

**PORT ORDINANCE NO. 4804**  
**ORDINANCE AMENDING THE PORT OF OAKLAND**  
**ENVIRONMENTAL PROVISIONS IN CHAPTER 9.01 OF THE PORT**  
**OF OAKLAND ADMINISTRATIVE CODE, AND FINDING THAT**  
**THE PROPOSED ACTION IS EXEMPT UNDER THE CALIFORNIA**  
**ENVIRONMENTAL QUALITY ACT.**

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**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.3, dated July 10, 2025, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, Section 706 of the City of Oakland ("City") Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to exercise various powers and duties relating to the Port's jurisdiction, including, but not limited to, the power and 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" (City Charter, Sec. 706(27)); and

**WHEREAS**, the Port of Oakland Administrative Code ("POAC") currently requires Seaport tenants to provide the Port an inventory of Seaport Equipment, including cargo handling equipment; and

**WHEREAS**, the Port is committed to further reducing emissions from operations at Oakland Airport ("OAK"); and

**WHEREAS**, Port staff require additional data from OAK tenants operating Ground Support Equipment ("GSE") to develop plans for reducing emissions at OAK; and

**WHEREAS**, in 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 testimony received; now, therefore,

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

**Section 1.** The Board hereby finds and determines that the proposed action is not subject to the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the proposed action will not have a significant effect on the environment and therefore is not a "project" under CEQA.

**Section 2.** The Board further finds and determines as follows:

A. Approves and amends the POAC, including adding OAK GSE, including all conventional fuel or zero emissions GSE, into the Air Quality Environmental Provisions, which would require applicable OAK tenants to submit an inventory of GSE and planned actions to transition GSE to zero emissions, as reflected in **Attachment A**, and as further described in the Agenda Report.

B. Authorizes the Executive Director or her designee to take all actions necessary to implement these amendments into the POAC, provided that such actions do not materially differ from the terms and conditions set forth herein and in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

**Section 3.** This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Port. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this Ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

**Section 4.** This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, July 10, 2025. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Dominguez Walton, Leslie, Martinez, Myres and President Colbruno - 6. Noes: 0.

Daria Edgerly,

Secretary of the Board

## ***Chapter 9.01 Environmental Provisions***

### **Section 9.01.010 Purpose, Intent, Authority, and Applicability**

The purpose and intent of this Chapter is to:

- A. Promote health, safety, and general welfare;
- B. Protect and enhance the environmental quality of Port Property and of San Francisco Bay; and
- C. Support implementation and administration of the Port's environmental programs and policies.

This Chapter is adopted pursuant to the Port's Charter authority to take charge, control, and supervise the Port as well as to enforce general rules and regulations, including adopting and enforcing ordinances, orders, regulations, and practices necessary for the management and government of the Port. This Chapter applies to all Accessing Parties.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.020 Definitions**

Unless specifically defined otherwise herein in this Chapter, or unless a different meaning is apparent from the context, the following terms used in this Chapter shall have the following definitions, whether in the singular or plural, past or present tense:

"2020 and Beyond Plan" shall mean the Port of Oakland *Seaport Air Quality 2020 and Beyond Plan-The Pathway to Zero Emissions*, which ~~the Board approved~~enacted by Port Resolution No. 19-41 ~~on June 13, 2019, as further and~~ amended by Port Resolution Nos. 20-59 and 20-97, as they may be amended, superseded, or codified.

"Accessing Party" or "Accessing Parties" shall mean any Person or Persons who access, operate, or who is negotiating with the Port to access or operate on ~~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.

"Action" shall mean any (i) verbal or written claim or notice of a claim by a Governmental Authority or any Third Party, (ii) challenge, demand, legal action, arbitration, mediation, proceeding, or lawsuit, whether threatened or filed, including, without limitation, Third-Party subpoenas and requests under the Public Records Act, or (iii) judgment, order, settlement, or compromise, relating to the matters described in (i) through (ii) of this definition, above.

"Affiliate" shall mean, when used to indicate a relationship with a specified Person, a Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified Person.

"Agreement" shall mean any agreement, including a Tenancy Agreement, between a Person and the Port, to occupy or use any Port Property, including, without limitation, any assignment, lease, license and concession agreement, non-exclusive preferential assignment agreement, right-of-entry agreement, temporary rental agreement, temporary license agreement, easement, space/use permit, space assignment, and construction contract.

"AOA" shall mean the Air Operations Area.

"AST" shall mean an above-ground storage tank.

"Authorization" shall mean any determination, approval, consent, waiver, variance, exemption, or permit of any Person that applies to all or any part of the Premises or Operations.

"Business Day" shall mean any day that is neither a Saturday, a Sunday, nor a day observed as a holiday, non-operating day, or non-working day by the Port, the State, or the United States government.

"Cargo Handling Equipment" shall mean any off-road, self-propelled vehicle or equipment used at a port or intermodal rail yard to lift or move container, bulk, or liquid cargo carried by ship, train, or another vehicle, or used to perform maintenance and repair activities that are routinely scheduled or that are due to predictable process upsets. Cargo Handling Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, aerial lifts, excavators, dozers, and non-exempt locomotives (both line haul and switcher).

"Clean-Up Standard" shall mean the level of Response Action required by the Governmental Authority having jurisdiction over Toxic Materials or Response Actions, as more fully described in Section 9.01.080.

"Closure Activities" shall mean all activities required to be taken pursuant to Section 9.01.100, and applicable Environmental Laws, in order to complete all Response Actions for which an Accessing Party has responsibility under any Agreement or this Chapter.

"Closure Plan" shall mean the plan for conducting Closure Activities as set forth in Section 9.01.100 A.

"Construction Activities" shall mean and includes all activities on Port Property involving physical change to, or construction or demolition of, structures, utilities both above and underground, equipment, facilities, or other features, or involving disturbance of soil.

"Contamination" shall mean Toxic Materials contamination of the Environment, Port Property, or Improvements at, on, under, or about the Premises.

"Costs" or "fees and costs" shall mean 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.

"Effective Date" shall mean the date an Agreement becomes effective.

"Environment" shall mean the natural environmental ecosystem, with a primary focus on land, water, and air, including: soil; soil vapor; surface waters; groundwaters; tidelands; wetlands; surface water drainages; stream, ocean and bay sediments; surface or subsurface strata; habitat including species; ambient air; and indoor air.

"Environmental Audit" shall mean the audit, inspection, and testing of the Premises and Operations to determine whether the Premises and Operations comply with this Chapter, including compliance with all Environmental Laws, or whether there has been any Release or Contamination caused by the Operations.

"Environmental Indemnification Obligation" shall mean the obligation of any Accessing Party to indemnify, protect, defend, and hold harmless the Indemnitees as said obligation is more fully described in Section 9.01.070.

"Environmental Laws" shall mean 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) climate change; (v) the generation of greenhouse gases or emissions; or (vi) noise or light pollution.

"Seaport Equipment" shall mean ocean-going vessels, harbor craft, Cargo Handling Equipment, or drayage trucks.

"Equipment Inventory" shall mean a written inventory of all ~~Cargo Handling~~Seaport Equipment ~~used (except on the~~ Premises, ~~where the Premises are~~ subject to ~~the 2020 and Beyond Plan (except for~~ month-to-month agreements), ~~);~~ or Airport GSE used on the Premises, during the prior calendar year, which shall include the following information: equipment type, engine size (hp or kW); engine age or model year; engine tier level; hours of use; ~~lift~~ fuel type; fuel consumption; lift counts; truck gate counts; transaction counts; unit number or other unique identifier; and any other information that may be required by any Governmental Authority.

"Future Agreement" shall mean an Agreement duly approved and executed by the Port that becomes effective after the effective date of this Chapter.

"Governmental Authority" shall mean any court; or any federal, state, or local government; a department, commission, board, bureau, or agency including the Port; or other regulatory, administrative, governmental, or quasi-governmental authority, including any successor agency.

"Ground Support Equipment" or "GSE" shall mean all Motor Vehicles and equipment operating within the AOA. This includes any piece of self-propelled mobile equipment used for ground handling, servicing, or field maintenance of aircraft on the ramp area of an airport. Ground Support Equipment includes, but is not limited to baggage tugs, belt loaders, aircraft pushback tractors, cargo loaders, provisioning and lavatory trucks, passenger handling equipment, ground power and air conditioning equipment, maintenance and inspection equipment, safety and emergency equipment, aircraft servicing equipment, and Motor Vehicles operating on the AOA.

"Implementation Plan" shall mean a written implementation plan for the conversion of all ~~Cargo Handling~~ Seaport Equipment or Airport GSE (whichever is applicable to the Tenant) to Zero Emissions or Near Zero Emissions, or acquisition of Zero Emissions or Near Zero Emissions Cargo Handling Equipment or Ground Support Equipment. This can also include other sustainability measures and project information.

"Improvements" shall mean 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.

"Indemnitees" shall mean, in reference to any Environmental Indemnification Obligations, the Port, the Port's Representatives, and Port-designated secondary users of the Premises.

"Law" shall mean any resolution, order, directive, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, plan, program, permit, statute, code, rule, regulation, guidance documents, or CEQA or NEPA decision documents adopted, approved, issued, promulgated or enacted by a Governmental Authority, including any such Law adopted, issued, promulgated or enacted subsequent to the Effective Date, as the same may be modified, amended, or reissued.

"Loss" or "Losses" shall mean, with respect to any Person, any loss, liability, damage, penalty, charge, or out-of-pocket and documented Cost actually suffered or incurred by such Person (including in-house and outside attorneys' fees), but excluding any special, indirect, punitive, and consequential damages.

"Management Plan" shall mean any plan, authorization, deed restriction, or directive approved by the Port or a Governmental Authority that provides any use guidelines, Authorizations, or limitations on use of the Premises or the Environment.

"Near Zero Emissions" shall mean equipment that utilizes Zero Emission technologies in at least some operating modes, enables technologies that provide a pathway to Zero Emission operations, or incorporates other technologies that significantly reduce criteria pollutants, toxic air contaminants, and greenhouse gas emissions as determined by the Port.

"NEPA" shall mean the National Environmental Policy Act, as set forth at 42 U.S.C. § 4321, *et seq.*

"NOP" shall mean a Notice of Penalty, as further described in Section 9.01.160 C.

"NOV" shall mean a Notice of Violation, as further described in Section 9.01.160 A.

"Motor Vehicle" shall mean a device in, upon or by which a person or property may be transported, carried or otherwise be moved from point to point, including a Motor Vehicle or a device moved by human or animal power, except Aircraft or devices moved exclusively upon stationary rails or tracks.

"Operations" shall mean all activities, including any Improvements, Construction Activities, business operations, and Response Actions, on the Premises that are performed by, or on behalf of, any Person.

"Original Ordinance" shall mean the Port of Oakland Environmental Ordinance No. 4345, which the Board adopted on July 30, 2015, which became effective on September 1, 2015, and which was superseded and replaced by this Chapter.

"Party" shall mean a party to any Agreement and "Parties" shall mean all of them.

~~"Person" shall mean 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.~~

"Port Property" shall mean real property owned by the Port.

"Premises" shall mean the Port Property and all Improvements and equipment located at, on, under, or about the land that an Accessing Party is occupying or accessing.

"Prior Non-Tenancy Agreement" shall mean an Agreement other than a Tenancy Agreement, including, but not limited to, construction contracts and maintenance agreements, duly approved and executed by the Port that became effective prior to the effective date of this Chapter.

"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 Chapter.

"Private Sewer Lateral Ordinance" shall mean Port Ordinance No. 4474, as it may be amended ~~or~~, superseded, or codified.

"Project" shall mean any activity as defined under CEQA or NEPA.

"Protest" shall mean a request for review of an NOV or NOP submitted to the Port in accordance with Section 9.01.180.

"Protest Officer" shall mean the individual(s) authorized by the Executive 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 9.01.180.

"Release" shall mean any emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Toxic Materials into the Environment.

"Representative" shall mean, with respect to any Person, any board member, director, officer, employee, partner, member, owner, agent, contractor, sub-contractor of any tier, sub-lessee, customer, or other Person for whom such Person is at law responsible or any Person designated by such Person as its "Representative."

"Response Action" shall mean 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 the Response Action.

"SOA Form" shall mean the Port's Sustainability Opportunities Assessment Form.

"Storage Tanks" shall mean USTs, ASTs, or any other equipment used to store, deliver, or process Toxic Materials.

"Storm Water Ordinance" shall mean Port Ordinance No. 4311, as it may be amended ~~or~~, superseded, or codified.

"Tariff 2-A" shall mean Port Ordinance No. 2833, as ~~subsequently it may be~~ amended, superseded, or codified.

"Tenancy Agreement" shall mean an Agreement between an Accessing Party and the Port pursuant to which the Accessing Party is granted access to the Premises.

"Tenant" shall mean an Accessing Party who has a Tenancy Agreement with the Port.

"Term" has the meaning ascribed thereto in any Agreement, as applicable.

"Third Party" shall mean anyone other than an Accessing Party, the Port, any Accessing Party's Representatives, the Port's Representatives, or any of their Affiliates.

"Toxic Materials" shall mean: (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, or other airborne contaminants (collectively, "Air Contaminants"); (iv) the environmental media such as the soil, water, groundwater, or air containing any Toxic Materials; (v) any non-hazardous substances that could be injurious to human health or the Environment when Released into the Environment in substantial quantities; and (vi) substances that now, or in the future, are defined by Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "contaminants," "reproductive toxins," "carcinogens," "toxic substances," or are otherwise regulated under Environmental Laws.

"UST" shall mean an underground storage tank.

"Zero Emissions" shall mean equipment that produces no emissions of criteria air pollutants, toxic air contaminants, or greenhouse gases ~~when~~while in a stationary or operating mobile operation mode.

(Ord. No. 4691, § 2.A., 3-9-2023)

## **Section 9.01.030 General Prohibitions**

### **A. Release**

No Accessing Party shall Release, or cause or allow another Person to Release, any Toxic Materials at, on, under, or about Port Property or on any other property where it may migrate onto Port Property; provided, however, that Air Contaminants may be Released to the extent such Release is (i) consistent with the use provisions in an applicable Agreement, and (ii) not in conflict with Environmental Laws and applicable Authorizations.

### **B. Storage Tanks**

No Accessing Party shall cause or permit the installation, operation, or removal of any Storage Tank on Port Property without the prior written consent of the Port, which approval may be given, conditioned, or withheld at the Port's discretion. Any such installation, operation, or removal shall be subject to all the other applicable provisions of Authorizations from all Governmental Authorities including the Port (including obtaining a permit issued by the Board), any Agreement, and this Chapter. The Accessing Party shall have the sole responsibility to comply with all Environmental Laws applicable to Storage Tanks if the Accessing Party, the Accessing Party's Affiliates, predecessors, parent, or subsidiaries, or Accessing Party Representatives, installed, used, operated, repaired, maintained, or removed the Storage Tanks, even if the Storage Tanks were installed, owned, or permitted by the Port or other Third Party.

### **C. 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. In the event of an emergency, the Accessing Party shall provide written notice to the Port within five (5) Business Days of commencing its Response Action.

(Ord. No. 4691, § 2.A., 3-9-2023)

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## **Section 9.01.040 Compliance with Environmental Laws**

An Accessing Party shall comply, at its sole Cost, with all Environmental Laws relating to its Operations, or its occupancy, use, or development of the Premises. Compliance shall include obtaining, maintaining, and complying with the terms and conditions of all applicable Authorizations necessary for Accessing Party's Operations. The Port has no obligation to incur any Costs for, or to aid Accessing Party in its compliance with, Environmental Laws.

(Ord. No. 4691, § 2.A., 3-9-2023)

## **Section 9.01.050 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 9.01.090, 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 an Action under any Environmental Laws is threatened or taken against the Port concerning an Accessing Party's Operation, use, occupancy, development, or redevelopment of the Premises, the Accessing Party shall fully cooperate with the Port in responding to such Action.

(Ord. No. 4691, § 2.A., 3-9-2023)

## **Section 9.01.060 Entry, Inspection, and Oversight**

### **A. Port's Entry and Inspection Rights**

The Port, authorized Port Representatives, Governmental Authorities, or others who require access pursuant to Agreements, shall have the right, but not the obligation, to enter the Premises at any reasonable time to:

1. Confirm an Accessing Party's compliance, and an Accessing Party's Representatives' compliance, with the provisions of this Chapter;
2. Perform the Port's rights and obligations under this Chapter, or as required by Environmental Laws or Governmental Authorities; and
3. Subject to Section 9.01.060 C., perform any actions the Port deems necessary as the owner of the Premises to comply with Environmental Laws.

### **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 Chapter shall be reimbursed by the Accessing Party within thirty (30) days of the Port's demand for payment. Failure by the Accessing Party to reimburse the Port in full all Costs is a violation of this Chapter in accordance with Section 9.01.150 and may subject the Accessing Party to enforcement under Section 9.01.160.

### **C. Environmental Audit**

The Port shall have the right, but not the obligation, to require an Environmental Audit (i) no more frequently than once every two (2) years during the Term of a Tenancy Agreement, or within thirty (30) Business Days after the end of the Term of a Tenancy Agreement; provided, however, that such Environmental Audit will consist of an inspection without invasive sampling, be conducted by the Port's consultant during no more



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than two (2) Business Days, and will minimize disruption to the Tenant, or (ii) at other times during the Term of the Tenancy Agreement where the Port has received credible evidence from a reliable source that there is either a failure of the Tenant to comply with Environmental Laws during its occupancy of the Premises or there is an environmental emergency arising from such occupancy, and the Port requires a focused Environmental Audit addressing such issues. Under those circumstances, the Port shall retain the right to undertake invasive sampling. For all Environmental Audits, except those triggered by an environmental emergency arising from a Tenant's occupancy, the Port shall provide the Tenant at least forty-eight (48) hours advance notice of the Environmental Audit. The Environmental Audit shall be conducted at the Tenant's sole Cost and shall be conducted by independent, qualified, licensed environmental consultants selected and retained by the Port.

(Ord. No. 4691, § 2.A., 3-9-2023)

## **Section 9.01.070 Limitation of Liability and Indemnity; Release**

### **A. Limitation of Liability**

The Indemnitees shall not be responsible for any damage or liability occurring by reason of any action or omission, 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, under, about, emanating from, or flowing onto the Premises.

### **B. Environmental Indemnification Obligation**

The Accessing Party shall be solely responsible for and shall fully indemnify, protect, defend (with legal counsel selected, retained, and controlled by the Port), and hold harmless the Indemnitees from and against any and all Actions and Losses of every name, kind, and description, including without limitation stigma and diminution in real property values, that arise during or after the period of access to Port Property as a result of:

1. 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 Provisions of this Chapter;
2. A Release by the Accessing Party or Accessing Party's Representatives including any residual Toxic Materials left in place after a Response Action for a Release;
3. Obligations the Accessing Party or Accessing Party's Representatives have for Contamination, as described in Section 9.01.080; or
4. Any CEQA or NEPA challenge related to the Accessing Party's or the Accessing Party's Representatives' Improvements, Operations, use of the Premises, or Project.

The foregoing applies to first Party losses sustained by Indemnitees.

### **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 Chapter. Upon receipt of the 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 the Accessing Party's ability to defend the Action. The Port and the Accessing Party shall cooperate with each other in the defense of the Action, 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 the Port's 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 Chapter.

E. Right to Defend

The Port retains the right to compromise or settle an Action without prejudice to its rights to indemnification hereunder. The Accessing Party shall be responsible for payment and reimbursement of all Costs (including defense 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.

F. Release and Waiver

Accessing Party, for itself, Accessing Party Representatives, successors and assigns, waives, releases, acquits, and forever discharges the Port of, from, and against any Actions, direct or indirect, at any time on account of, or in any way arising out of or in connection with:

1. The Port providing advice, guidance, or assistance to Accessing Party or Accessing Party Representatives regarding Accessing Party's compliance with Environmental Laws; and
2. Toxic Materials existing at, on, under, or about the Premises as of the Effective Date, and any migration of Toxic Materials to, within, or from the Premises regardless of the origin or source of the Toxic Materials, whether known or unknown.

An Accessing Party's release of the Port shall apply to all unknown and known Actions and contingent or liquidated Actions and shall specifically cover any potential liability which may be based on any Environmental Laws.

(Ord. No. 4691, § 2.A., 3-9-2023)

## **Section 9.01.080 Responsibility for Toxic Materials**

A. Management Plans

The Accessing Party shall be responsible for compliance with existing Management Plans and any future Management Plans, during the Term of its applicable Agreement, for the Premises and shall provide the Port access, without limitation, to the Premises for purposes of sampling, management, inspections, and maintenance of monitoring wells, environmental caps, or other environmental monitoring devices or systems to ensure compliance with such Management Plans.

B. Accessing Party's Obligations for Releases and Contamination

An Accessing Party shall be responsible for undertaking and completing, at no Cost to the Port, any and all Response Actions that are required by a Governmental Authority (including the Port) to respond to Releases, threatened Releases, or Contamination, if the Releases, threatened Releases, or Contamination in, on, about,

under, or emanating from the Premises, or other 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 9.01.080 A. and 9.01.080 B., the Port shall be the lead Person to interact with any Governmental Authority overseeing all Response Actions on Port Property; however, the Port reserves the right to require the Accessing Party to be the lead Person to interact with any Governmental Authority overseeing the Response Actions. To the extent that the Accessing Party becomes the lead Person interacting with the Governmental Authority overseeing the Response Actions, the Accessing Party shall follow the process outlined in 9.01.090.

D. Port's Right to Take Over Response Actions from Accessing Party

If the Port determines that an Accessing Party is not diligently conducting any Response Action as required ~~herein~~ in this Chapter, the Port may, but is not obligated to, take over the Response Action from the Accessing Party after providing reasonable notice and opportunity for the Accessing Party to resume diligently conducting the Response Action. If the Port reasonably and in good faith believes that the 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 the 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 the Accessing Party to resume conducting the Response Action. If the Port elects to take over the Response Action, any and all Costs incurred by the Port in conducting or overseeing the Response Action shall be reimbursed by the 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 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 the Release or Contamination requires a Response Action, including, if necessary, a Response Action outside the Premises, the Accessing Party shall be responsible for performing the Response Action in compliance with all applicable Environmental Laws and to the satisfaction of both the Port and any other Governmental Authority having jurisdiction over the Toxic Materials or Response Action.

G. Accessing Party's Clean-Up Standard for Contamination

An Accessing Party shall, at no Cost to the Port, implement all Response Actions to remove all Toxic Materials on Port Property for which the Accessing Party is responsible under this Chapter, any Agreement, or Environmental Laws, without the use of new covenants to restrict use of the 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 the Accessing Party's Tenancy Agreement, including any extensions thereof, then, in addition to the provisions of 9.01.100:

1. The 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 prior to completion of the Response Action which estimate may be updated from time to time by the Port) of the Response Action necessary to complete the Response Action or remove all Contamination from the Port Property, together with instructions for the disbursement from escrow payment of the Costs of any remaining Response Action as it is completed; and
2. 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 Port Property untenable or unleaseable, then the Accessing Party shall be liable to the Port for all Costs incurred, including Costs associated with limiting the use of Port Property until the Response Action is completed and the Port Property is suitable for leasing to Third Parties.

I. Reporting Obligations for Contamination and Releases

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 Contamination, Release, or threatened Release at, on, under, or about Port Property, 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 Port Property to address:

1. Any Release caused by an Accessing Party or Accessing Party's Representatives; or,
2. Any Release caused by an Accessing Party's or Accessing Party's Representatives' exacerbation of Contamination or other negligent handling of existing Toxic Materials; or,
3. Any material generated from Construction Activities conducted by an Accessing Party; then,

the Accessing Party or Accessing Party's Representatives shall be deemed the generator of any materials for purposes of disposal, including signing all manifests or reporting documents (including the execution of hazardous waste manifests, waste profile sheets, and reports, as generator), and shall pay all Costs associated with removal, including but not limited to taxes, landfill disposal fees, and transportation taxes or fees.

K. Importation of Fill Material

Notwithstanding any ~~provision herein~~ **Provision in this Chapter** to the contrary, no Accessing Party shall import fill material obtained from any source onto Port Property unless that Accessing Party has obtained prior written approval from both the Port and any other applicable Governmental Authority required for imported fill, before delivering the material to Port Property. The Accessing Party or Accessing Party's Representative shall provide 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 to deny at any time the Accessing Party's or Accessing Party's Representative's importation of material onto Port Property even if the Accessing Party has otherwise received approval from another Governmental Authority.

L. Reuse of Excavated Materials on Port Property

Notwithstanding any ~~provision herein~~Provision in this Chapter to the contrary, no Accessing Party shall reuse material excavated from the Premises on Port Property unless the Accessing Party or Accessing Party's Representative has obtained prior written approval from both the Port and any other applicable Governmental Authority before reusing the excavated material. Under no circumstances shall an Accessing Party reuse excavated materials from Port Property outside Port Property. All excavated materials that are removed from Port Property shall be disposed of in accordance with all applicable Laws at a Port approved landfill. The Port expressly reserves the right to deny at any time the Accessing Party's or Accessing Party's Representative's request to reuse material excavated from the Premises on Port Property even if the Accessing Party has otherwise received approval from another Governmental Authority.

(Ord. No. 4691, § 2.A., 3-9-2023)

## Section 9.01.090 Environmental Documentation

### A. Documentation

~~The environmental documents, as outlined in subsection B. below, that the Accessing Party proposes to submit to any Governmental Authority related to the Accessing Party's use of, or operation on, Port Property shall be provided to the Port for its review, comment, and approval for a minimum of ten (10) Business Days, prior to submittal to such Governmental Authority. If the Port fails to approve or disapprove the documents submitted within ten (10) Business Days of receiving the document from the Accessing Party, subject to a reasonable extension of time pursuant to a request by the Port, then the document shall be deemed approved by the Port and may be submitted to the Governmental Authority by the Accessing Party. No review or approval by the Port of any document prepared by an Accessing Party shall relieve the Accessing Party from any liability that it would otherwise have associated with its preparation of the subject document(s), or from failure to comply with applicable Laws with respect thereto, nor shall the Port be liable to the Accessing Party, any Governmental Authority, or any other Person by reason of its review or approval of the documents submitted to the Port.~~

### ~~B. Copy to the Port~~

If an Accessing Party makes any disclosure, or provides any report, to any Governmental Authority concerning Toxic Materials on Port Property, or the Accessing Party proposes to submit any environmental documents to any Governmental Authority related to the Accessing Party's use of, development of, or operation on, Port Property, the Accessing Party shall, where possible, provide a copy of such disclosure, report, or environmental documents to the Port's Director of Environmental Programs and Planning prior to submittal to such Governmental Authority in the same form provided to the Governmental Authority. In the event such disclosure, report, or environmental documents cannot be provided in advance of submission, the Accessing Party shall provide such disclosure, report, or environmental documents to the Port's Director of Environmental Programs and Planning concurrently with their submission to such Governmental Authority.

### B. Copy to the Port

~~the Accessing Party shall concurrently provide a copy of the 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 within five (5) Business Days of receipt of the communication received by the Accessing Party or Accessing Party's Representatives from a Governmental Authority or Third Party concerning:

1. Toxic Materials on Port Property; or,
2. The Accessing Party's non-compliance or alleged non-compliance with any Environmental Laws related thereto.

### C. Additional Documentation Obligations

An Accessing Party shall always maintain and, upon request by the Port, provide documents and Management Plans regarding its compliance with Environmental Laws.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.100 Closure Activities at Expiration or Termination of any Tenancy Agreement**

#### **A. Preparation, Submittal, and Implementation of Plan for Closure Activities**

At a minimum of one year prior, but no more than two (2) years 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 the Premises or any portion thereof subject to a Tenancy Agreement, the Accessing Party under the Tenancy Agreement shall prepare a Closure Plan for conducting Closure Activities with respect to the Premises, portion of the Premises, or other Port Property, as applicable. The Closure Plan shall include, at a minimum, the identification, investigation, and testing of areas where Toxic Materials were handled, stored, generated, or potentially Released during the Term of the Tenancy Agreement, and a plan and schedule for implementing 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 9.01.080, prior to the end of the Term of the Tenancy Agreement. The Accessing Party shall submit the Closure Plan to the Port for its prior review, comment, and approval as set forth in Section 9.01.100 A.

The Accessing Party shall implement the Closure Plan and shall also comply with any other Governmental Authority requirements for closure of the Premises, or portion of the Premises, or other Port Property impacted by Accessing Party as applicable. Closure documentation or requirements set forth by a Governmental Authority do not replace the requirements of a submittal of the Closure Plan to the Port, unless agreed upon in writing by the Port.

#### **B. Survival**

If the Accessing Party does not complete the work under this Section 9.01.100 in a manner that leaves the Premises or portion of the Premises, as applicable, in the condition required in this Chapter, or complete any required Response Action or Closure Activities before the end of the Term of the Tenancy Agreement, then the Accessing Party's obligations under this Section 9.01.100 shall survive the Term of the Tenancy Agreement and the Accessing Party shall be subject to the Response Action procedures set forth in Section 9.01.080 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 the Tenancy Agreement shall certify to the Port in writing that it has completed its obligations under this Chapter and provide certificates of closure from all applicable Governmental Authorities.

#### **D. Storage Tanks Used, Maintained, or Owned by Accessing Party**

For any Storage Tanks used, maintained, or owned 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 the Tenancy Agreement, the Accessing Party shall give the Port written notice expressly referring to the Provisions of this Chapter and stating the 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 the Accessing Party's intention, to require the Accessing Party to:

1. Remove any Storage Tanks and restore the area of the Premises where the Storage Tanks were located at the Accessing Party's sole Cost; or
2. Request that the Accessing Party provide the Port with the following documentary evidence and information, as applicable:
  - a. Documentary evidence that the Storage Tanks are in full compliance with Environmental Laws;
  - b. Documentary evidence that any Storage Tanks have been modified to comply with the upgrade requirements for USTs, spill and overfill prevention and underground piping pursuant to Chapter 6.7, Underground Storage of Hazardous Substances, California Health and Safety Code § 25280, *et seq.*;
  - c. 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 Section 9.01.100 D.2., the Port may elect 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, the Accessing Party shall handle the Storage Tanks in accordance with the Port's direction as stated in its notice to the 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 9.01.100 D.2., the Accessing Party shall properly remove and close all Storage Tanks in compliance with Environmental Laws at its sole Cost.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.110 Asbestos and Lead-Based Paint**

An Accessing Party shall comply, or ensure compliance, with all asbestos and lead-based paint notification requirements, asbestos and lead-based paint management plans, asbestos and lead-based paint handling protocols, asbestos and lead-based paint abatement requirements, and asbestos and lead-based paint removal and disposal requirements required by Environmental Laws.

The Accessing Party shall notify, and obtain the Authorization of, the Port prior to initiating any Operations on the Premises that could or will impact building materials, including underground utilities. The Port may require the Accessing Party to complete, at the Accessing Party's sole Cost, an asbestos and lead-based paint survey in accordance with all Environmental Laws. The Accessing Party shall ensure the asbestos and lead-based paint survey is conducted by qualified personnel who are certified in their respective professional fields.

If the asbestos and lead-based paint survey reports survey all potentially impacted materials from Operations and indicate the presence of asbestos or lead-based paint, the Accessing Party shall abate the identified materials prior to initiating Operations. The Accessing Party must provide the Port with an abatement work plan from a certified abatement contractor and receive Port Authorization prior to initiating abatement. In addition, the Accessing Party shall coordinate with the Port to schedule a qualified oversight consultant, at the Accessing Party's sole Cost, to be on-site for the abatement work to ensure the abatement adheres to all Environmental Laws. All documentation, including but not limited to, abatement oversight reports must be provided to the Port upon completion.

(Ord. No. 4691, § 2.A., 3-9-2023)

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## Section 9.01.120 Approvals, Permits, CEQA, and NEPA

### A. Permits and Conditions

An Accessing Party shall notify the Port of any activities that are subject to Governmental Authority Authorization.

### B. Compliance Requirements

The Accessing Party shall, at its sole Cost, fund, comply with, and implement all applicable mitigation measures and reporting requirements, including data collection, and conditions of Authorizations or permits, including those that are: (i) contained in any mitigation monitoring and reporting program; or (ii) contained in any other environmental document prepared pursuant to CEQA or NEPA that are specific to the Accessing Party's Project or Operations.

### C. Accessing Party's CEQA or NEPA Obligations

#### 1. Consultants and Port Staff

The Port shall select, retain, and manage an environmental planning consultant to prepare the appropriate CEQA or NEPA documents, technical studies, or any other environmental documentation or analysis required to analyze the impacts from a proposed Project by the Accessing Party. The Accessing Party shall reimburse the Port for all Costs related to the environmental planning process, including but not limited to, consultant Costs and other Costs including Port staff time as set forth in the Engineering Division Master Fee Schedule (~~Port Ordinance Nos. 3859 and 4240, as they may be amended or superseded~~), Section 5.10).

#### 2. Legal Counsel

The Port shall utilize legal counsel (including in-house and outside attorneys retained by the Port) in support of the Port's preparation and review of CEQA and NEPA documents, technical studies, or any other environmental documentation or analysis required to analyze impacts from a proposed Project by the Accessing Party. The Accessing Party shall reimburse the Port for all legal Costs related to the environmental planning and entitlement process.

(Ord. No. 4691, § 2.A., 3-9-2023)

## Section 9.01.130 Air Quality

### A. ~~Port's Seaport Air Quality Vision~~

~~As documented in the 2020 and Beyond Plan, the Port's~~The Port's vision is to achieve zero emissions ~~seaport~~ operations ~~through changes in equipment, operations, fuels, and infrastructure.~~

~~Both at the Port of Oakland Seaport and the Airport. The Accessing Party or Tenant, as specified in this Section,~~shall comply with all of the following provisions to the fullest extent applicable.

#### 1. Compliance with Port Air Quality Requirements

#### 2. The Accessing Party shall comply with all Environmental Laws related to the operation of Equipment.

### ~~C. Air Emissions Monitoring, including the Air Quality 2020 and Beyond Plan and Facilities~~



~~The Port reserves the right to, at any time future revisions or air quality plans affecting Port of Oakland Seaport and at its sole cost: Airport operations.~~

~~1. — Install and operate air emissions monitoring equipment on the Premises;~~

~~2. — Sample 3. Pilot and Demonstration Projects~~

~~If applicable and analyze air emissions; and~~

~~3. — Install feasible and practicable air emissions filter facilities, control technologies, Tenants shall use best efforts to participate in pilot or other devices demonstration projects for equipment or technologies using Zero Emissions or Near Zero Emissions upon the Port's request.~~

#### DB. Seaport

##### 1. Seaport Annual Equipment Inventory and Use

On January 31 of each calendar year during the Term of any Tenancy Agreement covering Premises, where the Premises is subject to the 2020 and Beyond Plan (except for month-to-month agreements), starting with January 31 in the first year of the Tenancy Agreement, to the extent a Tenant operates Cargo Handling Equipment, the Tenant shall provide the Executive Director with an Equipment Inventory.

##### ~~E. Annual 2. Meeting Regarding Seaport Equipment Inventory, Lower-Emissions Equipment, and Implementation Plan~~

Within thirty (30) days of the Port's receipt of the annual Equipment Inventory (if one is provided pursuant to Section 9.01.130 ~~DB.1.~~), ~~if a meeting is requested by the Tenant or the Port,~~ the Port and the Tenant shall meet in good faith to discuss the Equipment Inventory and evaluate the feasibility of the Tenant's use of Cargo Handling Equipment that is Zero Emissions or Near Zero Emissions on the Premises. During the ~~annual~~ meeting, the Tenant and the Port shall also discuss the Implementation Plan required by Section 9.01.130 ~~FB.3.~~

##### ~~F3. Cargo Handling Equipment~~

Any Tenant that operates Cargo Handling Equipment on Premises that are subject to the 2020 and Beyond Plan (except for month-to-month agreements) shall provide the Executive Director with a draft Implementation Plan for review and comment:

~~1. — By December 31, 2023, for Prior Tenancy Agreements or Future Agreements that become effective on or prior to December 31, 2023; or~~

~~2. — Concurrent with Future Agreements that become effective on or after January 1, 2024, concurrent with the effective date of Future Agreements.~~

Following initial submission of the Implementation Plan, the Port shall have the right, but not the obligation, to review and provide comments or proposed edits to the Implementation Plan within sixty (60) days of the initial plan submission. If the Port provides edits, the Tenant shall provide a response and an updated Implementation Plan, as required, within forty-five (45) days of receipt of the Port's comments.

Each year following submission of the Implementation Plan to the Port, the Tenant and the Port shall, ~~during the annual meeting regarding the Equipment Inventory referenced in Section 9.01.130 E. above:~~ (i) review the Implementation Plan to assess its effectiveness and consistency with applicable Environmental Laws including, without limitation, the 2020 and Beyond Plan; (ii) discuss any recent or proposed revisions to Environmental Laws that may require an amendment to the Implementation Plan; and (iii) evaluate whether any changes should be made to the Implementation Plan. Within thirty (30) ~~business days~~ Business Days after ~~the annual meetingsuch discussion,~~ the Tenant shall submit to

the Executive Director: (i) a Technical Memorandum summarizing the results of the above-referenced meeting and ~~annual~~ review of the Implementation Plan; and (ii) a proposed revised draft of the Implementation Plan if revisions are deemed appropriate during the ~~annual~~ meeting.

The Implementation Plan must be consistent with the feasibility criteria in the 2020 and Beyond Plan. For details of the feasibility criteria established in the 2020 and Beyond Plan, (see Table D-2 of Appendix D: of the 2020 and Beyond Plan).

**G4. Least Polluting Equipment**

Tenants shall use best efforts to use the least polluting Equipment on the Premises. Upon the Port's request, the Tenant shall negotiate in good faith with the Port during the Term to implement new air quality control measures when new technologies or other opportunities arise to reduce emissions from Equipment.

**H5. Pilot and Demonstration Projects**

If applicable and feasible, Tenants shall use best efforts to participate in pilot or demonstration projects for equipment or technologies using Zero Emissions or Near Zero Emissions upon the Port's request ~~of the Port~~.

(Ord. No. 4691, § 2.A., 3-9-2023)

**C. Airport**

**1. Airport Annual Equipment Inventory and Use**

On October 31 of each calendar year during the Term of any Tenancy Agreement covering the Premises, where the Premises is located on, or accesses Airport premises starting with October 31 in the first year of the Tenancy Agreement, to the extent a Tenant operates Ground Support Equipment, the Tenant shall provide the Executive Director with an Equipment Inventory.

**2. Meeting Regarding Airport GSE Inventory, Lower-Emissions Equipment, and Implementation Plan**

Within thirty (30) days of the Port's receipt of the annual Equipment Inventory (if one is provided pursuant to Section 9.01.130 C.1.), if a meeting is requested by the Tenant or Port, the Port and the Tenant shall meet in good faith to discuss the Equipment Inventory and evaluate the feasibility of the Tenant's use of Ground Support Equipment at the Airport that is Zero Emissions or Near Zero Emissions on the Premises. During the meeting, the Tenant and the Port shall also discuss the Implementation Plan required by Section 9.01.130 C.3.

**3. Ground Support Equipment at the Airport**

Any Tenant that operates Ground Support Equipment at the Airport shall provide the Executive Director with a draft Implementation Plan for review and comment:

a. By March 31, 2026 for Prior Tenancy Agreements or Future Agreements that become effective on or prior to March 31, 2026; or

b. Concurrent with Future Agreements that become effective on or after April 1, 2026.

Following initial submission of the Implementation Plan, the Port shall have the right, but not the obligation, to review and provide comments or proposed edits to the Implementation Plan within sixty (60) days of the initial plan submission. If the Port provides edits, the Tenant shall provide a response and an updated Implementation Plan, as required, within forty-five (45) days of receipt of the Port's comments.

Each year following submission of the Implementation Plan to the Port, the Tenant and the Port shall: (i) review the Implementation Plan to assess its effectiveness and consistency with applicable Environmental Laws; (ii) discuss any recent or proposed revisions to Environmental Laws that may require an amendment to the Implementation Plan; and (iii) evaluate whether any changes should be made to the Implementation Plan. Within thirty (30) Business Days after such discussion, or as otherwise extended by the Port, the Tenant shall submit to the Executive Director: (i) a Technical Memorandum summarizing the results of the review of the Implementation Plan; and (ii) a proposed revised draft of the Implementation Plan if revisions are deemed appropriate.

#### 4. Least Polluting Equipment

Tenants shall use best efforts to use the least polluting Equipment on the Premises. Upon the Port's request, the Tenant shall negotiate in good faith with the Port during the Term to implement new air quality control measures when new technologies or other opportunities arise to reduce emissions from Equipment.

#### 5. Pilot and Demonstration Projects

If applicable and feasible, Tenants shall use best efforts to participate in pilot or demonstration projects for equipment or technologies using Zero Emissions or Near Zero Emissions upon the Port's request.

### **Section 9.01.140 Sustainability**

The Accessing Party shall comply with the Port's Sustainability Policy (~~i.e.~~, Port Resolution Nos. 20467 and 01346, as they may be amended ~~or~~ superseded, or codified), the City's Construction and Demolition Debris Waste Reduction and Recycling Program (City Ordinance No. 13315), City Ordinance No. 13040, California Code of Regulations Title 24, Part 11, and any other applicable Laws, as such Laws may be amended from time to time.

In any application to the Port for a permit pursuant to Section 708 of the Charter, the Accessing Party shall complete the SOA Form to document features and measures that the Accessing Party shall incorporate into any development on the Premises. The Accessing Party is prohibited from undertaking any development on the Premises requiring such a permit from the Port until the SOA Form is approved by the Port. The Accessing Party shall be responsible for implementing all the proposed sustainability measures identified in the approved SOA Form.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.150 Violations**

#### **A. Acts in Violation of this Chapter**

It shall be a violation of this Chapter for any Person to:

1. Fail to comply with any provision of this Chapter;
2. Conceal a violation of this Chapter;
3. Fail to timely comply with a directive of the Executive Director issued pursuant to this Chapter;
4. Fail to comply with conditions of approval for Construction Activities; or
5. 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 Chapter may also be in violation of Environmental Laws and may be separately subject to the additional sanctions of the Environmental Laws including civil and criminal penalties.

(Ord. No. 4691, § 2.A., 3-9-2023)

## Section 9.01.160 Enforcement Actions

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

A. Notice of Violation

The Executive Director may issue a written NOV describing the violation, requiring action, specifying the time period or deadline for the action, and notifying the alleged violator of his or her right to protest the order as provided in Section 9.01.180.

B. Inspections

The Port may perform inspections to confirm a Person has addressed an NOV to the Executive Director's satisfaction.

C. Notice of Penalty

The Executive 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 9.01.170. The NOP must notify the violator of his or her right to protest the penalty as provided in Section 9.01.180.

D. Extension of Time

If an extension of time is required to undertake a Response Action to address a Release, or take other action directed in an NOV or NOP, the Executive Director may establish a new time frame and notify appropriate Governmental Authorities of the 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 Chapter 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 in this Chapter, commence legal actions and equitable proceedings in a court of competent jurisdiction to abate, enjoin, or otherwise compel the cessation of the nuisance, or compel abatement of the nuisance at the violator's expense. The Port shall be entitled to recover all Costs associated with the legal action.

F. Written Enforcement Notices

Any written notice provided under this Chapter 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. Notice given to one, shall be deemed to have been given to both.

G. Notice to Governmental Authorities

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The Executive Director may report known or suspected violations of Environmental Laws to Governmental Authorities.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.170 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 Chapter shall, upon written NOP as provided in Section 9.01.160 C., be subject to a penalty of up to and including Five Hundred Dollars (\$500.00) per day for each violation, as the amount may be modified from time to time in the Charter.

#### **B. Penalty Alternative**

In addition to enforcement proceedings, penalties, and remedies authorized by this Chapter, the Executive Director may require 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 Executive Director's discretion.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.180 Protests**

#### **A. Designation of Protest Officer**

The Executive 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 Executive Director.

#### **B. Filing a Protest**

Any Person named in an NOV or NOP may submit a Protest of the order, penalty, or attorneys' Costs by sending a written request to the Executive Director by certified mail or hand delivery within twenty (20) calendar days of receipt of the NOV or NOP. The 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 Executive 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 the Protest. The Protest Officer's decision shall be final, unless, within ten (10) calendar days of receipt of the decision, the Person requests in writing, by certified mail or hand delivery, that a public hearing before the Executive 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 Executive Director shall send a written notice of the date and time of the public hearing to the requesting Person. At any 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. Any Costs of transcription of testimony taken shall be

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borne by the Person requesting transcription. The Executive Director may affirm, modify, or reverse any aspect of the written notice under review. The Executive Director shall issue a final decision with twenty (20) calendar days of the hearing.

E. Liens

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 California Government Code § 38771, et seq., as amended from time to time or a lien pursuant to California Government Code § 54988 as amended from time to time. The Port may enforce a lien under this Chapter 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 Chapter to a special assessment lien, or vice versa. Costs recoverable under this Chapter shall include those categories of Costs and fees set forth in California Civil Code § 3496, regardless of the type of nuisance involved.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.190 Remedies**

The remedies in Sections 9.01.160, 9.01.170, and 9.01.180 shall apply to all Accessing Parties and Persons that have not entered into an Agreement with the Port. For any Accessing Parties or Persons that have entered into an Agreement with the Port, the Port shall pursue its remedies under the applicable Agreement or other applicable Law. Without modifying the foregoing, the remedies provided for the Port in this Chapter shall be cumulative and not exclusive of any other remedies and shall not preclude the Port from any other relief which otherwise is available.

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.200 Conflicting Agreement Provisions**

If the requirements of an Agreement (including any Future Agreement(s)) and this Chapter conflict, the requirements of this Chapter shall control, except as provided in this Section.

A. Prior Tenancy Agreements

To the extent that any provision in a Prior Tenancy Agreement directly conflicts with any provision in this Chapter or the Original Ordinance, the requirements of the directly conflicting provision in the Prior Tenancy Agreement shall take precedence, and compliance with the provision in the Prior Tenancy Agreement shall be deemed compliance with the conflicting provision in this Chapter or the Original 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 9.01.070 or 9.01.080 or the Original Ordinance, 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 the Prior Non-Tenancy Agreement or Future Agreement shall be deemed compliance with the directly conflicting provision in Sections 9.01.070 or 9.01.080 or the Original Ordinance, as applicable. Any Future Agreement that has a provision that directly conflicts with Sections 9.01.070 or 9.01.080 shall be approved by resolution or ordinance of the Board based on a finding by the Board supported by evidence in the record that the directly conflicting provision(s) are in the best interest of the Port.

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

(Ord. No. 4691, § 2.A., 3-9-2023)

### **Section 9.01.210 Miscellaneous Provisions**

**A. Written Notice**

Except as otherwise provided in this Chapter or by the Executive Director, any written notice or request provided under this Chapter may be delivered by hand-delivery, mail, or email.

**B. Applicability**

The Provisions of this Chapter shall be strictly interpreted to apply to all Accessing Parties to the maximum extent allowed by Law.

**C. Conflict of Law**

This Chapter is not intended to interfere with, abrogate, or annul any other ordinance, resolution, rule, regulation, statute, or other provision of Law. The requirements of this Chapter establish minimum requirements, and if any Provision of this Chapter imposes requirements different from those imposed by any other Port ordinance, resolution, rule, regulation, statute, 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.

**D. Liability of Port**

Persons subject to Environmental Laws shall be solely responsible for compliance with Laws. The Executive Director, any member of the Commissioners, or a Port employee, acting under authorization of this Chapter, if acting within the course and scope of his or her employment or service to 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 discharge of the duties of employment or service.

**E. Relationship to Tariff 2-A**

Any provisions in Tariff 2-A that are in direct conflict with the Provisions of this Chapter shall be superseded by this Chapter.

**F. Relationship to Storm Water Ordinance**

To the extent that any provision in this Chapter directly conflicts with any provision in the Storm Water Ordinance, ~~as may be amended~~, the provisions of the Storm Water Ordinance shall supersede the directly conflicting Provisions of this Chapter. The absence of any provision in the Storm Water Ordinance to address a topic or subject matter in this Chapter shall not be a direct conflict, and the applicable provision in this Chapter shall apply.

**G. Relationship to Private Sewer Lateral Ordinance**

To the extent that any provision in this Chapter directly conflicts with any provision in the Private Sewer Lateral Ordinance, ~~as may be amended~~, the provisions of the Private Sewer Lateral Ordinance shall supersede the directly conflicting Provisions of this Chapter. The absence of any provision in the Private Sewer Lateral Ordinance to address a topic or subject matter in this Chapter shall not be a direct conflict, and the applicable provision in this Chapter shall apply.

H. Port's Discretion

The Port shall make all determinations or decisions under this Chapter using its sole and absolute discretion with no obligation to consult with or seek input from any other Person.

(Ord. No. 4691, § 2.A., 3-9-2023)