by the Accessing Party or Accessing Party's Representatives.

(c) Port's Rights Regarding Accessing Party's Obligations Notwithstanding an Accessing Party's responsibility for Response Actions as provided in Sections 8(a) and (b) above, the Port shall be the lead Person to interact with any Governmental Authority overseeing all Response Actions on the Premises or other Port property; however, the Port reserves the right in its sole discretion to require the

Accessing Party to be the lead Person to interact with any Governmental Authority overseeing the Response Actions. All documents that the Accessing Party proposes to have submitted to such Governmental Authority shall be provided to the Port for its prior review, comment, and approval.

(d) Port's Right to Take Over Response Actions from Accessing Party. If the Port determines, in its reasonable discretion, that an Accessing Party is not diligently conducting any Response Action as required herein, the Port may, but is not obligated to, take over such Response Action from such Accessing Party after providing reasonable notice and opportunity for such Accessing Party to resume diligently conducting such Response Action. If the Port reasonably and in good faith believes that such Accessing Party's failure to diligently conduct any Response Action is causing, or is likely to cause, an imminent danger to the health or safety of any Person, or substantial harm to the Environment; or subject the Port to any civil or criminal liability or penalty; or is reasonably likely to result in the Port incurring Losses from any Governmental Authority, or any Third Party bringing any Action against the Port, the Port may direct such Accessing Party and Accessing Party's Representatives to immediately cease all work, and the Port may take over the Response Action, without providing reasonable notice and opportunity for such Accessing Party to resume conducting such Response Action. If the Port elects to take over any such Response Action, any and all Costs incurred by the Port in conducting or overseeing the Response Action shall be reimbursed by such Accessing Party promptly upon demand by the Port, which demand shall include supporting documentation to substantiate the demand.

(e) Accessing Party's Responsibility for Disposal of Toxic Materials Arising from Its Operations. An Accessing Party, at no cost or expense to the Port, shall be responsible for any Toxic Materials that are disturbed, spread, dispersed, released, removed or disposed, or Contamination that is exacerbated, as the result of any Operations including grading, excavation, removal, disposal or other activity made or undertaken on the Premises by any Accessing Party or Accessing Party's Representatives.

(f) Accessing Party's Obligations for Certain Third Party Releases and Contamination. To the extent an Accessing Party has exclusive rights (including rights under a Non-Exclusive Preferential Assignment Agreement with the Port) to use the Premises (other than the Port's rights), if any Release or Contamination is caused by any Third Party within the Premises during the period of access to Port property, and such Release or Contamination requires a Response Action, including, if necessary, a Response Action outside the Premises, the Accessing Party shall be responsible for performing such Response Action in compliance with all applicable Environmental Laws and to the satisfaction of the Port and the Governmental Authority having jurisdiction over such Toxic Materials or Response Action.

(g) Accessing Party's Clean-Up Standard for Contamination. An Accessing Party shall, at no cost or expense to the Port, implement all Response Actions on the Premises or other Port property for which such Accessing Party is responsible under this Ordinance, any Agreement or Environmental Laws, to the contaminant concentration levels authorized by the Governmental Authority having jurisdiction over the Response Actions or Toxic Materials without the use of new Covenants to Restrict Use of Property, environmental restrictions or any similar deed restriction, or institutional or engineering controls.

(h) Response Action After the Expiration or Termination of a Tenancy Agreement. In the event any Response Action for which an Accessing Party is responsible is not completed prior to the expiration or termination of such Accessing Party's Tenancy Agreement, including any extensions thereof, then, in addition to the provisions of Section 10: (i) such Accessing Party shall deposit in an escrow account an amount of money equal to the balance of the estimated Costs (as estimated by the Port) of the Response Action necessary to complete the Response Action or remove all Contamination from the Premises and other Port property, together with instructions for the disbursement of such amount in payment of the Costs of any remaining Response Action as it is completed; and (ii) if the Toxic Materials are of such a nature or the Response Action required of the Accessing Party is of such a nature as to make the Premises or other Port property untenable or unleaseable, then such Accessing Party shall be liable to the Port as a holdover tenant until the Response Action is completed to make the Premises and other Port property suitable for leasing to Third Parties.

(i) Reporting Obligations for Contamination, Releases, or Response Action. An Accessing Party shall immediately provide the Port with telephonic notice, which shall later be confirmed by written notice within five (5) Business Days, of any discovery of any such Contamination, Release, or threatened Release at, under or within the Premises, or other Port property, caused by such Accessing Party or Accessing Party's Representatives, and any injuries or damages resulting directly or indirectly therefrom, regardless of whether reporting to a Governmental Authority is required by the Governmental Authority or Environmental Laws.

(j) Generator Status. To the extent any Toxic Materials are removed from the Premises or other Port property to address:

(i) any Release caused by an Accessing Party or Accessing Party's Representatives; or

(ii) any Release caused by an Accessing Party's or Accessing Party's Representatives' exacerbation of Contamination or other negligent handling of existing Toxic Materials,

then such Accessing Party or Accessing Party's Representatives shall be deemed the generator of such materials for purposes of disposing of

such materials, including all manifesting or reporting Costs (including the execution of hazardous waste manifests, other waste profile sheets, and reports, as generator), taxes, landfill disposal fees, and transportation taxes or fees.

(k) Importation of Fill Material. Notwithstanding any provision herein to the contrary, no Accessing Party shall import fill material obtained from any source onto the Premises or any other Port property unless that Accessing Party has obtained prior written approval from the Port before delivering such material to the Premises or other Port property. The Accessing Party or Accessing Party's Representative shall provide to the Port detailed information concerning the source of the material which shall include a Phase I environmental site assessment and Phase II sampling report. The Port expressly reserves the right, at its sole and absolute discretion, to deny at any time the Accessing Party's or Accessing Party's Representative's importation of material onto the Premises or other Port property.

(l) Reuse of Excavated Materials. Notwithstanding any provision herein to the contrary, with regard to material excavated from the Premises, an Accessing Party shall not reuse such excavated material on the Premises or any other Port property unless the Accessing Party or Accessing Party's Representative has obtained prior written approval from the Port before reusing such excavated material.

Section 9. Environmental Documentation.

(a) Copies to the Port. If an Accessing Party makes any disclosure, or provides any report, to any Governmental Authority concerning Toxic Materials on the Premises or other Port property, such Accessing Party shall concurrently provide a copy of such disclosure or report to the Port in the same form provided to the Governmental Authority. An Accessing Party shall deliver to the Port a copy of each communication received by the Accessing Party or Accessing Party's Representatives from a Governmental Authority or Third Party concerning (a) Toxic Materials on the Premises or on other Port property or (b) such Accessing Party's non-compliance or alleged non-compliance with any Environmental Laws related thereto within five (5) Business Days of receipt of the communication.

(b) Additional Documentation Obligations. An Accessing Party shall at all times maintain and, upon request by the Port, provide documents and plans regarding its compliance with Environmental Laws.

Section 10. Closure Activities at Expiration or Termination of any Tenancy Agreement.

(a) Preparation and Submittal of Plan for Closure Activities. One (1) year prior to the expiration or termination of any Tenancy Agreement that has a term of two (2) years or more, or promptly upon a return to the Port of a portion of the Premises

subject to such a Tenancy Agreement, the Accessing Party that is party to such Tenancy Agreement shall prepare a Closure Plan for conducting Closure Activities with respect to the Premises or portion of the Premises, as applicable. The Closure Plan shall include, at a minimum, the investigation and testing of areas where Toxic Materials were handled, stored, generated, or potentially Released during the Term of such Tenancy Agreement, and a plan and schedule for any Response Action necessary to ensure that all Toxic Materials have been removed and all Contamination has been remediated to the Accessing Party's Clean-Up Standard for Contamination, as set forth in Section 8(g). The Accessing Party shall submit the Closure Plan to the Port for its prior review, comment and approval.

(b) Survival. If the Accessing Party does not complete the work under this Section 10 in a manner that leaves the Premises or portion of the Premises, as applicable, in the condition required herein, or complete any required Response Action or Closure Activities before the Scheduled Termination Date, then such Accessing Party's obligations under this Section 10 shall survive the Scheduled Termination Date and such Accessing Party shall be subject to the Response Action procedures set forth in Section 8(h) until all required Response Actions and obligations are completed.

(c) Certificates. Upon the expiration or earlier termination of any Tenancy Agreement, the Accessing Party that is a party to such Tenancy Agreement shall certify to the Port in writing that it has completed its obligations under this Ordinance, and certificates of closure from all applicable Governmental Authorities.

(d) Storage Tanks. With regard to Storage Tanks used at any time by an Accessing Party, an Accessing Party's Affiliates, predecessors, parent or subsidiaries or Accessing Party Representatives, if any, at least ninety (90) calendar days, but not more than one-hundred twenty (120) calendar days, before expiration of the Term of a Tenancy Agreement, or, in the event of earlier termination, prior to the scheduled date of termination of such Tenancy Agreement, the Accessing Party shall give the Port written notice expressly referring to the provisions herein and stating such Accessing Party's intention either to close or to remove any Storage Tanks at the Accessing Party's sole Cost. The Port may elect by written notice to the Accessing Party, given at any time not later than thirty (30) calendar days after receipt of notice of such Accessing Party's intention, to require such Accessing Party either to:

(i) remove said Storage Tanks and restore the area of the Premises where the Storage Tanks were located at the Accessing Party's sole Cost; or

(ii) request that such Accessing Party provide the Port with: (A) documentary evidence that the Storage Tanks are in full compliance with Environmental Laws; (B) if applicable, documentary evidence that any Storage Tanks have been modified to

comply with the upgrade requirements for USTs, spill and overflow prevention and underground piping pursuant to Chapter 6.7, Underground Storage of Hazardous Substances, H&S Code Section 25280, et seq.; (C) if applicable, documentary evidence that the Storage Tanks have passed Tank Tightness Integrity Tests for the past five (5) years; (D) soil and groundwater monitoring data verifying that there has been no Release from the Storage Tanks; and (E) all other monitoring records, equipment testing or maintenance records required by Environmental Laws.

Upon the review of the documentary evidence and information provided in subsection (ii) above, the Port may elect, in its sole discretion, to have the Accessing Party leave the Storage Tanks in place in operating condition or remove said Storage Tanks. If the Port gives notice of election to the Accessing Party during said thirty (30) day period, such Accessing Party shall handle the Storage Tanks in accordance with the Port's direction as stated in its notice to such Accessing Party. If no notice of election is given to the Accessing Party, or if the Accessing Party fails to satisfy the requirements under Section 10(d)(ii)(A)-(E) above, such Accessing Party shall properly remove all Storage Tanks in compliance with Environmental Laws at its sole Cost.

Section 11. Asbestos.

An Accessing Party shall comply, or ensure compliance, with all asbestos notification requirements, asbestos management plans, asbestos handling, asbestos abatement, and asbestos removal and disposal requirements required by Environmental Laws. The Accessing Party shall notify the Port when abatement activities occur on the Premises and provide to the Port all relevant abatement-related documents.

Section 12. Approvals, Permits, California Environmental Quality Act and National Environmental Policy Act.

(a) Existing CEQA and NEPA Requirements. An Accessing Party shall comply with conditions set forth in any environmental review documents completed pursuant to CEQA and/or NEPA or any mitigation measures or requirements existing as part of a mitigation monitoring and reporting program applicable to the use or activities on the Premises as of the Effective Date.

(b) Regulatory and Municipal Agency Permits and Conditions. An Accessing Party shall notify the Port of any activities that will require coverage under a Governmental Authority Authorization.

(c) Compliance Requirements. An Accessing Party shall, at its sole cost and expense, fund, comply with, and implement all designated mitigation measures and reporting requirements, including data collection, and conditions of Authorizations or permits, including those that are required under any document prepared pursuant

to CEQA and/or NEPA, contained in any mitigation monitoring and reporting program or in any environmental impact statement or mitigated negative declaration or similar documents prepared pursuant to CEQA and/or NEPA that are specific to such Accessing Party's Project or Operations.

Section 13. Violations.

(a) Acts in Violation of this Ordinance. It shall be a violation of this Ordinance for any Person to:

(i) Fail to comply with any provision of this Ordinance;

(ii) Conceal a violation of this Ordinance;

(iii) Fail to timely comply with a directive of the Director issued pursuant to this Ordinance;

(iv) Fail to comply with conditions of approval for Construction Activities; or

(v) Cause or permit any actions that constitute a nuisance or cause or contribute to violations of applicable Environmental Laws.

(b) Separate Violations. A separate violation shall be deemed committed on each day during, or on which, a violation occurs or continues. A Person who violates any provision of this Ordinance may also be in violation of Environmental Laws and may be separately subject to the additional sanctions of such Environmental Laws including civil and criminal penalties.

Section 14. Enforcement Actions.

Whenever the Director or Port Attorney finds, or has reason to believe, that a violation of this Ordinance has occurred or is occurring, the Port may take all appropriate action and pursue all available legal remedies to enforce this Ordinance, including, but not limited to, the following:

(a) Notice of Violation. The Director may issue a written NOV describing the violation, requiring action, specifying the time period or deadline for such action, and notifying the alleged violator of his or her right to protest the order as provided in Section 16 of this Ordinance.

(b) Inspections. The Port may perform inspections to confirm a Person has addressed an NOV to the Director's satisfaction.

(c) Notice of Penalty. The Director may issue a written NOP describing the violation and ordering the recipient to pay, within a specified period of time, a penalty as provided in Section 15 of

this Ordinance. The NOP must notify the violator of his or her right to protest the penalty as provided in Section 16 of this Ordinance.

(d) Extension of Time. If an extension of time is required to clean up or abate a Release, or take other action directed in an NOV or NOP, the Director may establish a new time frame and notify appropriate Governmental Authorities of such revised timeframe as may be required by Environmental Laws.

(e) Legal Action. Whenever any condition is caused or permitted to exist in violation of this Ordinance that may be a threat to public health, safety, or the Environment, or is deemed by the Port to be a nuisance, the Port Attorney may, in addition to the enforcement processes and penalties herein provided, commence legal actions and/or equitable proceedings in a court of competent jurisdiction to abate, enjoin, or otherwise compel the cessation of such nuisance, or compel abatement of the nuisance at the violator's expense. If the Port prevails in such action and/or proceeding, it shall be entitled to recover Costs.

(f) Written Enforcement Notices. Any written notice provided under this Section 14 shall be served personally by hand delivery, certified mail or email to the Accessing Party where the violation occurred, or to the Person believed responsible for the violation, or to both.

(g) Notice to Governmental Authorities. Notwithstanding any other provision of this Ordinance, the Director may report known or suspected violations of Environmental Laws to Governmental Authorities.

Section 15. Penalties.

(a) Penalties. In addition to all other Costs, a Person who violates or fails to comply with an NOV or any provision of this Ordinance shall, upon written NOP as provided in Section 14(c) above, be subject to a penalty of up to and including Five Hundred Dollars (\$500.00) per day for each violation, as such amount may be modified from time to time in the Charter of the City.

(b) Penalty Alternative. In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Director may require alternative compensatory actions, including but not limited to, monitoring of the Environment, attendance at compliance workshops, shoreline clean-up, and other measures as appropriate, at the Director's discretion.

Section 16. Protests.

(a) Designation of Protest Officer. The Director shall designate one or more individuals employed by the Port to serve as a Protest Officer. The designation may be for a specified period and may be withdrawn or revoked at the discretion of the Director.

(b) Filing a Protest. Any Person named in an NOV or NOP may protest such order or penalty or attorneys' fees and costs by sending by certified mail or hand delivering to the Director's office a written request for review within twenty (20) calendar days of receipt of such NOV or NOP. Such Protest shall specify all reasons why the order or penalty or assessment of attorneys' fees should be rescinded or modified. Upon receipt of a timely and properly filed Protest, the Director shall promptly assign a Protest Officer.

(c) Review and Decision. Within twenty (20) calendar days of receipt of a Protest, the Protest Officer shall send a written decision by certified mail to the Person filing such Protest. The Protest Officer's decision shall be final, unless, within ten (10) calendar days of receipt of such decision, the Person requests in writing, by certified mail or hand delivery, that a public hearing before the Director or his/her Representative be held on the matter.

(d) Hearing. Within ten (10) calendar days of receiving a request for a hearing, the Director shall send a written notice of the date and time of the public hearing to the requesting Person. At any such hearing, the requesting Person may attend, give testimony, and present evidence. The issues addressed at the hearing shall be limited to those specifically raised in the hearing request. The hearing is an administrative process, not a criminal proceeding or a civil court of law proceeding. Costs of transcription or any testimony taken shall be borne by the Person requesting transcription. The Director may affirm, modify or reverse any aspect of the written notice under review. The Director shall issue a final decision with twenty (20) calendar days of the hearing.

(e) Liens. Notwithstanding any other provision of this Ordinance to the contrary, the Costs incurred by the Port in the abatement of a violation or nuisance may be placed against any privately-owned and affected property as either a nuisance abatement lien or a special assessment lien, pursuant to Government Code Section 38771, et seq., as amended from time to time or a lien pursuant to Government Code Section 54988 as amended from time to time. The Port may enforce a lien under this Ordinance in any manner permitted by Law, including judicial foreclosure. The Port may elect, upon thirty (30) calendar days' written notice to all known and record owners of the Premises, to convert any nuisance abatement lien authorized by this Ordinance to a special assessment lien, or vice versa. Costs recoverable under this Ordinance shall include those categories of Costs and fees set forth in Civil Code Section 3496, regardless of the type of nuisance involved.

Section 17. Remedies Not Exclusive.

The remedies provided for the Port in this Ordinance shall be cumulative and not exclusive of any other remedies and shall not preclude the Port from any other relief which otherwise is available.

Section 18. Conflicting Agreement Provisions.

If the requirements of an Agreement (including any Future Agreement) and this Ordinance conflict, the requirements of this Ordinance shall control, except as provided below:

(a) Prior Tenancy Agreements. To the extent that any provision in a Prior Tenancy Agreement directly conflicts with any provision in this Ordinance, the requirements of the directly conflicting provision in the Prior Tenancy Agreement shall take precedence, and compliance with the provision in such Prior Tenancy Agreement shall be deemed compliance with the conflicting provision in this Ordinance.

(b) Prior Non-Tenancy Agreements and Future Agreements. To the extent that any provision in a Prior Non-Tenancy Agreement or Future Agreement directly conflicts with any provision in Sections 7 or 8, as applicable, the requirements of the directly conflicting provision in the Prior Non-Tenancy Agreement or Future Agreement shall take precedence, and compliance with the provision of such Prior Non-Tenancy Agreement or Future Agreement shall be deemed compliance with the directly conflicting provision in Sections 7 or 8, as applicable.

In all circumstances, the absence of any provision in an Agreement to address a topic or subject matter in this Ordinance shall not be a direct conflict, and the applicable provision in this Ordinance shall apply.

Section 19. Miscellaneous Provisions.

(a) Written Notice. Except as otherwise provided in this Ordinance or by the Director, any written notice or request provided under this Ordinance may be delivered by hand-delivery, mail or email.

(b) Conflict of Law. This Ordinance is not intended to interfere with, abrogate or annul any other ordinance, resolution rule, or regulation, statute, or other provision of Law. The requirements of this Ordinance establish minimum requirements, and if any provision of this Ordinance imposes requirements different from those imposed by any other Port ordinance, resolution, rule, or regulation or other provision of Law, the provision that is more restrictive or imposes a higher protective standard for the Port, human health, safety or the Environment shall take precedence.

(c) Liability of Port. Persons subject to Environmental Laws shall be solely responsible for compliance with such laws. The Director, including any Port official or employee, acting under authorization of this Ordinance, if acting in good faith and within the course and scope of his or her employment of the Port, shall not be liable for any damage that may accrue to a Person or Persons or Premises as the result of, or by reason of, any act or omission occurring in the good faith discharge of the duties of employment.

(d) Severability. The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

(e) Effective Date. This Ordinance shall be in full force and effect on September 1, 2015.

(f) Relationship to Tariff 2-A. The foregoing provisions shall supersede any provisions in Tariff 2-A that are in direct conflict with the provisions of this Ordinance.

(g) Relationship to Storm Water Ordinance. To the extent that any provision in this Ordinance directly conflicts with any provision in the Storm Water Ordinance, such provisions of the Storm Water Ordinance shall supersede the directly conflicting provisions of this Ordinance. The absence of any provision in the Storm Water Ordinance to address a topic or subject matter in this Ordinance shall not be a direct conflict, and the applicable provision in this Ordinance shall apply.

The Board of Port Commissioners, Oakland, California, July 23, 2015. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Head, Story, Yee and President Hamlin - 6. Excused: Commissioner Parker - 1. Noes: 0.

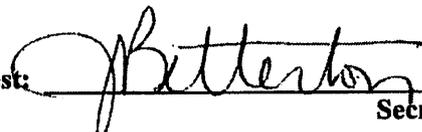
John T. Betterton
Secretary of the Board

Adopted at a regular meeting held July 30, 2015
by the following vote:

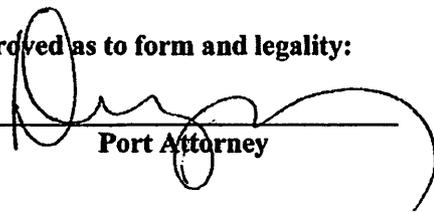
Ayes: Commissioners Butner, Colbruno, Head, Parker, Story, Yee and
President Hamlin - 7
Noes: 0



President.

Attest:  _____
Secretary.

Approved as to form and legality:



Port Attorney