
PORT OF OAKLAND
ENVIRONMENTAL ORDINANCE

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ENVIRONMENTAL ORDINANCE

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 ~~p~~Property and the San Francisco Bay; and
- (c) support implementation and administration of the Port’s environmental programs and policies.

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.

“2020 and Beyond Plan” means the Seaport Air Quality 2020 and Beyond Plan-The Pathway to Zero Emissions, which was adopted by the Board by Port Resolution No. 19-41 on June 13, 2019, as further amended by Port Resolution Nos. 20-59 and 20-97.

“Accessing Party” or “Accessing Parties” means any Person or Persons who ~~are accessing~~access, operate, or who is negotiating with the Port to access or operate on, any Port ~~p~~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 ~~p~~Property.

“Action” means ~~any~~ (i) ~~any~~ verbal or written claim or notice of a claim by a Governmental Authority or any Third Party, (ii) ~~any challenge~~, demand, legal action, arbitration, mediation, proceeding, or lawsuit, whether threatened or filed, including without limitation, Third-Party subpoenas and requests under the California Public Records Act (Gov. Code § 6250 et seq.), or (iii) ~~any demand~~, judgment, order, settlement, or compromise, relating to the matters described in Section 2(b)(i) through (iii)-ii) of this definition, above.

“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 a~~ specified Person.

“Agreement” means any agreement between a Person and the Port to occupy or use any Port ~~p~~Property, including any assignment, lease, license and concession agreement, ~~non-exclusive preferential assignment agreement~~, right of entry agreement, easement, space/use permit, and space assignment.

“AST” means an above-ground storage tank.

“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.

“Board” means the Board of Port Commissioners of the City.

“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.

“Cargo Handling Equipment” means 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. 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 locomotives.

“CEQA” means the California Environmental Quality Act as enacted under California Public Resources Code Section 21000, *et seq.* ~~and Port CEQA guidelines, as applicable.~~

“City” means the City of Oakland.

“Clean-Up Standard” means the level of Response Action required by the Governmental Authority having jurisdiction over ~~certain~~ Toxic Materials or Response Actions, as more fully described in Section 8.

“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.

“Closure Plan” means the ~~closure~~ plan for conducting Closure Activities as set forth in Section 10(a).1.

“Construction Activities” means and includes all activities ~~in the Premises or other on~~ Port ~~p~~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” means Toxic Materials contamination of the Environment, ~~the Premises~~ Port Property, or Improvements ~~in at, on or, under, or about~~ the Premises.

“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.

“Director” means the Port’s Executive Director ~~and his/her designated Representatives.~~

“Effective Date” means the date an Agreement becomes effective.

“Emission Source” has the meaning ascribed to it in Section 13.3.

“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 including species; ambient air; and indoor air.

“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~~, including compliance with all Environmental Laws, or whether there has been any Release or Contamination caused by the Operations.

“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.

“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 ~~e~~C Contamination of the Environment, structures, or subsurface structures; (iii) Toxic Materials; (iv) ~~global warming or climate change~~; (v) the generation of greenhouse gases or emissions; or ~~(vi)~~ noise or light pollution.

“Equipment Inventory” has the meaning ascribed to it in Section 13.5.

“Future Agreement” ~~shall mean~~ means an Agreement duly approved and executed by the Port that be~~com~~es effective after the effective date of this Ordinance.

“Governmental Authority” means any court; ~~or any~~ federal, state, or local government, department, commission, board, bureau, or agency including the Port or other regulatory, administrative, governmental or quasi-governmental authority, including any successor agency.

“H&S Code” means ~~T~~the California Health and Safety Code.

“Implementation Plan” means a written implementation plan for the conversion of all Cargo Handling Equipment to Zero Emissions or Near Zero Emissions.

“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.

“Indemnitees” means, in reference to any Environmental Indemnification Obligations, the Port, the Port’s Representatives, and Port-designated secondary users of the Premises.

“Law” means 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 ~~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.

“Loss” or “Losses” means, with respect to any Person, any loss, liability, damage, penalty, charge, or out-of-pocket and documented ~~cost or expense~~ 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” means 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.

“MAQIP” means the Port’s Maritime Air Quality Improvement Plan, including Supplement No. 1, both of which were approved by the Board on April 7, 2009, by Port Resolution No. 09038, as it may be modified, amended, or reissued from time to time.

“Near Zero Emissions” means equipment that utilizes Zero Emission technologies, 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” means the National Environmental Policy Act, as set forth at 42 U.S. Code Section 4321, *et seq.*

“NOP” means a Notice of Penalty, as further described in Section ~~14(e)~~.16.3.

“NOV” means a Notice of Violation, as further described in Section ~~14(a)~~.16.1.

“Operations” means all activities, including any Improvements, Construction Activities, business operations, and Response Actions, ~~in~~ on the Premises that are performed by, or on behalf of, any Person.

“Ordinance” means this Port of Oakland Environmental Ordinance, as it may be amended from time to time.

“Original Ordinance” means 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 is superseded and replaced by this Ordinance.

“Party” means a party to any Agreement and “Parties” means all of them.

“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.

“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”.

“Port Attorney” means the Port’s lead attorney ~~and his/her designated Representatives~~ as defined in the City Charter.

“Port Property” means real property owned by the Port.

“Premises” means the ~~real property~~ Port Property and any and all Improvements and equipment located ~~in~~ on, or ~~at~~ under, or about the land that an Accessing Party is occupying or accessing.

“Prior Non-Tenancy Agreement” ~~shall mean~~ means 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 Ordinance.

“Prior Tenancy Agreement” means a Tenancy Agreement duly approved and executed by the Port that became effective prior to the effective date of this Ordinance.

~~(d) “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.~~

“Private Sewer Lateral Ordinance” means the Port Ordinance Adopting By Reference Oakland Municipal and Planning Codes Sections 13.08.590 Through 13.08.620 as Modified Herein, Requiring Port Tenants to Comply with Such Private Sewer Lateral Regulations, and Directing Port staff to Prepare Plans to Assess and Repair Port-Owned Private Sewer Laterals, No. 4474, adopted by the Board on May 10, 2018, that became effective on June 9, 2018, as may be amended.

“Project” means any activity as defined under CEQA or NEPA.

“Protest” means a request for review of an NOV or an NOP submitted to the Port in accordance with ~~Section 16 of this Ordinance.~~ 18.

“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~~ 18.

“Release” means any ~~release~~, emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Toxic Materials into the Environment.

“Representative” means, with respect to any Person, any ~~B~~board member, director, officer, employee, partner, member, owner, agent, contractor, sub-contractor of any tier, sub-~~lessees,~~ lessee, customer, or other Person for whom such Person is at law responsible or ~~other representative of such~~ any Person designated by such Person as its “Representative.”

“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~~the Response Action.

~~“Scheduled Termination Date” means~~SOA Form” has the scheduled date for completion of Closure Activities as described meaning ascribed to it in Section 4014.

“Storage Tanks” means USTs, ASTs, or any other equipment used to store, deliver, or process Toxic Materials.

“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~~as may be amended.

“Tenancy Agreement” ~~shall mean~~ means an Agreement between an Accessing Party and the Port pursuant to which the Accessing Party is granted ~~use of a portion of~~access to the Premises ~~for a Term.~~

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

“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.

“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, toxic air contaminants, noxious fumes, vapors, soot, smoke, fugitive dust, or other airborne 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 ~~(i-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,” ~~or~~ “toxic substances,” or are otherwise regulated under Environmental Laws.

“UST” means an underground storage tank.

“Zero Emissions” means equipment that produces no emissions of criteria air pollutants, toxic air contaminants, or greenhouse gases when stationary or operating.

Section 3. General Prohibitions.

3.1 Release. No Accessing Party shall Release, or cause or allow another Person to Release, any Toxic Material at, on, under, or about Port Property or on any other property where it may migrate onto Port Property.

3.2 Storage Tanks. No Accessing Party shall cause or permit the installation, operation, or removal of any Storage Tank on ~~the Premises or other~~ Port ~~p~~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~~The Accessing Party shall have the sole responsibility to comply with all Environmental Laws ~~concerning~~applicable to 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~~the Storage Tanks, even if ~~such~~the Storage Tanks were installed, owned, or permitted by the Port or other Third Party.

3.3 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 within five (5) business days of commencing its Response Action.

Section 4. Compliance ~~W~~with Environmental Laws.

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

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 ~~e~~Operation, use, occupancy, development, or redevelopment of the Premises, ~~such~~the Accessing Party shall fully cooperate with the Port in responding to such Action ~~under any Environmental Laws.~~

Section 6. Entry, Inspection and Oversight.

6.1. Port's Entry and Inspection Rights. The Port ~~and~~, 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:

6.1.1. confirm an Accessing Party's compliance, and an Accessing Party's Representatives' compliance, with the provisions of this Ordinance; ~~and~~

6.1.2. perform the Port's rights and obligations under this Ordinance, or as required by Environmental Laws or Governmental Authorities; ~~and~~

6.1.3. perform any actions the Port deems necessary as the owner of the Premises to comply with Environmental Laws.

6.2. 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: 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 Ordinance in accordance with Section 15 and may subject the Accessing Party to enforcement under Section 16.

6.3. 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 the~~ Tenancy Agreement, ~~and/or~~ at any other time reasonably necessary, as the Port determines, to address or respond to a compliance matter, or an emergency, that an Environmental Audit be conducted, at the Accessing Party's sole ~~expense. Cost.~~ The Environmental Audit shall be conducted by independent, qualified, licensed environmental consultants selected and retained by the Port.

Section 7. Limitation of Liability and Indemnity; Release.

7.1. Limitation of Liability. ~~Neither the Port, nor any officer, employee, or Board member thereof, The Indemnitees~~ shall not be responsible for any damage or liability occurring by reason of ~~anything done, or omitted to be done~~ any action or omission, by an Accessing Party or an Accessing Party's Representatives arising from or relating to ~~(4i)~~ Environmental Laws, ~~(2ii)~~ any Response Actions, or ~~(3iii)~~ Toxic Materials at, on, ~~or~~ under, about, emanating from, or flowing onto the Premises.

7.2. Environmental Indemnification Obligation. ~~An~~ The Accessing Party shall be solely responsible for and shall fully indemnify, protect, defend (with legal counsel ~~approved~~ 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 ~~p~~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 Response Action for~~ 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 or NEPA 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~~may agree to alternate indemnity requirements under an applicable Agreement. The foregoing applies to first Party losses sustained by Indemnitees.

7.3. 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~~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 ~~such~~the Accessing Party's ability to defend the Action. The Port and the Accessing Party shall cooperate with each other in the defense of ~~such Environmental Indemnification Obligation~~the Action, including the tendering of claims to appropriate insurance carriers or other Third Parties for defense and indemnity.

7.4. 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~~the 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.

~~(a) — 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 retains 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 an Action without prejudice to its rights to indemnification hereunder. In such case, the~~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 ~~e~~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.

7.6. 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: (i) the Port providing advice, guidance, or assistance to Accessing Party or Accessing Party Representatives regarding Accessing Party's compliance with Environmental Laws; and (ii) 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.

Section 8. Responsibility for Toxic Materials.

8.1. Management Plans. The Accessing Party shall be responsible for compliance with existing ~~management plans impacting~~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.

8.2. Accessing Party's Obligations for Releases and Contamination. An Accessing Party shall be responsible for undertaking and completing, at no ~~cost or expense~~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 ~~such the~~ Releases, threatened Releases, or Contamination in, on, about, under, or ~~Contamination on~~emanating from the Premises, or other ~~Port~~ property were caused, exacerbated, or allowed by the Accessing Party or Accessing Party's Representatives.

8.3. Port's Rights Regarding Accessing Party's Obligations. Notwithstanding an Accessing Party's responsibility for Response Actions as provided in ~~Sections 8(a).1 and (b) above~~8.2, the Port shall be the lead Person to interact with any Governmental Authority overseeing all Response Actions on ~~the Premises or other Port p~~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~~To the extent that the Accessing Party ~~proposes to have submitted to such~~becomes the lead Person interacting with the Governmental Authority overseeing the Response Actions, the Accessing Party shall be provided to the Port for its prior review, comment, and approvalfollow the process outlined in Section 9.

8.4. 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 the~~ Response Action from ~~such the~~ Accessing Party after providing reasonable notice and opportunity for ~~such the~~ Accessing Party to resume diligently conducting ~~such the~~ Response Action. If the Port reasonably and in good faith believes that ~~such 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 ~~such 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 ~~such the~~ Accessing Party to resume conducting ~~such the~~ Response Action. If the Port elects to take over ~~any such the~~ Response Action, any and all Costs incurred by the Port in conducting or overseeing the Response Action shall be reimbursed by ~~such the~~ Accessing Party promptly upon demand by the Port, which demand shall include supporting documentation to substantiate the demand.

8.5. Accessing Party's Responsibility for Disposal of Toxic Materials Arising from Its Operations. An Accessing Party, at no ~~cost or expense~~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.

8.6. 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 ~~p~~Property, and ~~such~~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 ~~such~~the Response Action in compliance with all applicable Environmental Laws and to the satisfaction of ~~both~~ the Port and ~~the any other~~ Governmental Authority having jurisdiction over ~~such~~the Toxic Materials or Response Action.

8.7. Accessing Party's Clean-Up Standard for Contamination. An Accessing Party shall, at no ~~cost or expense~~Cost to the Port, implement all Response Actions to remove all Toxic Materials on the Premises or other Port ~~p~~Property for which ~~such~~the 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 ~~C~~covenants to ~~Restrict User~~restrict use of ~~Property~~the property, environmental restrictions or any similar deed restriction, or institutional or engineering controls.

8.8. 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~~the Accessing Party's Tenancy Agreement, including any extensions thereof, then, in addition to the provisions of Section 10: (i) ~~such~~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 ~~Premises and other~~ Port ~~p~~Property, together with instructions for the disbursement ~~of such amount in from escrow~~ 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 ~~p~~Property untenable or unleaseable, then ~~such~~the Accessing Party shall be liable to the Port ~~as a holdover tenant for all Costs incurred, including Costs associated with limiting the use of Port Property~~ until the Response Action is completed ~~to make the Premises and other Port property~~Property is suitable for leasing to Third Parties.

8.9. Reporting Obligations for Contamination, and 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, ~~on~~, under, or ~~within the Premises, or other~~about Port ~~property, caused by such Accessing Party or Accessing Party's Representatives~~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.

8.10. Generator Status. To the extent any Toxic Materials are removed from ~~the Premises or other Port p~~Property to address:

8.9.1 any Release caused by an Accessing Party or Accessing Party's Representatives; or

8.9.2 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

8.9.3 any material generated from Construction Activities conducted by an Accessing Party;

then ~~such~~the Accessing Party or Accessing Party's Representatives shall be deemed the generator of ~~such~~any materials for purposes of ~~disposing of such materials~~disposal, including signing all manifestings or reporting Costsdocuments (including the execution of hazardous waste manifests, ~~other~~ 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.

8.11. 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 p~~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 ~~such~~the material to ~~the Premises or other Port p~~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~~Port Property even if the Accessing Party has otherwise received approval from another Governmental Authority.

(a) — Reuse of Excavated Materials on Port Property. Notwithstanding any provision herein to the contrary, ~~with regard to no Accessing Party shall reuse~~ material excavated from the Premises, ~~an Accessing Party shall not reuse such excavated material on the Premises or any other Port property 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 ~~such~~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.

Section 9. Environmental Documentation.

9.1 ~~Copies~~Documentation. All documents that the Accessing Party proposes to submit to any Governmental Authority 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.

9.1.2 Copy 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~~Property, the Accessing Party shall concurrently provide a copy of ~~such~~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 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 p~~Property, or (b) ~~such~~the 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.

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

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

10.1 ~~Preparation and~~ Submittal, and Implementation of Plan for Closure Activities. ~~One~~At a minimum of one (1) 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 ~~a portion of the Premises~~ or any portion thereof subject to ~~such~~a Tenancy Agreement, the Accessing Party ~~that is party to such~~under the Tenancy Agreement shall prepare a Closure Plan for conducting Closure Activities with respect to the Premises ~~or~~ 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 ~~such~~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 ~~Section 8-~~ 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~~10.1.

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.

10.2 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 in this Ordinance, or complete any required Response Action or Closure Activities before the Scheduled Termination Date end of the Term of the Tenancy Agreement, then such the Accessing Party's obligations under this Section 10 shall survive the Scheduled Termination Date Term of the Tenancy Agreement and such the Accessing Party shall be subject to the Response Action procedures set forth in Section 8(h).8 until all required Response Actions and obligations are completed.

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

10.4 Storage Tanks. ~~With regard to~~ 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 such the Tenancy Agreement, the Accessing Party shall give the Port written notice expressly referring to the provisions herein of this Ordinance and stating such 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 such the Accessing Party's intention, to require such the Accessing Party ~~either~~ to:

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

10.4.2 request that such the Accessing Party provide the Port with: ~~(A) the following documentary evidence and information, as applicable:~~

~~10.4.1.1~~ 10.4.2.1 documentary evidence that the Storage Tanks are in full compliance with Environmental Laws;

~~10.4.1.2~~ 10.4.2.2 ~~(B) if applicable,~~ 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, H&S Code Section 25280, *et seq.*;

~~10.4.1.3~~10.4.2.3 ~~(C) if applicable,~~ documentary evidence that the Storage Tanks have passed Tank Tightness Integrity Tests for the past five (5) years;

~~10.4.1.4~~10.4.2.4 ~~(D)~~ soil and groundwater monitoring data verifying that there has been no Release from the Storage Tanks; and

~~10.4.1.5~~10.4.2.5 ~~(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)~~Section 10.4.2 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 the~~ Accessing Party shall handle the Storage Tanks in accordance with the Port's direction as stated in its notice to ~~such 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 10(d)(ii)(A) (E) above,~~ ~~such 4.2, the~~ Accessing Party shall properly remove and close all Storage Tanks in compliance with Environmental Laws at its sole Cost.

Section 11. 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, asbestos and lead-based paint abatement, 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 ~~when abatement activities occur prior to initiating any Operations~~ on the Premises ~~and provide to the Port all relevant~~ 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-related documents 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.

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

~~Section 13.~~Section 12. ~~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.~~

12.1 ~~Regulatory and Municipal Agency~~ Permits and Conditions. An Accessing Party shall notify the Port of any activities that ~~will require coverage under~~ are subject to Governmental Authority Authorization.

12.2 Compliance Requirements. ~~An~~The Accessing Party shall, at its sole ~~cost and expense~~Cost, fund, comply with, and implement all ~~designated~~applicable 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 other environmental ~~impact statement or mitigated negative declaration or similar documents~~document prepared pursuant to CEQA ~~and/or~~ NEPA that are specific to ~~sue~~the Accessing Party's Project or Operations.

12.3 Accessing Party's CEQA or NEPA Obligations.

12.3.1 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, and any amendments thereof).

12.3.2 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.

Section 13. Air Quality.

13.1. Air Quality Policy, MAQIP, and Comprehensive Truck Management Plan (“CTMP”). By Resolution No. 08057, the Board adopted its Port of Oakland Maritime Air Quality Policy Statement and by Resolution No. 09038, the Board approved the MAQIP that guides the Port’s plans and actions with respect to air quality improvements and reduction of health risks. One of the programs described in the MAQIP is the CTMP, which the Board adopted on June 16, 2009, by Resolution No. 09082. The full text of the Maritime Air Quality Policy Statement, as stated in Resolution No. 08057, is as follows:

The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support and^[1] rights of community, local businesses and workers to clean air and fair working conditions. Therefore, the Board is committed to improving air quality, safety and quality of life for neighboring residents and workers by reducing environmental impacts of Port operations, while fulfilling the Port’s basic obligations to maximize commerce and to provide economic and job opportunities. To these ends, the Board hereby adopts the following policy principles that shall guide the Port’s plans and actions, including the adoption of the Port’s Maritime Air Quality Improvement Plan (MAQIP), Comprehensive Truck Management Plan (CTMP) and Early Actions (as defined below).

1. The Port adopts the goal of reducing the health risks to our neighboring communities (expressed as increase in cancer risk) related to exposure of people to diesel particulate matter emissions from Port sources by 85% by the year 2020 through all practicable and feasible means. Reduction will be calculated based on the Port’s 2005 Seaport Emissions Inventory baseline.

2. The Board commits to adopting funding mechanisms, including imposition of fees, to fund air emissions reduction measures. To the maximum extent possible, Port fee revenues shall leverage matching federal, state and private funds. Fees for the purpose of funding the measures shall be evaluated for legality and be enacted to the extent that they do not damage the Port’s or its customers’ market competitiveness.

3. The Port will implement certain air emissions reduction measures prior to the dates that such measures are required by state or federal regulations, in order to reduce the duration of people’s exposure to emissions that may cause health risks (“Early Actions”). The Port shall implement, beginning in 2008, Early Action measures for the purpose of immediately reducing the impacts of Port-serving trucks and other Port operations on West Oakland and surrounding communities. These measures shall include (a) incentives for Early Action

^[1] The word “and” was erroneously included in the Resolution instead of the word “the”. The sentence should read as follows: “The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions.”

replacement or retrofit of older polluting truck engines, (b) mechanisms for enforcing the prohibitive of Port truck parking or operation on neighborhood streets, including truck registration and tracking and (c) feasible and cost-effective means of reducing ship idling emissions. In order to fund these Early Action measures, the Board will adopt truck or containers fees and apply for matching state and federal funds.

13.2. Compliance with Port Air Quality Requirements. The Accessing Party shall comply with requirements adopted or approved by the Board (including any maritime tariff requirements) related to the operation of locomotives, ocean-going vessels, harbor craft, off-road diesel-fuel equipment, Cargo Handling Equipment, or drayage trucks ("Emission Sources"), including any requirement under the MAQIP, the 2020 and Beyond Plan, and the CTMP.

13.3. Air Emissions Monitoring and Facilities. The Port reserves the right to, at any time and at its sole Cost: i) install and operate air emissions monitoring equipment on the Premises; ii) sample and analyze air emissions; and iii) install feasible and practicable air emissions filter facilities, control technologies, or other devices or technologies.

13.4. Annual Equipment Inventory and Use. On January 31 of each calendar year during the Term of the Agreement (except for month to-month agreements) starting with January 31 in the first year of the Agreement, to the extent the Accessing Party operates Cargo Handling Equipment, the Accessing Party shall provide the Port Director of Environmental Programs and Planning with a written inventory of all Cargo Handling Equipment used on the Premises during the prior calendar year ("Equipment Inventory"). The Equipment Inventory shall include the estimated hours of use, lift counts, and fuel usage associated with the Cargo Handling Equipment, truck gate counts and transaction counts, and any other information that may be required by any Governmental Authority.

13.5. Annual Meeting Regarding Equipment Inventory, Lower-Emissions Equipment, and Implementation Plan. Within thirty (30) days of receipt of each of the annual Equipment Inventories (if one is provided pursuant to Section 13.4) by the Port, the Port and the Accessing Party shall meet in good faith to discuss the Equipment Inventory and evaluate the feasibility of the Accessing Party using Cargo Handling Equipment that is Zero Emissions or Near Zero Emissions on the Premises. During the annual meeting, the Accessing Party and the Port shall also discuss the Implementation Plan required by Section 13.6.

13.6. Cargo Handling Equipment. An Accessing Party that operates Cargo Handling Equipment shall provide the Port Director of Environmental Programs and Planning with the Implementation Plan: (i) by December 31, 2023, for Prior Tenancy Agreements or Future Agreements that become effective on or prior to December 31, 2023; or (ii) concurrent with Future Agreements that become effective on or after January 1, 2024. The Accessing Party must implement the Implementation Plan consistent with the feasibility criteria in the 2020 and Beyond Plan.

13.7. Least Polluting Emission Sources. The Accessing Party shall use best efforts to use the least polluting Emission Sources on the Premises. Upon the Port's request, the Accessing Party 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 Emissions Sources.

13.8. Pilot Projects. If applicable and feasible, the Accessing Party shall use best efforts to participate in pilot projects for equipment or technologies using Zero Emissions or Near Zero Emissions upon the request of the Port.

Section 14. Sustainability.

The Accessing Party shall comply with the Port's Sustainability Policy (i.e., Port Resolution Nos. 20467 and 01346), the City's Construction and Demolition Debris Waste Reduction and Recycling Program (City Ordinance No. 13315), City Ordinance No. 13040 C.M.S., California Code of Regulations Title 24, Part 11, and any other applicable Laws.

In any application to the Port for a permit pursuant to Section 708 of the Charter of the City, the Accessing Party shall complete the Port's Sustainability Opportunities Assessment Form ("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 of the proposed sustainability measures identified in the approved SOA Form.

~~Section 14.~~Section 15. Violations.

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

15.1.1 Fail to comply with any provision of this Ordinance;

15.1.2 Conceal a violation of this Ordinance;

15.1.3 Fail to timely comply with a directive of the Director issued pursuant to this Ordinance;

15.1.4 Fail to comply with conditions of approval for Construction Activities; or

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

15.2 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~~the Environmental Laws including civil and criminal penalties.

~~Section 15.~~Section 16. **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:

16.1 Notice of Violation. The Director may issue a written NOV describing the violation, requiring action, specifying the time period or deadline for ~~such~~the action, and notifying the alleged violator of his or her right to protest the order as provided in ~~Section 16 of this Ordinance~~18.

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

16.3 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.~~17. The NOP must notify the violator of his or her right to protest the penalty as provided in ~~Section 16 of this Ordinance~~18.

16.4 Extension of Time. If an extension of time is required to ~~clean up or abate~~undertake a Response Action to address 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~~the revised timeframe as may be required by Environmental Laws.

16.5 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~~the nuisance, or compel abatement of the nuisance at the violator's expense. ~~If the~~The Port ~~prevails in such action and/or proceeding, it~~ shall be entitled to recover all Costs associated with the legal action.

16.6 Written Enforcement Notices. Any written notice provided under this ~~Section 14~~Ordinance 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.~~ Notice given to one, shall be deemed to have been given to both.

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

~~Section 16.~~Section 17. **Penalties.**

17.1. 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)~~16.3 above, be subject to a penalty of up to and including Five Hundred Dollars (\$500.00) per day for each violation, as ~~such~~the amount may be modified from time to time in the Charter of the City.

17.2. Penalty Alternative. In ~~lieu of addition to~~ 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 17.~~Section 18. Protests.

18.1 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.

18.2 Filing a Protest. Any Person named in an NOV or NOP may ~~protest such~~ submit a Protest of the order ~~or~~, penalty, or ~~attorneys fees and costs~~attorneys' Costs by sending a written request to the Director by certified mail or hand ~~delivering to the Director's office a written request for review~~delivery within twenty (20) calendar days of receipt of ~~such~~the NOV or NOP. ~~Such~~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 Director shall promptly assign a Protest Officer.

18.3 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~~the Protest. The Protest Officer's decision shall be final, unless, within ten (10) calendar days of receipt of ~~such~~the 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.

18.4 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. Any Costs of transcription ~~or any of~~ 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.

18.5 Liens. ~~Notwithstanding any other provision of this Ordinance to the contrary, the~~ 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 18.**Section 19.** **Remedies Not Exclusive.**

The

The remedies in Sections 16, 17, and 18 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 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 19.**Section 20.** **Conflicting Agreement Provisions.**

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

20.1 Prior Tenancy Agreements. To the extent that any provision in a Prior Tenancy Agreement directly conflicts with any provision in this Ordinance~~, 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 ~~such~~the Prior Tenancy Agreement shall be deemed compliance with the conflicting provision in this Ordinance or the Original Ordinance.

20.2 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 of this Ordinance 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 ~~such~~the Prior Non-Tenancy Agreement or Future Agreement shall be deemed compliance with the directly conflicting provision in Sections 7 or 8, as applicable, of this Ordinance or the Original Ordinance, as applicable. Any Future Agreement that has a provision that directly conflicts with Sections 7 or 8 of this Ordinance 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.

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 20.~~**Section 21.**

Miscellaneous

Provisions.

21.1 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.

21.2 Applicability. The provisions of this Ordinance shall be strictly interpreted to apply to all Accessing Parties to the maximum extent allowed by Law.

21.221.3 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, 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.

21.321.4 Liability of Port. Persons subject to Environmental Laws shall be solely responsible for compliance with ~~such laws.~~ Laws. The Director, ~~including any member of the Board of Port official Commissioners,~~ or a Port employee, acting under authorization of this Ordinance, if acting ~~in good faith and~~ within the course and scope of his or her employment ~~or for 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 ~~good faith~~ discharge of the duties of employment or service.

21.421.5 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.

~~21.5~~21.1 ~~Effective Date. This Ordinance shall be in full force and effect on September 1, 2015.~~

21.6 Relationship to Tariff 2-A. ~~The foregoing provisions shall supersede any~~Any provisions in Tariff 2-A that are in direct conflict with the provisions of this Ordinance shall be superseded by this Ordinance.

21.7 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 as may be amended,~~ the 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.

21.8 Relationship to Private Sewer Lateral Ordinance. To the extent that any provision in this Ordinance 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 Ordinance. The absence of any provision in the Private Sewer Lateral 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.

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

21.10 Effective Date. This Ordinance shall be in full force and effect on _____, 2021.