

BOARD MTG. DATE: 3/27/2014

SUPPLEMENTAL AGENDA REPORT

TITLE: Approval of an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC for the Charles P. Howard Terminal Premises located at 1 Market Street, Oakland

AMOUNT: \$100,000.00 Deposit to the Port

PARTIES INVOLVED:

| Corporate Name/Principal | Location |
|----------------------------------|-----------------|
| Oakland Waterfront Ballpark, LLC | Oakland, CA |
| Michael Ghielmetti | |
| Douglas Boxer | |
| Don Knauss | |
| T. Gary Rogers | |
| Seth Hamalian | |

TYPE OF ACTION: Resolution

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: Chris Lytle, Executive Director

FACTUAL BACKGROUND

In July of 2013 the Port of Oakland approved various amendments to the lease and other agreements related to Charles P. Howard Terminal, Berths 67-68 (the "property"), in order to effectuate a settlement agreement related to litigation between the Port and SSA Terminals LLC. As a result of the agreements related to the settlement agreement, the previous tenant has now vacated the premises and has relocated its operations to another marine terminal within the Port. A map of the Howard Terminal site is attached as Exhibit A to this report for reference. Additionally, the July 11, 2013 Agenda Report which included a discussion of the early termination of this lease can be found on the Port website at the following link: www.portofoakland.com.

As discussed in the July 2013 Agenda Report referenced above, staff believes that the future utility of the Howard Terminal for continued long term container terminal operations is limited. This is due to several current factors including the existence of available terminal capacity elsewhere within the Port, as well as changes in the global shipping industry toward larger consolidated terminals that can service multiple carriers with larger vessels in an effort to reduce overall operating costs. As larger vessels replace smaller vessels, port and terminal operations require longer berth lengths and larger backland areas. The limited size (50 acres) of the Howard Terminal compared to modern container terminal sizes elsewhere of 150-200+ acres, the associated berth length, and the current water depth at berth of -42 feet compared with -50 feet available elsewhere, are property characteristics that combine to pose significant limitations for future container terminal operations at the property. Furthermore, as Howard Terminal is located in close proximity to an existing built

BOARD MTG. DATE: 3/27/2014

urban environment, with privately owned property immediately adjacent to the west (Schnitzer Steel Industries), privately owned mixed use development to the north (multiple property owners), and an established commercial/retail development to the east (Jack London Square), expansion of the property to accommodate modern container terminal needs is likely not feasible. An analysis of potential maritime use alternatives for the property prepared by Moffatt & Nichol for the Port, a copy of which is attached as Exhibit B, includes a discussion of the limitations mentioned above, as well as a discussion of other potential maritime uses of the property.

In response to the pending vacancy of this property, staff from the Maritime Division has been actively seeking maritime tenants in order to generate immediate revenue from the property. The Port released a Request for Proposals ("RFP") for the reuse of the site for maritime purposes in October 2013. The potential alternative maritime uses included in the Moffatt & Nichol report were incorporated into the RFP solicitation (RFP No. 13-14/06). Three proposals were received in response to this RFP in early December of 2013. Port staff analyzed the proposals received and recommended rejection of all proposals to the Board of Port Commissioners ("Board") on February 13, 2014. The Board concurred with staff's recommendation on February 27, 2014, after receiving additional information from staff, the proposers, and significant public testimony on the matter. A copy of the Agenda Report prepared for the February 27th meeting is also available on the Port of Oakland website at the following link: www.portofoakland.com. The outcome of the RFP process notwithstanding, the Port has, to date, entered into three short term tenancy agreements for a combined total of approximately 6 acres of the 50 acre property, as well as a berth (water area).

On January 15, 2014 the Port received an unsolicited offer from Oakland Waterfront Ballpark, LLC ("OWB") to enter into exclusive negotiations for the potential option and lease of the Howard Terminal. A copy of the letter from OWB is attached as Exhibit C to this report. In that letter, OWB proposes to develop a world-class waterfront ballpark, with beneficial and related uses, on the property. As this offer was received during the middle of the RFP process already underway, the Port did not respond to the offer at that time.

ANALYSIS

In light of the conclusion of the recent RFP process conducted for the property, staff has now analyzed the offer letter submitted to the Port by OWB. Staff believes that due to the existing site constraints of the Howard Terminal referenced above, and the unique, potentially transformative nature of the use and development concept proposed by OWB, staff believes that OWB's offer warrants further discussion and exploration. Staff believes that many of the proposed terms suggested in the OWB letter could be appropriately incorporated into an Exclusive Negotiating Agreement ("ENA") between the Port and OWB, with some suggested additions and modifications. **Staff recommends that the key business terms listed in Exhibit D to this Agenda Report be incorporated into the ENA.**

It is important to note that execution of an ENA is in no way intended to bind or commit either party to a definitive course of future action, and any proposal to authorize execution of a subsequent Option Agreement or Lease based on this proposal would require future

Deleted: Port staff plans to supplement this Agenda Report with additional information related to the suggested key business terms of the proposed ENA prior to the Board meeting of March 27, 2014.

BOARD MTG. DATE: 3/27/2014

consideration and approval at a public meeting of the Board. Furthermore, if either party does not believe that the due diligence efforts and discussions during the ENA term will result in a mutually beneficial Option Agreement and Lease, the ENA will automatically terminate at the end of the term.

Based on the analysis contained above, and incorporation of the key ENA business terms as indicated in Exhibit D, staff believes that the request to enter into exclusive negotiations with OWB is appropriate and recommends approval of an ENA with Oakland Waterfront Ballpark LLC.

STRATEGIC PLAN

| Strategic Priority Area | Goal | Objective | How + When Implemented |
|--|---|---|---|
| Sustainable Economic and Business Employment | Goal A: Create sustainable economic growth for the port and beyond. | Objective 1: Maximize the use of existing assets. | Approval of the proposed ENA will enable to the Port to discuss and negotiate the potential long term reuse of this existing asset to determine if a viable proposal can be developed between OWB and the Port. |

BUDGET & FINANCIAL IMPACT

Approval of the proposed action will result in the Port receiving a deposit in the amount of \$100,000.00 from OWB at execution of the ENA, up to 50% of which may be used by the Port during the term of the ENA for certain third party technical expenses (such as appraisals, site surveys, etc.) with the remaining portion of the deposit subject to refund at the end of the ENA term if no further agreement has been approved. During the term of the proposed ENA, Maritime Division staff will continue to seek short term tenants for the property to generate revenue from the property, consistent with the current Fiscal Year 2013-14 Budget assumptions of \$350,000 in revenue from this property, and the anticipated revenue projection of \$1.5 million for FY 2014-15, which will be reviewed and incorporated as part of the upcoming FY 2014-15 Port budget discussion.

STAFFING IMPACT

Existing Port staff will manage the ENA; no additional staffing is requested as part of the recommended action.

SUSTAINABILITY

While the approval of the proposed ENA itself does not provide opportunities for incorporation of sustainable practices, it is anticipated that sustainable environmental design practices and policies will be discussed during the negotiations related to any future proposal for the site during the term of the ENA.

BOARD MTG. DATE: 3/27/2014

ENVIRONMENTAL

CEQA Determination

The proposed approval of the ENA has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15061(b)(3), which refers to the “general rule” that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. As the approval of an ENA simply commits the Port and OWB to a limited period of exclusive negotiations regarding the property, and does not bind or commit either party to a future course of action nor include the approval of any project for the site nor any change in land use pattern for the site, approval of the ENA is not subject to CEQA.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

OCIP does not apply to the proposed action as it is not a capital improvement construction project.

GENERAL PLAN

General Plan conformity does not apply to the proposed action as the proposed approval of an ENA does not commit either party to any future course of action with respect to the use or development of the Howard Terminal site.

LIVING WAGE

Living Wage requirements, in accordance with the Port’s Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (“the Living Wage Regulations”) do not apply to the proposed action to approve an ENA.

OPTIONS

1. Approve an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC for the Charles P. Howard Terminal based on the terms and conditions contained within this Agenda Report; or
2. Do not approve an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC for the Charles P. Howard Terminal; or

BOARD MTG. DATE: 3/27/2014

3. Approve an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC for the Charles P. Howard Terminal based on different terms and conditions than those contained within this Report, which depending on the nature of those terms and conditions, may require further negotiation with OWB.

RECOMMENDATION

It is recommended that the Board approve a Resolution authorizing the Executive Director to approve and execute an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC for the Charles P. Howard Terminal premises based upon the terms and conditions stated within this Agenda Report [and as stated in Exhibit D to this Agenda Report](#), and subject to the approval as to form and legality by the Port Attorney. It is further recommended that the subject approval be valid for no longer than 30 days from the date of Board approval, and that if the subject Exclusive Negotiating Agreement is not fully executed by that date such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or his designee.

ATTACHMENTS

Exhibit A – Site Map

Exhibit B – Moffatt & Nichol Memorandum on Alternative Uses for Howard Terminal

Exhibit C - Letter from Oakland Waterfront Ballpark LLC to the Port of Oakland

[Exhibit D – Proposed Key ENA Terms](#)



EXHIBIT A



1300 Clay Street, Suite 550
Oakland, CA 94612

(510) 645-1238 Fax (510) 645-1010
www.moffattnichol.com

MEMORANDUM

To: Port of Oakland
From: Anne Landstrom
Date: February 27, 2014
Subject: Howard Terminal Alternative Uses

Background

Macro-economic trends suggest low to moderate growth of the port and shipping industry over the next several years, which will continue to pressure Port customers to reduce cost along the entire supply chain. In response, the industry has and continues to experience consolidation in the form of mergers, alliances, and other “sharing” arrangements that allow shipping lines to reduce cost by increasing operational efficiencies and flexibility. As part of this, we observe that some shipping lines with terminal operations are divesting those operations in favor of other arrangements, including the use of (typically) larger “public terminals” that serve multiple carriers. At the same time, terminal technology has evolved significantly in recent decades and smaller terminals are becoming increasingly obsolete for container cargo operations.

Howard Terminal is being vacated as a result of leasing decisions implemented by the Port in Summer 2013. For the reasons stated above, Howard Terminal is likely to be obsolete as a container terminal due to its relatively small size (50 acres) in comparison to the public terminals at the Port that are on the order of 200 to 300 acres; limited expansion potential given land uses on adjacent properties; and limited berth length and (currently) water depth.

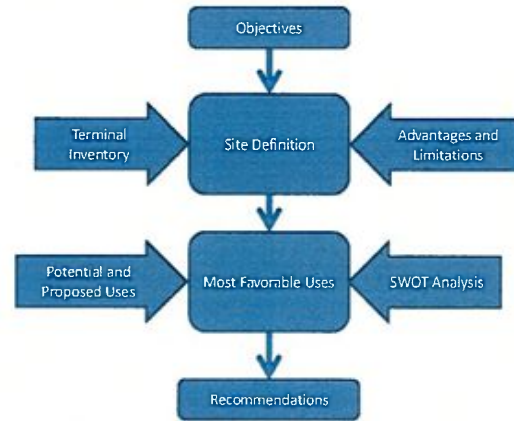
As such, the purpose of this study is to evaluate alternative uses for Howard Terminal that would be compatible with the area and attractive to a terminal operator and developer. Several alternative uses have been proposed for this site over the years, mostly focusing on potential dry bulk pet-coke and mineral commodities. This study will include those dry bulk proposals, but will also explore other potential terminal uses.

Present land use regulations as promulgated by the Bay Conservation and Development Commission (BCDC) under the federal Coastal Zone Management Act discourage or prohibit non-maritime uses of designated shoreline areas including the Howard Terminal site, which is designated as Port Priority Use in the BCDC Seaport Plan. Therefore, such non-maritime uses were not evaluated as part of this analysis.

In many urban port environments, the prime locations are dedicated to containerized cargo, as this use often generates the highest return on terminal infrastructure investment. However, building materials, industrial precursors and products, project cargo and marine services are also needed in an urban port area. These uses are often relegated to older, less optimum terminal sites where existing facilities can be repurposed for other uses. Howard Terminal likely falls into this category.

Methodology

This study is intended to be a high-level review of potential uses for Howard Terminal with specific recommendations for future evaluation. It begins with a statement of objectives and an outline of site defining characteristics. The study includes a discussion of potential and proposed use for Howard Terminal and selects from among these uses several that are most favorable at this site. The most favorable uses have been individually evaluated and recommendations developed for future uses at Howard Terminal.



Objectives of the Study

This study is intended to preliminarily explore alternative uses for the Port of Oakland, Howard Terminal (Berths 67-68). The alternatives will be evaluated for their compatibility with the existing terminal site and for their commercial attractiveness to marine terminal operators and developers. The objective of this evaluation will be to down-select the candidate alternatives to arrive at a short list of recommended terminal uses. The recommended uses will then be subjected to economic evaluation to generate a range of likely lease, vessel, and cargo derived revenues to the Port of Oakland.

While a number of potential uses were considered, the Moffatt & Nichol team evaluated the most favorable uses by using a selection matrix as shown below. Although the selection matrix is a subjective tool, it is a good method for comparing alternatives on an equal basis. Evaluation of the matrix suggests that various ro-ro and break bulk cargos may be the most favorable options for constructive re-use of Howard Terminal.

Ro-ro cargo could include both autos and equipment. The Port of Baltimore has been successful in repurposing their underutilized Dundalk container terminal for both heavy equipment and autos. The Port of Virginia, Newport News Marine Terminal has been similarly repurposed from container to auto.

Break bulk general cargo along with the more specialized refrigerated cargo services and building material or project cargo transfer and storage would also be compatible with the site criteria. Although “omni-port” type break bulk facilities have not been particularly successful as public terminals, they can be viable as private terminals where the operator also controls the market.

The reader should note that the matrix shown below is not intended to reflect detailed, site-specific analyses; should the Port opt to implement one of these uses, more thorough review of the viability of such use would be required to support implementation. Some uses may ultimately prove to be more or less viable than indicated in this study.



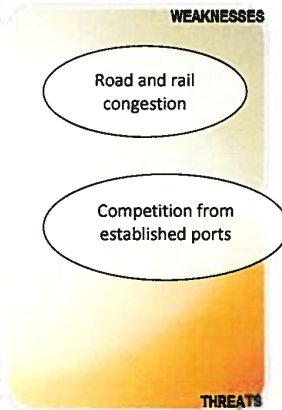
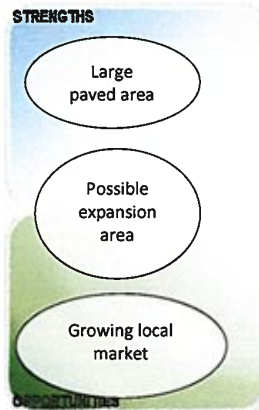
Terminal Selection Matrix

| TERMINAL TYPE | Good ● | Fair ○ | Poor X | Compatible With Local Community | Compatible With Port Master Plan | Compatible With City Master Plan | Adequate Road and Rail Access | Adequate Water Depth at Berth | Use of Existing Wharf and Crane | Efficient Use of Existing Land |
|--------------------------|------------|--------|--------|---------------------------------|----------------------------------|----------------------------------|-------------------------------|-------------------------------|---------------------------------|--------------------------------|
| | Containers | ● | ○ | X | ● | ● | ● | X | X | ○ |
| Ro-ro Equip./Trailers | ● | ○ | X | ● | ● | ● | ○ | ● | ○ | ○ |
| Ro-ro Autos | ● | ○ | X | ● | ● | ● | ○ | ● | ○ | ● |
| Break Bulk Cargo | ● | ○ | X | ● | ○ | ○ | ● | ● | ● | ○ |
| Refrigerated Cargo | ● | ○ | X | ● | ○ | ○ | ● | ● | ● | ○ |
| Building Materials | ● | ○ | X | ● | ○ | ○ | ● | ● | ● | ○ |
| Local Dry Bulk Materials | X | ○ | ○ | X | ○ | ○ | ● | ● | ○ | ● |
| Other Dry Bulk | X | ○ | ○ | X | X | X | X | ○ | ○ | ● |
| Dry Bulk Ag | ● | ○ | X | ● | X | X | X | ● | ○ | ○ |
| Liquid Bulk Ag | ● | ○ | X | ● | X | X | ● | ● | ○ | X |
| Compressed Gas | X | ○ | ○ | X | X | X | X | ○ | X | ● |
| Petroleum Products | X | ○ | ○ | X | X | X | X | ○ | X | ● |
| Marine Services | ○ | ○ | X | ○ | X | X | ● | ● | ○ | ● |

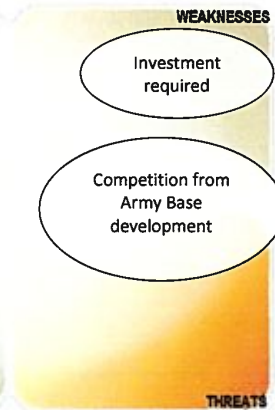
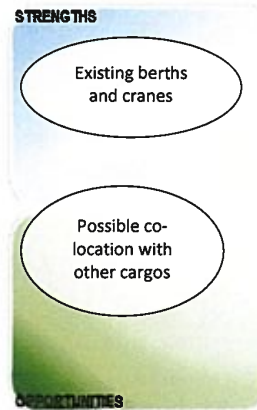


To further explore the ro-ro and break bulk terminal options, which were the use categories ranked highest in the matrix above, a graphical “Strengths, Weaknesses, Opportunities and Threats” analysis was developed.

Ro-Ro Auto and Equipment



Break Bulk



As a result of the terminal selection matrix and the SWOT analysis, the uses deemed most viable were identified and are listed below with a more detailed discussion on the “order of magnitude” costs following (for the complete list and an overview of the site see Appendix A):

- Container Terminal
- Terminal for Heavy RO-RO Equipment
- Ro-Ro Automobile Terminal
- Break-bulk Terminal
- Refrigerated Cargo and Warehousing Terminal
- Lumber, Steel and Building Materials Terminal
- Local Dry Bulk Materials Terminal
- Other Dry Bulk Cargo Terminal
- Dry Bulk Agricultural and Forest Products Terminal
- Liquid Bulk Ag Products Terminal



The analysis presented herein provides estimated (“order of magnitude”) costs based on standard engineering design/construction parameters, some site-specific characteristics including previous studies performed by the Port and others, and improvements constructed at other ports/properties. The estimates provided herein are not intended to reflect detailed site-specific analyses; should the Port opt to implement one of these uses, more thorough cost estimating would be required to support implementation and ensure an appropriate return on investment.

Container Terminal –Port capacity has increased faster than the demand for container terminal services; as a result, there is a Port-wide surplus of capacity currently. This, coupled with draft limitations of 42 feet, make Howard Terminal undesirable for container handling in the foreseeable future. However, if the Port wanted to attempt to retain container operations at the terminal, an investment of approximately \$40 million would be required, as summarized below.

| Tasks | Costs |
|--|--------------|
| Electric Dredging/Disposal/Permits down to -50': | \$3.8m |
| Wharf/Embankment Strengthening: | |
| 2002 Cost (Based on WESP Estimates provided by F.E. Jordan/Gerwick): | \$7m |
| Projected 2013 Cost: | \$10.4m |
| Yard Striping and pavement upgrades | \$2m |
| Design/Contingencies/Permits (25% of construction): | \$4m |
| 2 New Container Cranes and scrapping of 2 Old Cranes | \$20m |
| Estimated Total: | \$40m |

Source: Port of Oakland and Moffatt & Nichol

Container terminal operations are the most lucrative of all maritime uses being considered for Howard Terminal; the most recent container terminal operation on the site generated approximately \$10 million of annual revenue to the Port. The return on the potential investment of \$40 million for dredging and related improvements depends on the viability of continued container operations at Howard Terminal, which is currently deemed to be very low.

The reader should note that the wharf and dredging improvement costs listed above will not be applicable for any other uses discussed in the rest of this document because we believe that 50 feet of water depth is not required for the other alternative uses.

Heavy Ro-Ro Equipment and Trailers – In addition to containers, Howard Terminal has been used for roll-on/roll-off (ro-ro) trailer service to Hawaii. With adequate backlands and rail access, Howard terminal could also support heavy equipment import and export operations and project cargo. Areas of



reinforced paving would be required for tracked equipment movement. The market for this type of terminal has not been evaluated for the San Francisco Bay area. The estimated investment is summarized below:

| Tasks | Costs |
|--|---------------------|
| Site Preparation and Demolition (including environmental) | \$3m |
| Earthwork – Grading and Paving | \$4m |
| Rail Track work (additional track into site, turnouts)*: | \$1m |
| Utilities and Misc. Sitework | \$5m |
| Structures (depending on what existing structures can be repurposed for project cargo use) | \$1-1.5m |
| Design/Construction Management (6%) | \$0.9m |
| Permits (6%) | \$0.9m |
| Contingency (25%) | \$3.5m |
| Estimated Total: | \$19.3-19.8m |

Source: TranSystems August 2012 Memo and Moffatt & Nichol

Ro-ro Auto and Vehicle Processing – The current berth dimensions and draft, along with the 50 acres of paved backlands are favorable for ro-ro auto import or export. Loading tracks for tri-level rail cars are possible either on Howard terminal or on the nearby Roundhouse Property. However, it is questionable whether Oakland offers significant advantages over the established auto terminals in Benicia, CA and Richmond, CA, and whether there is sufficient market to support expansion of auto imports or exports in the San Francisco Bay area. Detailed market studies would have to be undertaken to evaluate the potential of this alternative use at levels warranting investment. The estimated investment is summarized below:



| Tasks | Costs |
|---|----------------|
| Site Preparation and Demolition | \$1m |
| Earthwork – Grading, Paving and Access | \$4m |
| Rail Track Work (Assumes use of Roundhouse Property for loading of rail cars, staging of automobiles)*: | \$1.1m |
| Utilities and Misc. Sitework | \$5m |
| Structures (Processing – minimal facility, car wash, fueling facility, quality assurance) | \$4m |
| Design/Construction Management (6%) | \$0.7m |
| Permits (6%) | \$0.7m |
| Contingency (25%) | \$3m |
| Estimated Total: | \$16.6m |

Source: Moffatt & Nichol and TranSystems August 2102 Memo

Break Bulk Marine Terminal – With the addition of warehouse space and truck circulation, the wharf and berthing area at Howard Terminal would be suitable for handling vessels carrying various break bulk cargoes (for example palletized or unitized general cargo such as steel products, paper products, fiber board, plywood, cocoa beans or coffee or project cargo). As an adjunct to this terminal operation with specialized vessels calling at the berths, the terminal could also function as an off-terminal cross dock and containerized freight station (CFS) for container terminals at the Port. However, this use may be in competition with a similar development planned by the City of Oakland at the former Oakland Army Base site. Further, such use may be cost prohibitive from a labor standpoint since waterfront work is typically in the jurisdiction of waterfront labor unions and other competing off-terminal cross dock and container freight stations may not use waterfront labor unions, potentially creating a competitive disadvantage for an operator at Howard Terminal. The estimated investment is summarized below:



| Tasks | Costs |
|--|---------------|
| Utilities and Misc. Sitework | \$1m |
| Structures (50,000 sq. ft. storage shed @\$110/sf) | \$5.5m |
| Design/Construction Management (6%) | \$0.4m |
| Permits (6%) | \$0.4m |
| Contingency (25%) | \$1.6m |
| Estimated Total: | \$8.9m |

Source: Moffatt & Nichol

Refrigerated Cargo and Warehousing – A refrigerated warehouse complex at Howard Terminal would allow import and possibly export of fruit, meat and other food products. Smaller container ships and refrigerated break bulk ships could be accommodated at the existing wharf. Consolidation, cross-docking, refrigerated storage and other value added services could be provided within the terminal, in support of other container terminals at the Port. However, such use may be cost prohibitive from a labor standpoint (refer to discussion above). The estimated investment is summarized below:

| Tasks | Costs |
|--|----------------|
| Site Preparation and Demolition | \$1m |
| Earthwork – Grading | \$1m |
| Track work (primarily to bring in rail spur to refrigerated warehouse for manifest cars): | \$0.5m |
| Utilities and Misc. Sitework | \$7m |
| Structures (130,000 sq. ft. refrigerated storage facility and office and administrative buildings) | \$20.7m |
| Design/Construction Management (6%) | \$1.8m |
| Permits (6%) | \$1.8m |
| Contingency (25%) | \$7.6m |
| Estimated Total: | \$41.4m |

Source: Moffatt & Nichol



Lumber, Steel and Building Materials – Break bulk and neo-bulk (neo-bulk is units of a single commodity like lumber or scrap metal, not normally unitized or palletized as compared to break-bulk) building materials are generally non-discretionary, meaning that they are being consumed within the local area and are shipped and received close to their points of origin or use. With 50 acres of paved backland available for storage, Howard Terminal could function as a receiving and distribution center for various building materials that would arrive by ship, rail or van and be distributed by truck. However, as mentioned with some of the previous alternative uses, this use could be overly costly from a labor standpoint (see discussion above). This use requires no additional investment.

Dry Bulk Materials

Local Dry Bulk Materials – Other local building materials such as aggregate and cement are carried as dry bulk and could be brought into the East Bay through the Howard Terminal. Aggregate and cement could be imported by ship at a lower cost than by truck or rail and from a broader market than local barge services can reach. However, issues of dust generation and truck traffic would have to be addressed to make this a viable option. The investment for this type of activity would likely require roadway and related circulation improvements outside the terminal boundary, which could be challenging because some of the roadways are outside Port jurisdiction and land area is constrained within the Port area/jurisdiction. Without further detailed study of this alternative use, Moffatt & Nichol cannot reasonably estimate the potential investment required.

Other Dry Bulk – Other bulk cargoes that could be attracted would include pet-coke, iron ore, fertilizer, sulfur prill, plastic resin pellets, and other industrial materials. However, some of these cargoes are better served by large, deep draft vessels that would not be able to call Howard Terminal, particularly without 50 feet of water, but likely even with 50 feet of water. Another issue is rail access for delivery of discretionary cargoes. The unit value of the cargo must be relatively high to support the local rail costs to or from Oakland.

Dry Bulk Agricultural and Forest Products – As world markets open up for U.S. agricultural and forest products, there may be an opportunity to develop a dry bulk terminal for grain and animal feed. Forest products such as wood pellets or bulk wood pulp have been suggested as well. However, it is unlikely that U.S. bulk forest products exports from the Bay Area would be competitive with the Pacific Northwest and a specific market need for additional agricultural product export capacity has not been established.

The investment level for the rail infrastructure required to support bulk cargoes is most likely cost prohibitive to establishing these uses unless a terminal operator or other entity would be willing to make the investment itself based on a long term agreement with the Port. The market interest for this type of activity has not yet been identified.

The estimated investment for these types of uses is summarized below:



| Tasks | Costs |
|--|----------------|
| Site Preparation and Demolition | \$1m |
| Earthwork – Grading | \$1m |
| Track work | \$1.5m |
| Bulk unloading infrastructure and equipment (unloading pit and covered conveyor systems) | \$21.1m |
| Utilities and Misc. Sitework | \$5m |
| Structures (silos, office/admin buildings and material storage buildings) | \$15m |
| Design/Construction Management (6%) | \$2.7m |
| Permits (6%) | \$2.7m |
| Contingency (25%) | \$11.1m |
| Estimated Total: | \$61.1m |

Source: TranSystems August 2012 Memo and Moffatt & Nichol

Liquid Bulk Ag Products – Probably the only liquid bulk cargos that would be compatible with the Howard Terminal geographical setting are edible oils such as exported soy bean oil or imported palm oil. However, the local market may be too thin to support a two-berth, 50 acre terminal. If this type of cargo is attractive to an importer or exporter, it may be possible to include liquid bulk edible oils with other compatible break bulk or dry bulk cargos.

Similar to dry bulk, the investment level for the rail and terminal infrastructure required to support liquid bulk cargoes is most likely cost prohibitive to establishing this use unless a terminal operator or other entity would be willing to make the investment themselves based on a long term agreement with the port. The market interest for this type of activity has not yet been identified.

The estimated investment is summarized below:



| Tasks | Costs |
|---|----------------|
| Site Preparation and Demolition (including environmental) | \$4m |
| Trackwork: | \$1.5m |
| Liquid Bulk equipment | \$5m |
| Tanks and Pipelines | \$30m |
| Design/Construction Management (6%) | \$2.4m |
| Permits (6%) | \$2.4m |
| Contingency (25%) | \$1m |
| Estimated Total: | \$54.8m |

Source: Moffatt & Nichol

Summary and Conclusion

Based on the evaluation of these uses, the range of investment required to re-purpose Howard Terminal would range from \$8.9 million for a break-bulk terminal to \$61.1 million for a dry-bulk terminal.

A ROI calculation has been done for the most viable uses of Howard Terminal, providing a calculation of Breakeven point at 5 % return. As shown below, the most optimal uses for Howard, to attain the highest rate of return would be: an automobile terminal, a container terminal or a multi-purpose break-bulk terminal. Although the rate of return looks favorable for continuing to operate Howard Terminal as a container terminal, based on various issues (discussed above) there will likely not be a continued demand for container terminal operations at Howard Terminal in the near future. Similarly, a ro-ro auto terminal has a favorable rate of return but is not likely to be marketable based on competing facilities in Benicia and Richmond that are currently not operating at full capacity.

Of the remaining uses, a multi-purpose, break-bulk facility that could also handle project cargoes and heavy equipment would likely provide the best return on investment and be the most viable for Howard Terminal. We have modeled this option with both no tenant investment and with a \$5.5 million tenant investment in structures necessary for cargo storage. The break-bulk option with tenant investment has the most favorable rate of return and the shortest time period for breakeven at 7 years.

| Terminal Use | Capital Expense | IRR | Breakeven @ 5% (yrs) |
|------------------------------|-----------------|----------------|----------------------|
| Auto ro-ro | \$ 16,600,000 | 11.1% | 13 |
| Container | \$ 40,000,000 | 8.9% | 16 |
| Multi-Purpose Break-Bulk | \$ 8,900,000 | 3.2% | > 30 |
| Multi-Purpose Break-Bulk V2* | \$ 3,400,000 | 19.3% | 7 |
| Multi-Purpose Reefer | \$ 41,400,000 | Not meaningful | never |



*Assumes \$5.5 tenant investment in cargo storage structures

notes:

- IRR (internal rate of return) is the rate at which the present value equals zero over a 30 year project life;
i.e., the return on investment. IRR based on rental assumptions provided to the Port under separate cover as part of confidential settlement negotiations.
- Assumes all options are based on 50 rentable acres
- Rent escalated at 2% per annum
- Capital expense is spread over two years
- Rent begins in year three
- 5% of capex per year assumed for capital maintenance paid by the Port
- Breakeven is years of operation (after capex is completed)



APPENDIX A: Site Inventory and Potential Uses

Howard Terminal Site Inventory

- 2,000 ft. marginal wharf with 42 feet of draft at berth
- Approximately 50 acres of paved yard (pavement in various condition)
- Rail access – Approximately 5,000 feet of on-terminal rail (sub-standard curvature)
- Four Container Gantry Cranes – 100 ft. Gauge
- Two inbound documentation canopies, 9,600 square feet and 11,000 square feet
- Approximately 10,000 square feet of portable building offices
- Approximately 5,000 square feet miscellaneous shops and offices
- 204 Refrigerated container connections

Site Advantages

- 50 Contiguous Paved Acres
- Zoned and Permitted for Port Use
- Favorable Site Geometry
- Possible Off-site Expansion (Roundhouse Property)
- Located on a Dredged Channel
- Rail and Highway Access
- Two Panamax Berths
- High Density Market Area

Site Limitations

- Not Contiguous with Other Terminals
- Pavement designed for wheeled storage
- Potential rail and roadway Congestion
- Less than optimal access and egress onto neighboring surface streets
- Contaminated Sub-surface
- Current 42' Maximum Draft at the Wharf
- Competition from nearby terminals
- No site (acreage) expansion potential due to existing adjacent non-Port-owned or non-maritime land uses

Potential Uses

- Container Terminal
- Ro-ro Auto and Vehicle Processing
- Ro-ro Equipment
- Break-bulk
- Refrigerated Cargo and Warehousing
- Lumber, Steel and Building Materials
- Local Dry Bulk: Aggregate, Cement
- Other Dry Bulk Industrial Products
- Dry Bulk Ag and Forest Products
- Liquid Bulk Ag Products
- Liquid Bulk: Ethanol, Liquid Fuel, Liquid Sulfur, Petro-chemicals
- Liquid Bulk Compressed Gas: LPG, LNG, CNG



- Marine Construction and Vessel Services
- Truck Parking or Chassis/Empty Container Storage

Discussion of Potential Uses

- **Container Terminal** – As newer container handling technologies are deployed at nearby terminals, overall port capacity has increased faster than the demand for container terminal services and port-wide, there is a surplus of capacity. This, coupled with current draft limitations of 42 feet, make further investment in Howard Terminal for container handling highly unlikely. In summary, the construction and dredging investment required to bring Howard Terminal up to current standards of practice is probably greater than the market for container handling services will support in the foreseeable future.
- **Ro-ro Equipment and Trailers** – In addition to containers, Howard Terminal has been used for ro-ro trailer service to Hawaii. With sufficient backlands and rail access, Howard terminal could also support heavy equipment import and export operations. Areas of reinforced paving would be required for tracked equipment movement. The market for this type of terminal has not been evaluated for the San Francisco Bay area.
- **Ro-ro Auto and Vehicle Processing** – The berth dimensions and draft, along with the 50 acres of paved backlands are favorable for ro-ro auto import or export. Loading tracks for tri-level rail cars are possible either on Howard terminal or on the nearby Roundhouse Property. However, it is questionable whether Oakland offers significant advantages over the established auto terminals in Benicia, CA and Richmond, CA and whether there is sufficient market to support expansion of auto import or export in the San Francisco Bay area.
- **Break Bulk** – With the addition of warehouse space and truck circulation, the wharf and berthing area at Howard Terminal would be suitable for various break bulk cargos. As an adjunct to this terminal operation, the site could also function as an off-terminal cross dock and containerized freight station (CFS) for container terminals at the Port of Oakland. However, this use may be in competition with a similar development planned by the City of Oakland at the former Oakland Army Base site.
- **Refrigerated Cargo and Warehousing** – A refrigerated warehouse complex at Howard Terminal would allow import and possibly export of fruit, meat and other food products. Smaller container ships and refrigerated break bulk ships could be accommodated at the existing wharf. Consolidation, cross-docking, refrigerated storage and other value added services could be provided within the terminal, in support of other container terminals at the Port of Oakland.
- **Lumber, Steel and Building Materials** – Break bulk and neo-bulk building materials are generally non-discretionary cargos that are shipped and received close to their points of origin or use. With its 50 acres of paved storage, Howard Terminal could function as a receiving and distribution center for various building materials that would arrive by ship, rail or van and be distributed by truck.



- **Local Dry Bulk Materials** – Other local building materials such as aggregate and cement are carried as dry bulk and could be brought into the East Bay through the Howard Terminal. Aggregate and cement could be imported by ship at a lower cost than by truck or rail and from a broader market than local barge services can reach. However, issues of dust generation and truck traffic would have to be addressed to make this a viable option.
- **Other Dry Bulk** – It may be possible to attract dry bulk cargoes that are currently handled at other regional ports. These cargoes include pet-coke, iron ore, fertilizer, sulfur prill, plastic resin pellets, and other industrial materials. However, some of these cargoes are better served by large, deep draft vessels that would not be able to call Howard Terminal. Typically, minerals and iron ore fall into this category. Another issue is rail access for delivery of discretionary cargoes. The unit value of the cargo must be relatively high to support the local rail costs to or from Oakland. High grade calcined pet-coke and resin pellets may fall into this category.
- **Dry Bulk Ag and Forest Products** – As world markets open up for U.S. agricultural and forest products, there may be an opportunity to develop a dry bulk terminal for grain and animal feed. Forest products such as wood pellets or bulk wood pulp have been suggested as well. However, it is unlikely that U.S. bulk forest products exports from the Bay Area would be competitive with the Pacific Northwest and a specific market need for additional agricultural product export capacity has not been established.
- **Liquid Bulk Ag Products** – Probably the only liquid bulk cargoes that would be compatible with the Howard Terminal setting are edible oils such as exported soy bean oil or imported palm oil. However, the local market may be too thin to support a two-berth, 50 acre terminal. If this type of cargo is attractive to an importer or exporter, it may be possible to include liquid bulk edible oils with other compatible break bulk or dry bulk cargoes.
- **Liquid Bulk Compressed Gas** – Storage of highly flammable liquefied or compressed gas such as LPG, LNG or CNG is not compatible with the urban port environment at Howard Terminal. Additionally, Coast Guard channel restrictions would result in a virtual closure of inner harbor while vessel loading took place.
- **Liquid Bulk Petroleum Products** – As with liquefied gas, liquid fuels and petroleum products are also not compatible with the urban port environment.
- **Marine Construction and Vessel Services** – Marine construction, dredging and towing companies often need high quality berthing and storage for their equipment. Howard Terminal may be attractive to a large constructor such as Weeks or Great Lakes. However, the lease rates on such sites are typically low.
- **Paved Parking or Storage Area** – Howard Terminal could also provide paved area suitable for truck parking, chassis storage, empty container storage or other maritime related paved acreage. This would be a use similar to what the Roundhouse property is now being used for.



OAKLAND WATERFRONT BALLPARK LLC

January 15, 2013

BY FIRST CLASS AND ELECTRONIC MAIL

Mr. Christopher Lytle
Executive Director
Port of Oakland
530 Water Street
Oakland, California 94607

Re: Howard Terminal – Proposal for Exclusive Negotiating Agreement

Dear Mr. Lytle:

The Oakland Waterfront Ballpark, LLC (“OWB”) is comprised of a group of long-time Oakland businesses and residents who have come together for the purpose of keeping the Oakland Athletics in Oakland. As part of that effort, we would like to enter into an exclusive negotiating agreement (“ENA”) with the Port of Oakland (“Port”) to negotiate a long term ground lease at the Howard Terminal site (the “Site”) for development of a world-class, waterfront ballpark and beneficial and related ancillary uses.

We envision that the parties’ negotiations would occur in three steps: (1) entry into an ENA between OWB and the Port for a period not to exceed twelve (12) months, during which time the parties would negotiate the terms of an option agreement and long term ground lease for the Site; (2) an option period during which OWB would obtain necessary permits and land use approvals for the planned ballpark development, including compliance with the California Environmental Quality Act (“CEQA”), any necessary approvals from the Bay Conservation and Development Commission, any required modifications to the San Francisco Bay Area Seaport Plan and any approvals required from the California State Lands Commission; and (3) subject to compliance with CEQA and all necessary permits and land use approvals relating to development of the ballpark and related uses, OWB’s exercise of the option and commencement of the long term ground lease.

We expect that the option period would be between two and three years and that during the ENA and the option periods, the Port would have the right to lease and otherwise make appropriate use of the Site, consistent with the ENA and option agreement.

The following is an outline of terms under which OWB would agree to enter into an ENA with the Port:

1. **Parties:** Oakland Waterfront Ballpark, LLC (“OWB”) and the Port of Oakland (“Port”).
2. **Purpose:** The purpose of the ENA would be to permit the parties to negotiate the terms of an option agreement and a long term ground lease for the development of the Site as a world-class, waterfront ballpark for the Oakland Athletics and beneficial and related ancillary uses.

2201 BROADWAY, SUITE 604, OAKLAND, CA 94612

EXHIBIT C

Howard Terminal – Proposal for Exclusive Negotiating Agreement
January 15, 2014
Page 2 of 3

Any option agreement and/or ground lease would be subject to OWB's compliance with all applicable land use requirements and approvals, including CEQA, and would reserve to the Port all of the Port's necessary authority and discretion as a lead and/or responsible agency under CEQA.

3. Deposits: OWB would deposit \$50,000 with the Port (the "Initial Deposit") within three (3) business days following the effective date of a formal ENA. The Initial Deposit and any Extension Deposit (defined below) would be fully applicable to any payments required of OWB pursuant to any future option agreement or ground lease, and would be fully refundable to OWB in the event that no formal option agreement is executed or becomes effective.
4. Term: The ENA would have an initial term of six (6) months (the "Term") and, if the parties were actively engaged in negotiations, OWB would have the right to extend the Term for an additional six (6) months by depositing an additional \$50,000 with the Port (the "Extension Deposit") prior to the expiration of the initial Term.
5. Site Evaluation: OWB anticipates ground leasing the Site in its "as-is, where is" physical condition. During the Term of the ENA, OWB would have the right to enter upon the Site to conduct any tests deemed necessary or desirable by OWB (including taking soil and/or groundwater samples). In addition, during the Term of the ENA, OWB would have the right to discuss the Site with City of Oakland staff and officials, other applicable governmental agencies and any public and private stakeholders.
6. Assignment: OWB would have the right to assign the ENA to any owner of the Oakland Athletics upon written notice to the Port.
7. Confidentiality: The parties would agree to keep their negotiation of and under the ENA confidential to the maximum extent permitted by law. The confidentiality obligation would terminate upon the earlier to occur of: (a) the effective date of any agreed upon option agreement or (b) eighteen (18) months following the effective date of this letter.
8. General Terms: This letter sets forth a general summary of some of the material terms that would need to be negotiated and memorialized in a formal ENA. Until that time, and except for the confidentiality obligation set forth in Paragraph 7, (a) neither party shall have any obligation to the other party with respect to the Site, (b) neither the expenditure of funds, the making of any commitments, nor the taking of any actions by any party to implement any of the terms and conditions of this submission or any such correspondence shall be regarded as part performance or otherwise effectuate any agreement prior to the full execution and delivery of the formal ENA and (c) either party may terminate negotiations at any time for any or no reason.

Howard Terminal – Proposal for Exclusive Negotiating Agreement
January 15, 2014
Page 3 of 3

If the foregoing terms are acceptable, please so indicate by countersigning this letter in the space provided below and returning a copy to me by 5:00 p.m. Pacific time on February 6, 2014.

If the Port accepts this letter, OWB will have a draft Agreement prepared for review by the Port.

Please do not hesitate to contact me with any questions or comments.

Sincerely,



Don Knauss



Michael Ghielmetti



T. Gary Rogers



Douglas Boxer



Seth Hamalian

Reviewed and Approved:

Signed: _____

By: _____

Its: _____

Date: _____

SUPPLEMENTAL EXHIBIT D
Proposed Key ENA Terms

Exclusive Negotiating Agreement (“ENA”):

1. Parties: Port and Oakland Waterfront Ballpark LLC (“OWB”), the composition of OWB must at all times during the term of the ENA include representatives with significant land use entitlement and development experience and demonstrated success with applicable State, regional, and local agencies, as determined at the reasonable discretion of the Port;
2. Purpose of ENA: Parties to negotiate the potential terms of an Option Agreement and Lease for the development and operation of a world-class, waterfront ballpark and/or similar national sports venue and beneficial and related ancillary uses including Public Trust uses (the “Project”);
3. Deposit: \$100,000 deposit amount, and up to ½ of deposit may be used by the Port for certain third party expenses during the ENA term (i.e. appraisal, site survey, etc.) remaining deposit funds applicable to Option Agreement payment if Option is executed or refunded if no Option is executed;
4. Term: the term of the ENA shall expire 10 months from the date of execution or by February 10, 2015, whichever occurs first;
5. Site and Project Evaluation: Lease of the property shall be in its “as-is, where is” physical condition, OWB to have the right to perform site evaluation due diligence including the right to review site reports and property information available regarding the property, discuss the planned project development and entitlements with regulatory agencies, and solicit input from key community stakeholders;
6. Assignment: OWB has the right to assign ENA to the owner of the Oakland Athletics, or other national sports franchise ownership groups, however the composition of the Assignee must at all times during the term of the ENA include representatives with significant land use entitlement and development experience and demonstrated success with applicable State, regional, and local agencies, as determined at the reasonable discretion of the Port;
7. Confidentiality: Parties agree to keep the negotiation of Option and Lease terms confidential during the term of the ENA, to the maximum extent permitted by law;
8. Site Control: Port to retain site control and possession of the premises during the term of the ENA, the Port to retain all tenant leasing responsibility and tenant revenues from the site during the term of the ENA, Port shall not approve or execute any property rental agreements for the premises during the term of the ENA which have a term expiration date beyond three years from the effective date of the ENA, without the written consent of OWB;
9. Port Due Diligence: OWB shall submit to the Port in a timely fashion, and the Port shall have the right to examine the feasibility of the Project with respect to the financing plan, development plan, and the proposed uses of the site, among other matters; and the Port shall have the right to solicit input from key regulatory agencies and community stakeholders in collaboration with OWB;
10. Waiver and Release of Damages for Breach: Both parties agree to waive and release the other party from any monetary or equitable damages for breach of the ENA, the sole remedy for breach is specific performance.

03/27/14
Item No. 6.2
DC/kk *[Signature]*

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN EXCLUSIVE NEGOTIATING AGREEMENT WITH OAKLAND WATERFRONT BALLPARK, LLC FOR THE CHARLES P. HOWARD TERMINAL PREMISES LOCATED AT MARKET STREET, OAKLAND.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 6.2 ("Agenda Report"), dated March 27, 2014 and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; now, therefore, be it

RESOLVED that the Board hereby authorizes the Executive Director of the Port of Oakland ("Executive Director") to negotiate and execute, for and on behalf of the Board and subject to approval as to form and legality by the Port Attorney, an Exclusive Negotiating Agreement ("ENA") with Oakland Waterfront Ballpark, LLC ("OWB") for the Charles P. Howard Terminal premises with the following material terms and conditions as more fully described in the Agenda Report and Supplemental Agenda Report:

- 1. The composition of OWB must at all times during the term of the ENA include representatives with significant land use entitlement and development experience and demonstrated success with applicable State, regional, and local agencies, as determined at the reasonable discretion of the Port;
- 2. The purpose of the ENA shall be to negotiate the potential terms of an Option Agreement and Lease for the development and operation of a world-class, waterfront ballpark and/or similar national sports venue and beneficial and related ancillary uses including Public Trust uses (the "Project");
- 3. OWB shall deposit with the Port an amount equal to \$100,000.00, up to 50% of which may be used by the Port for certain third party expenses during the ENA term (e.g., appraisal, site survey, etc.) and any remaining balance thereof to be (i) applied to an Option Agreement payment if

an Option is executed or (ii) refunded if no Option Agreement is executed;

4. the term of the ENA shall expire 10 months from the date of execution or by February 10, 2015, whichever occurs first;
5. the Lease shall be in its "as-is, where-is" physical condition, and OWB will have the right to perform site evaluation due diligence (including the right to review the Port's site reports and property information regarding the site, discuss the planned project development and entitlements with regulatory agencies, and solicit input from key community stakeholders);
6. OWB will have the right to assign the ENA to the owner of the Oakland Athletics, or other national sports franchise ownership groups, provided that the composition of such assignee must at all times during the ENA term include representatives with significant land use entitlement and development experience and demonstrated success with applicable State, regional, and local agencies, as determined at the reasonable discretion of the Port;
7. during the ENA term, negotiations regarding the Option Agreement and Lease shall remain confidential to the maximum extent permitted by law;
8. the Port shall retain site control and possession of Howard Terminal throughout the term of the ENA, and the Port shall retain all leasing responsibility and revenues from the use of Howard Terminal during the ENA term, provided that the Port shall not approve or execute any property rental agreements for Howard Terminal which have a term greater than three (3) years from the effective date of the ENA without the prior written consent of OWB;
9. OWB shall submit to the Port in a timely fashion, and the Port shall have the right to examine the feasibility of the Project with respect to the financing plan, development plan, and the proposed uses of the site, among other matters, and the Port shall have the right to solicit input from key regulatory agencies and community stakeholders in collaboration with OWB;
10. except as stated herein, both parties agree to waive and release the other party from any monetary or equitable damages for breach of the ENA, the sole remedy for each in the event of breach being specific performance; and be it

FURTHER RESOLVED, that the subject approval be valid for no longer than 30 days from the date of Board approval, and that if the

subject ENA is not fully executed by that date such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or his designee; and be it

FURTHER RESOLVED, that the Executive Director is hereby authorized, after consultation with the Port Attorney, to issue interpretations, and/or enter into certain amendments of the ENA on behalf of the Port so long as such actions do not materially or substantially change the material terms and conditions set forth herein; and be it

FURTHER RESOLVED, that the Board hereby finds and determines that the project was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines, Article 19, Section 15061(b)(3), which refers to the "general Rule" that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. As the approval of an ENA simply commits the Port and OWB to a limited period of exclusive negotiations regarding the property, and does not bind or commit either party to a future course of action nor include the approval of any project on the site nor any change in land use pattern for the site, approval of an ENA is not subject to CEQA; and be it

FURTHER RESOLVED, that this resolution 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, any officer or employee of the Board. This resolution approves and authorizes the execution of an agreement in accordance with the terms of this resolution. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed and 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, and be it

FURTHER RESOLVED, that this resolution shall become effective immediately upon adoption by the Board.