

224-200.888

RECEIVED

'94 OCT 18 10:00

FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

MANAGEMENT AGREEMENT

(Ninth Avenue Terminal)

Between

PORT OF OAKLAND

and

MARINE TERMINALS CORPORATION

Dated

September 13, 1994



TABLE OF CONTENTS

1.	<u>Areas of Services</u>	2
2.	<u>Effective Date; Term</u>	2
3.	<u>Use of Premises</u>	3
4.	<u>Promotion of Facilities</u>	4
5.	<u>Compensation</u>	6
6.	<u>Use of Parcel "B"</u>	12
7.	<u>Storage</u>	13
8.	<u>Maintenance of Shipping Terminal; M.T.C.'s Rates, Charges and Practices</u>	13
9.	<u>Clearing of Apron and Other Areas</u>	15
10.	<u>Load Limits</u>	15
11.	<u>Utilities</u>	16
12.	<u>Condition and Surrender of Premises</u>	17
13.	<u>Cargo on Premises at Expiration of Agreement</u>	17
14.	<u>Maintenance, Repairs, Alterations and Additions</u>	18
15.	<u>Railroad Tracks</u>	21
16.	<u>Duty to Guard Goods</u>	21
17.	<u>Protection and Watchman Service</u>	21
18.	<u>Insurance</u>	22
19.	<u>Hold Harmless Agreement and Liability Insurance</u>	24
20.	<u>Dredging</u>	26
21.	<u>Utility Lines and Easements</u>	26
22.	<u>Access to Premises</u>	27
23.	<u>Taxes</u>	27
24.	<u>Signs</u>	27

25.	<u>Assignment and Subletting</u>	28
26.	<u>Hazardous Substances</u>	29
27.	<u>Forfeiture</u>	29
28.	<u>Right of Entry as Agent</u>	30
29.	<u>Inspection of Premises</u>	31
30.	<u>Continuation of Agreement</u>	31
31.	<u>Waivers</u>	32
32.	<u>Waiver of Claims</u>	33
33.	<u>Tidelands</u>	33
34.	<u>No Interest in Land Created</u>	34
35.	<u>Terms Binding on Successors</u>	34
36.	<u>Time of Essence</u>	34
37.	<u>Notices</u>	34
38.	<u>Equal Opportunity; Nondiscrimination</u>	35
39.	<u>Employee Resources Development Program</u>	38
40.	<u>Covenant Against Contingent Fees</u>	38
41.	<u>Agreement in Quadruplicate</u>	40

MANAGEMENT AGREEMENT
(Ninth Avenue Terminal)

THIS AGREEMENT, made this 13th day of September, 1994 by and between the **CITY OF OAKLAND**, a municipal corporation, acting by and through its **Board of Port Commissioners**, hereinafter referred to as the "Port", and **MARINE TERMINALS CORPORATION**, a corporation, hereinafter referred to as "M.T.C.",

W I T N E S S E T H:

WHEREAS, the Port has developed marine terminal facilities in the Ninth Avenue Terminal Area of the "Port Area" and said terminal, described and shown in Exhibits "A" and "A-1" attached hereto and by reference made a part hereof, which includes a gross terminal area of approximately 26.182 acres, more or less, has been developed as marine terminals available to various users on a nonexclusive basis; and

WHEREAS, the Port desires to continue to assign the responsibility of management and the provision of terminal operating and cargo solicitation services for said marine terminals, hereinafter referred to as the "premises" or the "terminal", to a marine terminal operator; and

WHEREAS, a continuity of terminal services for said terminal will permit maximum cargo operations over the Port's Ninth Avenue Terminal; and

WHEREAS, such continuity of terminal services can be attained through the performance of said services by M.T.C. pursuant to this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual terms, covenants, provisions and conditions herein set forth, it is agreed by and between the parties hereto as follows:

1. **Areas of Services:** M.T.C. shall perform marine terminal management services and provide terminal operating and cargo solicitation services within the Port's Ninth Avenue Terminal, which areas are more particularly described and shown in said Exhibits "A" and "A-1" attached hereto and by reference made a part hereof, utilizing said area for the berthing of vessels and the loading and discharging of cargoes and operations supplemental thereto. M.T.C.'s services as the terminal operator shall be made available to marine terminal users on a nonexclusive basis.

2. **Effective Date; Term:** This Management Agreement shall become effective upon the occurrence of all of the following events:

(a) The filing of this Agreement with the Federal Maritime Commission pursuant to Section 5 of the Shipping Act of 1984 and the effectiveness of this Agreement pursuant to Section 6 of said Shipping Act, or a ruling by said commission that such approval is not required;

(b) The expiration of thirty (30) days from and after the final adoption of the ordinance authorizing execution of this Agreement.

The term of this Agreement shall commence upon the first day immediately following its effective date and shall terminate on the 31st day of March, 1996.

It is acknowledged and agreed that upon the commencement of the term of this Agreement, that any holdover use of the premises by M.T.C. pursuant to that certain Management Agreement between the parties hereto dated the 3rd day of September, 1991 (Federal Maritime Commission Agreement No. 224-200580) shall terminate and expire and shall be superseded by this Agreement.

3. **Use of Premises:** The premises covered by this Agreement shall be used by M.T.C. for the docking and mooring of vessels, for the loading, unloading, receipt, handling, storage, transporting and delivery of cargo and for uses incidental thereto.

M.T.C. shall, in good faith and with all reasonable diligence, employ its best endeavors and all practical means to promote and aid the commerce of the Port of Oakland and the use of the said premises.

M.T.C. shall not use or permit the premises to be used in whole or in part during the term of this Agreement for any purpose other than as hereinabove set forth, except with the prior written consent of the Executive Director of the Port nor for any use in violation of any present or future laws, ordinances, general rules or regulations at any time applicable thereto of any public or governmental authority, including the City of Oakland or its Board of Port Commissioners, relating to sanitation or the public health, safety or welfare, or navigation and use of the harbor, and

M.T.C. hereby expressly agrees at all times during the term of this Agreement, at its own cost, to operate the premises used by M.T.C. in a clean, wholesome and sanitary condition, and in compliance with any and all present and future laws, ordinances and general rules or regulations of any public or governmental authority now or at any time during the term of this Agreement in force relating to sanitation or public health, safety or welfare, and M.T.C. shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto adopted by federal, state, local or other governmental bodies or departments or officers thereof.

4. **Promotion of Facilities:** M.T.C. recognizes that effective marketing of the facility is an essential element in the decision of the Port to make a Management Agreement with M.T.C. and M.T.C. agrees to use its best efforts to induce cargo to be handled over the assigned premises and shall cooperate fully with the Port in its efforts to attract cargo to use the facilities located upon the premises. M.T.C. shall pursue all cargo generating activity in addition to steel cargo, including other potential commodities to include coffee, lumber, automobiles, newsprint or other general cargo business. Whenever any shipping line is refused terminal service by M.T.C. at the premises, M.T.C. shall notify the Executive Director of the Port, in writing, of such refusal, together with the reason or reasons why such shipping line could not be accommodated by M.T.C. If in such event the Executive Director determines that the shipping line refused service by M.T.C. should be accommodated with respect to future services

requested by such shipping line, he shall so notify the M.T.C., in writing, which notice shall include a plan for providing such terminal services, and M.T.C. shall follow such plan set forth by the Executive Director; provided that M.T.C. shall not be required to follow such plan if it can establish to the satisfaction of the Port that such plan would cause M.T.C. to provide such services at an economic loss. At such times during the term of this Agreement that the terminal approaches throughput capacity, as such capacity is mutually determined by the parties hereto, M.T.C. will consult with the Port prior to introducing additional steamship lines to the terminal if by doing so terminal congestion can reasonably be anticipated to result. It is understood and agreed that any breach of this Paragraph 4 by M.T.C. shall be deemed to be a material breach of this Agreement.

M.T.C. shall not in any manner participate in the transfer of a water carrier to the premises from the use of another of the Port's facilities, without the prior written consent of the Port. The Port will cooperate fully with M.T.C. in maximizing the use of the premises.

M.T.C. agrees that effective terminal operations require regular and frequent contact and coordination with water carriers, other users of the terminal and the Port of Oakland Marine Terminals Department. M.T.C. therefore agrees to maintain appropriate communication and coordination regarding all terminal operations with water carriers, other users of the terminal and the Port of Oakland Marine Terminals Department.

5. **Compensation:** As compensation for the rights granted by the Port to M.T.C. pursuant to this Agreement, M.T.C. shall pay to the Port seventy per cent (70%) of revenue from dockage and wharfage and ninety percent (90%) of revenue from wharf demurrage and storage earned upon the premises by M.T.C. during the term of this Agreement, and M.T.C. shall retain the balance of such revenue; provided, however, that M.T.C. shall pay to the Port ninety per cent (90%) of all such dockage and wharfage and wharf demurrage and storage, revenue earned upon the premises with respect to military cargo when the receiving, delivery and stevedoring services are not performed by M.T.C., and M.T.C. shall retain the balance of such revenue. For purposes of this Agreement, revenue from wharf demurrage shall not be deemed to include revenue from handling charges. The Port's share of such revenue shall be paid by M.T.C. to the Port at the times and in the manner hereinafter set forth. All revenue from sources other than as above specified shall be the exclusive property of M.T.C. and the Port shall not be entitled to any portion thereof. In the event total revenues earned upon the premises from dockage and wharfage exceed the sum of Seven Hundred Thousand Dollars (\$700,000.00) in any contract year during the term of this Agreement M.T.C. may, in lieu of the percentage of revenues hereinabove set forth, pay to the Port fifty percent (50%) of revenues with respect to non-military cargo from wharfage and dockage only which exceed the said Seven Hundred Thousand Dollars (\$700,000.00) annual breakpoint level and M.T.C. shall retain the balance of such revenue. It is understood and agreed that notwithstanding M.T.C.'s exceeding said annual breakpoint level M.T.C.

will continue to pay to the Port ninety percent (90%) of revenues from wharf demurrage and storage and ninety percent (90%) of revenues with respect to the military cargo hereinabove described.

Notwithstanding the provisions of this Paragraph 5 hereinabove set forth MTC shall retain only two and one half percent (2 1/2%) of revenue from dockage and wharfage for shipping lines operating combination breakbulk cargo and container vessels which previously called at other of the Port's public terminals in lieu of the retention by MTC otherwise provided in this Paragraph 5 and the remainder of said dockage and wharfage revenue shall be paid to the Port.

For the purposes of this Agreement, the term "contract year" is hereby defined to mean the twelve (12) month period commencing October 1, to and including September 30. In any partial contract year of M.T.C.'s use of the assigned premises during said term, the annual minimum compensation and breakpoint level hereafter and hereinabove specified shall be prorated to reflect the portion of the contract year of such use.

In the event that the occasional use by M.T.C. of certain other Port-owned terminals consisting of the Seventh Street Public Container Terminal or Berth 40 in the Seventh Street Terminal Area is required for: (1) heavy weight cargo which by reason of weight restrictions cannot be handled at the assigned premises, or (2) deep draft vessels which by reason of channel or berth depth limitations cannot be handled at the assigned premises, or (3) lack of adequate rail access and capability at the assigned premises, the provisions of this paragraph 5 relating to M.T.C.'s payment to the Port of the hereinabove specified percentages of

terminal tariff charges for cargo or vessels handled at the assigned premises shall likewise apply to said occasional heavy weight cargo, deep draft vessels or rail requirement cargo so handled at other port terminals; provided, that this provision shall only apply to cargo or vessels which in the judgment of the Executive Director of the Port, as evidenced by the prior written approval of said Executive Director or his designee, would have been handled at the Ninth Avenue Terminal but for its weight, depth limitations and/or rail limitations.

M.T.C. shall keep and furnish to the Port a detailed report on the movement of cargo and vessels at the premises and the revenue derived from dockage, wharfage, wharf demurrage and storage earned on the premises for each month during the term of this Agreement, and such report shall be furnished by M.T.C. to the Port not later than one (1) month after the close of the monthly period being reported upon. If any charge for any service mentioned in this paragraph be not assessed or collected, the proper amount of such charge shall, nevertheless, be deemed to have been earned within the meaning of this paragraph unless the Port on proper showing shall excuse the same. All payments due the Port on account of such dockage, wharfage, wharf demurrage and storage earned on the premises during each month, whether collected by M.T.C. or not, shall be paid by M.T.C. to the Port without previous demand, in like lawful money, at the time of the rendition of said report.

M.T.C. guarantees that the Port shall receive the minimum sum of Three Hundred Thousand Dollars (\$300,000.00) (hereinafter referred to as the "minimum compensation") for each contract year during the term of this Agreement from dockage and

wharfage and in the event that the Port shall not receive such amount from such sources for each contract year during the term of this Agreement M.T.C. shall pay to the Port any deficiency therein within sixty (60) days thereafter; and further provided, that in the event that during said immediately preceding twelve-month period M.T.C. has paid to the Port more than the amount of said minimum compensation and more than the total amount of revenue the Port is entitled to receive under the division of revenue herein set forth for said contract year, the excess over the amount M.T.C. should have paid shall be refunded by the Port to M.T.C.

In the event the Port makes tariff space assignments to third parties of portions of the premises, which said assignments will require the prior approval of M.T.C., the Port will pay to M.T.C. thirty percent (30%) of the tariff revenue received by the Port for such assignments.

In addition to the compensation hereinabove set forth M.T.C. shall pay to the Port an amount remaining due as compensation under the prior Management Agreement between the Port and M.T.C. for the premises, Agreement No. 224-200580, in the agreed sum of One Hundred Twenty Three Thousand Seven Hundred Eight and 69/100 Dollars (\$123,708.69). Said remaining amount shall be paid to the Port upon the commencement of the term of this Agreement.

M.T.C. and/or its terminal users shall keep full and accurate records relating to the tariff operations on the premises, and the Port shall have the right, through its representatives and

at all reasonable times, to inspect such records, and M.T.C. agrees that such records of M.T.C. and/or its terminal users shall be made available to the Port.

It is the intent of the parties hereto that the interests of the Port and M.T.C. with respect to the payment and receipt of compensation as described in Agreement shall take effect commencing October 1, 1994. Accordingly, not later than ninety (90) days after the effective date of this Agreement, the parties shall mutually calculate the amount of compensation which would have been due and payable to the Port as if this Agreement had been in effect from and after October 1, 1994. If the amount of said compensation calculated in accordance with this Agreement from and after said date is less than that which accrues in accordance with any prior assignment of M.T.C. for the premises, the Port shall credit M.T.C. with the difference and said credit shall apply against compensation subsequently accruing under this Agreement.

Any such compensation or other sum that becomes due under the terms of this Agreement and is unpaid shall be subject to a delinquency charge, for violation of this Agreement and for damages, equal to six one-hundredths of one percent (.06%) of said compensation and said other sum per day for each day from the date such compensation or such other sum became due and payable until payment of said compensation or said other sum has been received by the Port. Unpaid delinquency charges that accrue shall be compounded monthly. The Port shall apply any monies received from M.T.C. after delinquency charges accrue first to accrued delinquen-

cy charges, and then to any other compensation or other sums then due. In addition, in the event of delinquency in paying said compensation or other sums, the Port may bill M.T.C. using a reasonable estimate of the volume of M.T.C.'s operation. The delinquency charges provided by this paragraph are in addition to all other remedies that the Port may have that are provided by this Agreement or otherwise by law to enforce payment of any compensation or other sum that has become due and has not been paid.

If M.T.C.'s operations upon the premises are suspended by strike action by American workers, war, casualty or other causes beyond the reasonable control of M.T.C., here referred to as the "event," there shall be proportionate abatement of the minimum annual compensation to the Port, commencing on the fifteenth (15th) day after receipt by the Port of written notice from M.T.C. of such event, in the ratio that the time the event continues bears to the contract year in which such event occurs, but M.T.C. shall pay to the Port the respective percentages, as specified in this Paragraph 5, of all revenue from dockage, wharfage, wharf demurrage and storage earned upon the premises during the time that the event continues. For any contract year that M.T.C. due to said proportionate abatement does not pay to the Port the minimum annual compensation, the sum of the unpaid abated portion of minimum annual compensation shall be carried forward to subsequent contract years and added to the minimum annual compensation and breakpoint level and no tariff charge sharing in any

contract year shall commence until all of said abated and unpaid sums have been paid to the Port.

In the event that the entire premises are condemned by paramount governmental authority for use and occupancy by such governmental authority, or requisitioned during time of war or national emergency by paramount governmental authority for use and occupancy by such governmental authority, this Agreement shall be terminated as of the date of such taking and M.T.C. shall be relieved of all obligation thereunder save any which has accrued prior to such taking; and in the event that a portion only of the premises is so taken by paramount governmental authority for use and occupancy by such governmental authority, there shall be a partial abatement of the minimum annual guaranteed revenue to the Port in the ratio that the proportion of the productive capacity of the premises taken bears to the entire productive capacity of the premises; and if the parties cannot agree upon the productive capacity of the premises taken, then either party may cancel and terminate this Agreement upon giving to the other party two (2) months' prior written notice of its intention to so cancel and terminate.

6. Use of Parcel "B": In the event the Port does not have other users of all or portions of Parcel "B" described in Exhibit "B", attached hereto and by reference made a part hereof, M.T.C. shall have the right to use any unused portions of Parcel "B" subject to the provisions of the Port's terminal tariff except that M.T.C. shall be required to pay only sixty percent (60%) of

the then applicable Port tariff rate for space assignments of paved, lighted and fenced area on open area so used and/or sixty percent (60%) of the then applicable warehouse rate (as presently set forth in Port Tariff 2-A, Item 10160) for covered area so used.

7. **Storage:** M.T.C. may use not more than twenty-five per cent (25%) of the premises covered by this Agreement for storage without the prior consent of the Port. Any storage in excess of said twenty-five per cent (25%) shall not interfere with the ability of the Port or others to handle vessels berthed at the premises.

8. **Maintenance of Shipping Terminal; M.T.C.'s Rates, Charges and Practices:** The premises shall be operated by M.T.C. as a major shipping terminal in connection with water-borne commerce for the accommodation of shipping by rail, truck and water, including the handling of general cargo and packaged freight. Charges exacted by M.T.C. for dockage, wharfage, wharf demurrage and storage shall conform with like charges enacted by and published in the tariff of the Port, if any, applying at municipal terminals of the Port. To the extent permitted by law, the rates, charges, and practices of M.T.C. shall be subject to review and control by the Port.

It is understood and agreed that M.T.C. has no interest in the land and improvements of said Ninth Avenue Terminal and is acting as the Port's management contractor in the operation of the facilities upon said areas and M.T.C. shall not participate in the tariff revenues derived from said premises and facilities

except as hereinabove set forth in Paragraph 5 hereof. M.T.C. shall be allowed to assess a reasonable charge to users of the said premises and facilities for services rendered by M.T.C. in the operation of said terminal areas, which service charge shall be retained by M.T.C. M.T.C. may also assess and retain charges for use of equipment, facilities and utilities furnished by M.T.C. for which charges are not included in the Port's marine terminal tariff.

It is understood and agreed by and between the parties hereto that the control reserved by the Port in this Paragraph 8 with respect to the rates, charges and practices of M.T.C. shall not include the charge assessed against vessels, their owners, agents or operators which load or discharge cargo at the terminal for the use of terminal working areas in the receipt and delivery of cargo to and from the vessel and for services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo (a) from vessels to consignees, their agents or connecting carrier, or (b) from shippers, their agents or connecting carriers, to vessels, commonly known and designated as Service and Facilities Charge".

It is further understood and agreed that the M.T.C. shall not have the exclusive right to perform stevedoring services upon the premises and that M.T.C. will permit any responsible person, firm or corporation to come upon the premises for the purpose of performing stevedoring operations when requested to do so by the steamship operator, master, agent, charterer or by the

person legally responsible for the loading or unloading of vessels berthed at the premises; provided, that such use by others shall not unreasonably interfere with operations of M.T.C. as herein authorized.

9. **Clearing of Apron and Other Areas:** Upon the sailing of a vessel which has been berthed at the premises pursuant to this Agreement and upon request of the Port on not less than ten (10) days' prior written notice, M.T.C. shall forthwith clear the apron of the wharf in front of the transit shed for its entire length and at the apron of the open wharf from the water-front edge of the wharf to a distance of not less than fifty (50) feet back from the water-front edge of the wharf in order that such area shall be available for use in connection with cargo to be loaded or discharged from other vessels.

The storage by M.T.C. of pallet boards, dunnage and other property not subject to wharf demurrage, storage or other tariff charges upon the premises covered by this Agreement shall be limited to the amount actually necessary in the handling of ships at the berth. Such storage shall not interfere with other vessel operations of the Port or others, and the pallet boards and dunnage shall be removed by M.T.C. upon request of the Port.

The requirements of this Paragraph 9 shall also be imposed upon any other Stevedore operator upon the premises pursuant to Paragraph 8 hereof.

10. **Load Limits:** M.T.C. shall not exceed the maximum allowable loads on the wharf as described in the Table 1 below nor

that portion of the premises on land in excess of one thousand (1,000) pounds per square foot. The approximate limits of the loads in Table 1 is shown on Exhibit C. In the event that the Port finds that overloading exists, M.T.C. upon receiving notice thereof from the Port, shall immediately take appropriate steps to correct the condition. Operation of mobile cranes at Berth 3 shall be permitted only in the area designated by restrictive striping on the pavement, as shown in Exhibit "C" attached hereto and by reference made a part hereof.

The load limits set forth in this Paragraph 10 may be lowered or exceeded by the prior mutual agreement of M.T.C. and the Executive Director of the Port in writing; provided, however, that in no event shall such agreement provide for a load limit which exceeds the maximum safe load limit for the premises or the load limit provided for in any applicable insurance policy, whichever is lower.

TABLE 1

WOOD PORTION	CONCRETE PORTION	
UNIFORM LOAD : 600 PSF TRUCK LOAD : AXLE 26,000 LB FORK LIFT : 15,000 LB/WHEEL	APRON AREA	WAREHOUSE AREA
	UNIFORM LOAD : 600 PSF TRUCK LOAD : AXLE 37,000 LB FORK LIFT LOAD : 20,000 LB/WHEEL	UNIFORM LOAD : 600 PSF TRUCK LOAD : AXLE 29,000 LB FORT LIFT : AXLE 29,000 LB

11. Utilities: M.T.C. hereby covenants and agrees to pay for all water, light, fuel, electricity, power, gas and other utilities which may be furnished to or used in or upon said premises by M.T.C. during the term of this Agreement.

12. Condition and Surrender of Premises: The taking of possession of said premises by the M.T.C. shall, in itself, constitute acknowledgment by M.T.C. that the premises and the buildings, structures and improvements thereon have been properly constructed and are in adequate and usable condition.

The parties hereto will complete a joint survey of the premises within three (3) months of the effective date of this Agreement which will reflect the state and condition of the premises and improvements at the commencement of the term of this Agreement.

Upon the expiration of the original term of this Agreement, or any extension thereof, the Port and M.T.C. shall jointly make a survey of the condition of the assigned premises for the purpose of determining the existence of damage to the premises caused by operations of M.T.C. during its occupancy of the premises and the responsibility of M.T.C. to repair such damage, except for normal wear and tear.

13. Cargo on Premises at Expiration of Agreement: All cargo remaining upon the premises upon the expiration of the original term of this Agreement, or any extension thereof, shall be physically inventoried in detail by the parties hereto as of the date of such expiration or termination, unless a physical inventory is waived in whole or in part by mutual agreement in writing of the parties hereto, and the amount and condition of such cargo as shown by such inventory shall be binding and conclusive upon the Port and M.T.C. The Port shall deliver to M.T.C., in duplicate, a receipt

for such cargo as shown by such inventory. M.T.C. shall make available to the Port its books and records with respect to such cargo, and in the event that the amount of such cargo as shown by said physical inventory differs from the amount of such cargo as shown upon the books and records of M.T.C., the said physical inventory shall control and the liabilities of the Port shall be determined in accordance therewith. M.T.C. agrees to and hereby assumes responsibility for damage to such cargo where the damaged case is not subject to view at the time of the taking of such physical inventory and the damage is not ascertainable due to the method of piling and which damage occurred prior to expiration or termination of this Agreement. The cargo as to which M.T.C. assumes such responsibility shall be identified by specific lot numbers at the time the physical inventory is taken. It is further understood and agreed by the Port that in case any such damage is discovered which is considered by the Port to have occurred prior to the expiration or termination of this Agreement, the Port shall immediately notify M.T.C. upon discovery of such damage and prior to the further removal of such cargo from the pallet board so that the extent of such damage can be jointly ascertained and evaluated.

All revenue derived from cargo upon the premises at the time of the expiration or termination of this Agreement and included in said physical inventory shall be equally divided between the Port and M.T.C.

14. Maintenance, Repairs, Alterations and Additions: The Port shall maintain the roof, walls and piling of all buildings and

structures located upon the premises, perform painting required to preserve the structure and any required structural maintenance as distinguished from maintenance required by operations. The Port shall also maintain the floors of all buildings and the roadways upon the premises to the extent required by structural failure thereof or reasonable wear and tear. The Port shall also perform structural maintenance of utilities upon the premises. M.T.C. shall perform all maintenance due to operations, including but not limited to the maintenance of (1) railroad switches, including greasing and cleaning and cleaning of space between running rail and guard rail; (2) replacement of all lamps; (3) rolling steel doors, including oiling; and (4) fences, gates and guardrails. Except as herein provided, the Port shall not be obligated to make any repairs, alterations, additions or betterments to said premises during the term hereof. The Port shall be liable, at its own expense, to make all repairs to said premises where the damage is caused by the Port or its employees, agents, guests, invitees or persons performing work on the premises at the request and under the direction of the Port. M.T.C. shall be liable at its own expense to make all repairs to windows irrespective of cause and repairs to said premises where the damage is caused by M.T.C. or its employees, agents, invitees, or persons coming upon said premises by M.T.C.'s authority or permission. Should M.T.C. fail to make any repairs for which it is liable, the Port shall have the option to make the same if M.T.C. fails to do so after having received thirty (30) days' notice from the Port; and M.T.C. shall

immediately reimburse the Port for the cost thereof. The making of such repairs by the Port shall in no event be construed as a waiver of the duty of M.T.C. to make repairs as herein provided. M.T.C. may make alterations, additions and betterments to said premises only with the prior written approval of the Port. M.T.C. waives the right to make repairs at the expense of the Port and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto; and further agrees that if and when any repairs, alterations, additions, or betterments shall be made by it as in this paragraph provided, it promptly shall pay for all labor done or materials furnished in that behalf and shall keep said premises and building and M.T.C.'s possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever. It is agreed that the parties may, by mutual agreement, amend this Paragraph 14 to modify or delete any of the M.T.C.'s obligations thereunder; provided, that any such amendment shall be filed with the Federal Maritime Commission in Washington, D.C., for Commission approval, if required.

M.T.C. shall also maintain the storage building identified as Building H-317 located upon the premises. Such maintenance obligation shall include structural maintenance as well as maintenance required by operations of M.T.C.

Upon the expiration or earlier termination of this Agreement, M.T.C. shall quit and surrender the premises leaving all facilities and improvements located thereon in a state and

condition at least equal to that at the time of the first use or occupancy thereof by M.T.C., reasonable wear and tear and damage by the elements excepted.

It is also understood and agreed that the Port shall have the right to enter upon the premises for the purpose of making repairs or performing maintenance, and the parties recognize that the performance of such repairs or maintenance may interfere with operations of M.T.C.

15. **Railroad Tracks:** All railroad tracks serving the premises shall be considered as joint tracks subject to use by the Port, tenants of the Port and M.T.C., with M.T.C. having priority.

16. **Duty to Guard Goods:** The Port shall have no liability for any loss of or damage to the cargo, property and equipment of M.T.C. or third persons, upon or used in connection with the said premises irrespective of the source of such loss or damage, except to the extent that same is caused by the Port's active negligence or is caused by the Port's passive negligence without any negligence by M.T.C. M.T.C. shall provide at its own expense such security guards or alarm system as it may deem necessary for the security and protection of cargo and M.T.C.'s operations.

17. **Protection and Watchman Service:** M.T.C. shall assume and pay the annual cost of an approved central station sprinkler supervisory service and valve alarm for the sprinkler system on the premises and for watchman service, if any, and the same shall be performed and maintained in a manner so as not to increase the

Port's insurance rate on any buildings or structures on the premises. M.T.C. shall cause all cargo, goods, materials and equipment to be stored in such manner that the equipment and controls for the sprinkler system shall be readily accessible. M.T.C. shall not place excessively heavy loads over the water lines serving the sprinkler system, and all valve pits in the open area shall be kept free and clear for access at all times. In the event of a breakage in a sprinkler or water line, or any other danger or damage to Port property caused by fire, earthquake or like hazard, the Port shall be immediately notified by M.T.C.

M.T.C. agrees, at its own cost and expense, to maintain upon the premises at all times fire extinguishers and fire hoses of such number, type and material as may be prescribed from time to time, including any periodic inspection and certification as may be required by the Port, the Fire Marshal of the City of Oakland, the United States Coast Guard or other competent authority.

18. **Insurance:** The Port agrees that it will place and maintain fire and extended coverage insurance on all structures and improvements on the assigned premises to which the Port has title with such coverages and amounts as it deems necessary for its protection. It is expressly understood and agreed that such fire policy shall at all times contain a waiver of all rights of subrogation to the Port.

The Port, by execution of this Agreement, hereby waives any claims or other rights it might have to recover damages

from M.T.C. for losses or damage sustained or arising out of fire or other perils insurable under the normal fire and extended coverage policy, except for the amount of any deductible.

M.T.C. shall maintain at all times during the term of this Agreement fire legal liability coverage in the sum of One Hundred Thousand Dollars (\$100,000.00), or such other sum as the Port may from time to time determine with reference to the deductible portion of the Port's insurance.

A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days' prior written notice to the Secretary of said Board. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is cancelled or reduced, M.T.C. shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction of coverage, file with the Secretary of said Board a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding the provisions of Paragraph 27 of this Agreement, upon failure to so file such certificate, the Port may without further notice cause this Agreement to be forfeited as

provided in said Paragraph 27 and exercise such other rights as it may have in the event of M.T.C.'s default.

19. Hold Harmless Agreement and Liability Insurance: It is an express condition of this Agreement that the Port, members of the Board of Port Commissioners, and its officers, agents and employees shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of M.T.C., its agents or employees, or third persons, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this Agreement or occasioned by any occupancy or use of said premises or any activity carried on by M.T.C. in connection therewith, except to the extent that same is caused by the Port's active negligence; or is caused by the Port's passive negligence without any negligence by M.T.C., and M.T.C. hereby covenants and agrees to indemnify and to save harmless the Port from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of the same.

M.T.C. shall maintain in force during the term of this Agreement, bodily injury and property damage liability including owned, non-owned and hired automobile liability, comprehensive or commercial general liability including premises and operations, blanket contractual, product and completed

operations, personal injury, broad form property damage, owners and contractors protective, and stevedore liability with such limits and coverages as may be reasonably requested by the Port from time to time, but in no event for less than the sum of Six Million Dollars (\$6,000,000.00) combined single limit; and M.T.C. agrees that the Port shall be named as an additional insured under such liability policy or policies excluding the Port's liability specifically stated above.

All such policies shall be endorsed with a severability of interests or cross-liability endorsement reading substantially as follows:

Cross-Liability - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.

A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of this Agreement, and said certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days' prior written notice to the Secretary of said Board. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If

such coverage is cancelled or reduced, M.T.C. shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction of coverage, file with the Secretary of said Board a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding the provisions of Paragraph 27 of this Agreement, upon failure to so file such certificate, the Port may without further notice cause this Agreement to be forfeited as provided in said Paragraph 27 and exercise such other rights as it may have in the event of M.T.C.'s default.

20. **Dredging:** At all times during the term of this Agreement the Port shall maintain berthing space alongside the premises dredged to a controlling depth equal to that maintained by the United States Army Corps of Engineers in the channel serving the facility, which is presently thirty-five (35) feet from the Mean Lower Low Water Datum. The obligations of the Port under this Paragraph 20 shall be subject to the Port securing all necessary permits to perform the dredging.

21. **Utility Lines and Easements:** The Port reserves and retains any and all existing rights of way for sewer outfalls, for gas and other pipe lines for water mains, for hydrants, for electrical cables and wires and the right to locate in, upon or across said premises in a location or locations which will not interfere with M.T.C.'s use and enjoyment of said premises, other such conduits, lines and mains as may be deemed necessary by the Port for its uses and the uses of other tenants of the Port in

connection with the latter's use and enjoyment of premises in the vicinity.

22. **Access to Premises:** M.T.C., its agents, employees and third persons using the premises with the consent and approval of M.T.C. shall have necessary access to the premises over other areas owned or controlled by the Port, but only in connection with the business operations of M.T.C. on the premises.

23. **Taxes:** The property interest created by this Agreement may be subject to property taxation, and M.T.C. in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. M.T.C. agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any federal, state, county, city or any tax or assessment levying agency upon M.T.C.'s interest in this Agreement or any possessory right which M.T.C. may have in or to the premises covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about said premises.

24. **Signs:** No signs or placards of an advertising or promotional nature shall be painted, inscribed or placed in or on the premises of any building or structure located thereon without the prior written consent of the Executive Director of the Port. M.T.C. agrees to remove promptly and to the satisfaction of the Port, at the cost and expense of M.T.C., upon the expiration of the

term or the earlier termination of this Agreement, any and all signs and placards placed by it upon the premises.

25. Assignment and Subletting: M.T.C. shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this Agreement or any interest therein, or sublet the whole or any part of the premises, or license the use of same in whole or in part without written consent of the Port evidenced by Resolution of its Board of Port Commissioners. Neither this Agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against M.T.C., or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against M.T.C. or by any process of law, and possession of the whole or any part of the premises shall not be divested from M.T.C. in such proceedings or by any process of law without written consent of the Port, and any breach of the provisions of this paragraph shall cause this Agreement to terminate immediately at option of the Port.

A prohibited assignment within the meaning of this Paragraph 25 shall include, but is not limited to, the following: The transfer of M.T.C.'s rights hereunder to a corporation which is not wholly-owned by M.T.C. or the subsequent change in the ownership of fifty per cent (50%) or more of the capital stock of M.T.C.

The Port's consent to any assignment, transfer or occupation or use shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to any

subsequent assignment, transfer or occupation or use by another person.

26. **Hazardous Substances:** No goods, merchandise or material shall be kept, stored or sold in or upon said premises which are in any way explosive or hazardous, except that hazardous and dangerous cargoes may be handled in accordance with Port of Oakland Tariff #2A, Section II, Hazardous Materials Rules and Regulations, items 03105 through 03190, inclusive, and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon; and no machinery or apparatus shall be used or operated on said premises which will in any way injure said premises or adjacent buildings; provided, however, that nothing in this paragraph contained shall preclude M.T.C. from bringing, keeping or using on or about said premises such materials, supplies, equipment and machinery as are necessary or customary in carrying on its said business, or from carrying on its business in all respects as is generally usual.

27. **Forfeiture:** This Agreement is made upon the condition that if the compensation or other sums which M.T.C. herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in any of the terms, agreements, conditions or covenants herein contained on the part of M.T.C., or should M.T.C. abandon and cease to use the premises for a period of sixty (60) days at any one time except when prevented by fire, earthquake, wars, strikes, or other calamity beyond its control, then and in such event, at the option

of the Port as evidenced by resolution of the Board of Port Commissioners, this Agreement shall become forfeited, and the Port may exercise all rights of entry and re-entry upon the premises. M.T.C. shall not be considered in default as to any provisions of this Agreement where such default is the result of, or pursuant to, any process, order or decree of any court or regulatory body. No default shall be declared by the Port as to any breach which may be cured or obviated by M.T.C. until the expiration of thirty (30) days after written notice by the Port to M.T.C. of such default and if, during such thirty (30) day period, such default shall have been cured or obviated; provided, that only five (5) days' written notice shall be required in the case of a default in the payment of compensation or other sums herein provided to be paid by M.T.C.; and provided further, that, except for failure to pay any sums of money when due, no default shall be declared by the Port if M.T.C. shall commence to cure or obviate such default prior to the expiration of such notice period and shall prosecute such work to completion with reasonable diligence, even though performance of such term, agreement, condition or covenant shall not have been effected or completed strictly within the period during which the same should have been affected or completed.

28. Right of Entry as Agent: In any case in which provision is made herein for the termination of this Agreement by the Port or in the case of abandonment or vacating of the premises by M.T.C., the Port in lieu of declaring a forfeiture may enter upon the premises. To such end M.T.C. hereby irrevocably appoints

the Port its agent to remove any and all persons or property on said premises and place any such property in storage for the account of and at expense of M.T.C. M.T.C. further agrees to save the Port harmless from any loss or damage or claim arising out of the action of the Port in pursuance of this paragraph.

29. Inspection of Premises: The Port or its duly authorized representatives, or agents and other persons for it, may enter upon said premises at any and all reasonable times during the term of this Agreement for the purpose of determining whether or not M.T.C. is complying with the terms and conditions hereof or for any other purpose incidental to rights of the Port.

30. Continuation of Agreement: Upon the expiration of the original term of this Agreement as set forth in Paragraph 2 hereof or any extension thereof pursuant to the provisions of this Paragraph 30 hereinafter set forth, this Agreement shall continue in full force and effect from year to year, upon the same terms and conditions as herein provided, subject to cancellation and termination, however, by either party upon giving to the other party three (3) months' prior written notice of its intention to cancel and terminate this Agreement.

In the event that during the original term of this Agreement M.T.C.'s operations upon the premises have been suspended by strike action of American workers for more than ninety (90) consecutive days and at the conclusion of the original term of this Agreement the compensation paid to the Port by M.T.C. for the approximately one and one half (1 1/2) contract years of this

Agreement ending March 31, 1996 pursuant to Paragraph 5 hereof is less than the total sum of Four Hundred Fifty Thousand Dollars (\$450,000.00) the original term of this Agreement will be extended for a period equal to the length of said suspension by strike action or until M.T.C.'s said total compensation payments to the Port equal or exceed Four Hundred Fifty Thousand Dollars (\$450,000.00), whichever occurs first. In the event the original term of this Agreement is so extended because of such suspension by strike action the minimum annual compensation and annual breakpoint level set forth in Paragraph 5 hereof shall not apply during the extended portion of the original term.

The Port shall notify the Federal Maritime Commission in writing at its offices in Washington, D.C., in the event this Agreement is extended or terminated pursuant to the provisions of this Paragraph 30.

31. **Waivers:** No waiver by the Port at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by M.T.C. No delay, failure or omission of the Port to re-enter the premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of compensation then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no

notice by the Port shall be required to restore or revive time as of the essence hereof after waiver by the port of default in one or more instances. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

32. **Waiver of Claims:** M.T.C. hereby waives any claim against the City of Oakland, and the Board of Port Commissioners and its officers, agents or employees, for damage or loss caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out.

33. **Tidelands:** This Agreement and the premises hereby demised shall at all times during the term of this Agreement be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the act of the Legislature of the State of California entitled, "An act granting certain lands and salt marsh and tide lands of the State of California, including the right to wharf out therefrom to the City of Oakland and

regulating the management, use and control thereof", approved May 1, 1911 (Statutes 1911, Chapter 654), and the Charter of the said City.

34. **No Interest in Land Created:** M.T.C. agrees that this Agreement is a Management Agreement and not a lease and that no interest or estate in real property or improvements thereon is created hereby.

35. **Terms Binding on Successors:** All the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this paragraph shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinbefore set forth.

36. **Time of Essence:** Time is expressly declared to be of the essence of this Agreement.

37. **Notices:** Any notice permitted or required to be served upon M.T.C. may be served upon it at 600 Harrison Street, Suite 200, San Francisco, California 94107; provided, however, that if M.T.C. shall give notice in writing to the Port of any change in said address, then and in such event such notice shall be given to M.T.C. at such substituted address. Any notice permitted or required to be served upon the Port may be served upon in at 530 Water Street, Oakland, California 94607; provided, however, that if the Port shall give notice in writing to M.T.C. of any change in said address, then and in such event such notice shall be given to the Port at such substituted address.

38. Equal Opportunity; Nondiscrimination: In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities it is expressly understood and agreed with respect to M.T.C.'s activities upon the premises.

(a) That M.T.C. shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status. M.T.C. shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. M.T.C. agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Employment Officer setting forth the provisions of this paragraph.

(b) That M.T.C. shall, in all solicitations or advertisements for employees placed by or on behalf of M.T.C. state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical

handicap disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.

(c) That M.T.C. will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Employment Officer, advising the labor union or workers' representative of M.T.C.'s commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) That M.T.C. shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, actual or perceived sexual orientation, age, national origin, physical handicap disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the demised premises, including any and all services, privileges, accommodations, and activities provided thereby.

(e) That M.T.C. shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Equal Opportunity Employment Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port.

(f) That if M.T.C. has fifteen (15) or more employees, M.T.C. shall within ninety (90) days of the effective date of this Agreement provide the Executive Director or his designee with a copy of its affirmative action program outlining the steps the tenant will undertake to promote effective utilization of minorities, women, handicapped persons, and veterans approved by an appropriate federal or state agency or by the Port or an affirmative action program required as a result of a court ordered consent decree. Thereafter any change(s) in M.T.C.'s affirmative action program shall be forwarded to the Port within thirty (30) days of its adoption. Such submissions shall be accorded the same level of confidentiality as provided for by the state or federal regulations or court order under which it was originally submitted.

(g) That M.T.C.'s noncompliance with the provision of this clause shall constitute a material breach of this Agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:

(i) Terminate this Agreement and to re-enter and possess said land and the facilities thereon, and to hold the same as if this Agreement had never been made without liability therefor; or

(ii) Seek judicial enforcement of said covenants.

(h) The Port shall assist M.T.C. in preparing the required affirmative action program to secure equal employment opportunities whenever such assistance would be beneficial, and shall be available to advise and counsel M.T.C. in the implementation of M.T.C.'s Affirmative Action Program.

39. **Employee Resources Development Program:** M.T.C. shall cooperate in implementing the goals of the Port's Employment Resources Development Program, hereinafter called the "ERDP", as set forth in Port Resolution No. 26291, as amended. M.T.C. understands the Port's ERDP seeks to address the needs of Port tenants for a qualified work force and the needs of Oakland's chronically unemployed and underemployed for employment, by identifying employment opportunities, by providing employment training and counselling for persons seeking such opportunities and by facilitating the employment of those persons qualified to fill the jobs identified. The Port shall assist tenants and businesses operating on Port property with the identification of qualified Oakland residents for employment opportunities developed by the ERDP.

40. **Covenant Against Contingent Fees:** Assignee warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the contract or deduct from any payments or credits to Assignee or

otherwise recover from Assignee the full amount of the contingent fee.

"Bona fide agency," as used in this Paragraph means an established commercial or selling agency, maintained by Assignee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

"Bona fide employee," as used in this Paragraph, means a person, employed by Assignee and subject to Assignee's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

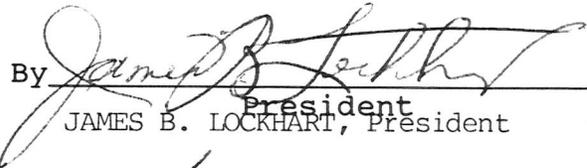
"Contingent Fee," as used in this Paragraph, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

"Improper influence," as used in this Paragraph, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

41. Agreement in Quadruplicate: This Agreement is executed in quadruplicate, each copy of which shall be deemed an original.

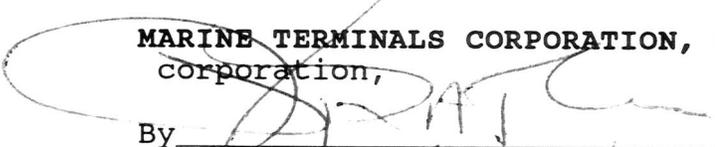
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By 
President
JAMES B. LOCKHART, President

Attest 
Secretary
CHRISTOPHER C. MARSHALL, Secretary

MARINE TERMINALS CORPORATION, a corporation,

By 
DOUGLAS A. TILDEN
CHIEF OPERATING OFFICER

Print Name and Title
DOUGLAS A. TILDEN, Chief Operating Officer

Attest 
MARY M. BAVASTER - ASST SEC.
Print Name and Title

MARY M. BAVASTER - Assistant Secretary

Approved as to form and legality this 13th day of October, 1994

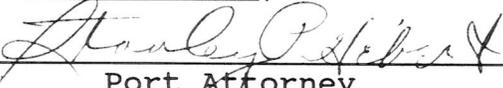

Port Attorney
STANLEY P. HEBERT, Port Attorney
Port Ordinance No. 3236

EXHIBIT "A"

Portion Ala. Co. Assessors Parcels "0-460-4; 0-465-2 and 0-470-2"

COMMENCING at the point on the southwesterly extension of the centerline of Ninth Avenue, 59.1 feet in width, which point is distant thereon S 47° 59' 17" W, 1,584.08 feet from the southwestern line of East Tenth Street, said point also being distant thereon N 47° 59' 17" E, 612.51 feet from the intersection of said centerline with the rear concrete wall of the Port of Oakland's Ninth Avenue Pier; thence leaving said centerline extension N 42° 00' 43" W, 29.247 feet; thence N 47° 59' 17" E, 46.738 feet; thence N 42° 00' 43" W, 315.75 feet to a point on the northwestern right-of-way line of the street reserve known as Eighth Avenue; thence continuing N 42° 00' 43" W, 156.997 feet to a point on the existing fence line which is southeasterly of and adjacent to the top of the Bank of Clinton Basin; thence southwesterly along last said fence line the following courses: S 47° 59' 17" W, 360.44 feet; S 7° W, 16.0 feet; S 32° W, 60.0 feet; S 40° W, 28.79 feet; S 45° W, 70.94 feet; S 39° 30' W, 71.04 feet to the TRUE POINT OF BEGINNING; thence continuing along said fence line S 39° 30' W, 8.96 feet; S 46° 15' W, 48.00 feet; S 52° W, 39.0 feet; S 41° 45' W, 38.00 feet; S 28° 30' W, 30.00 feet; S 20° W, 73.34 feet; thence N 42° 00' 43" W, 130.46 feet to a point on the southeasterly line of the Clinton Basin Channel, 150 feet in width; thence along last said channel line S 47° 59' 17" W, 277.468 feet; thence S 23° 41' 09" W, 134.15 feet to a point on the northern line of the Inner Harbor Channel as maintained by the U. S. Corps of Engineers; thence along last said channel line, S 66° 18' 51" E, 40.00 feet to a point where said channel line is 120 feet deep southwesterly from the most western tip of the existing Ninth Avenue wharf, said distance being measured at right angles to the channel line; thence continuing along last said channel line, S 66° 18' 51" E, 952.33 feet to a point that bears S 23° 41' 09" W, 80.00 feet front the angle point in said Ninth Avenue Wharf; thence continuing along said channel line, S 66° 18' 51" E, 66.52 feet to an angle point in said channel line; thence along the northern line of last said channel line which is parallel with and 100 feet southeasterly of the face of the Ninth Avenue wharf, N 64° 21' 50" E, 1,259.02 feet; thence N 25° 38' 10" W, 139.758 feet to an angle point that is northeasterly of the most eastern mooring dolphin for the Ninth Avenue wharf; thence N 20° 36' 50" E, 121.82 feet to a point on the easterly side at the most northern end of the railroad spur track trestle for Track 1034, said point also being at the intersection of an existing fence line; thence along the following meander line which generally follows the existing fence line the following courses: N 64° 21' 50" E, 35.0 feet; N 24° 21' 50" E, 135.0 feet; N 61° 06' 50" E, 90.00 feet; thence N 64° 36' 50" E, 296.83 feet to a point on the southern right-of-way line for the street known as Embarcadero, said point being on the arc of a curve concave to the south with a radius of 7,326 feet from which point the radial bears S 16° 41' 25" W; thence westerly along last said right-of-way line along the arc of said curve through a central angle of 0° 39' 45" for an arc distance of 84.71 feet to a point on the southeastern line of the street reserve southerly from Embarcadero known as Tenth Avenue; thence along last said line S 64° 21' 50" W, 484.155 feet; thence N 25° 38' 10" W, 60 feet to a point on the northwestern line of last said street reserve; thence along last said line S 64° 21' 50" W, 284.111 feet; thence leaving said street reserve along the following courses: N 30° 17' 15" W, 11.90 feet; S 64° 21' 50" W, 283.50 feet; N 25° 38' 10" W, 13.00 feet; S 64° 21' 50" W, 26.00 feet; S 25° 38' 10" E, 13.00 feet; S 64° 21' 50" W, 205.00 feet; N 52° 06' 32" W, 155.69 feet; N 41° 31' 57" W, 14.50 feet; N 58° 40' 00" W, 261.49 feet; N 75° 59' 09" W, 163.29 feet; N 86° 35' 02" W, 10.63 feet; S 48° 17' 17" W, 238.22 feet; N 41° 42' 43" W, 98.84 feet to the TRUE POINT OF BEGINNING.

Containing 26.182 acres, more or less.

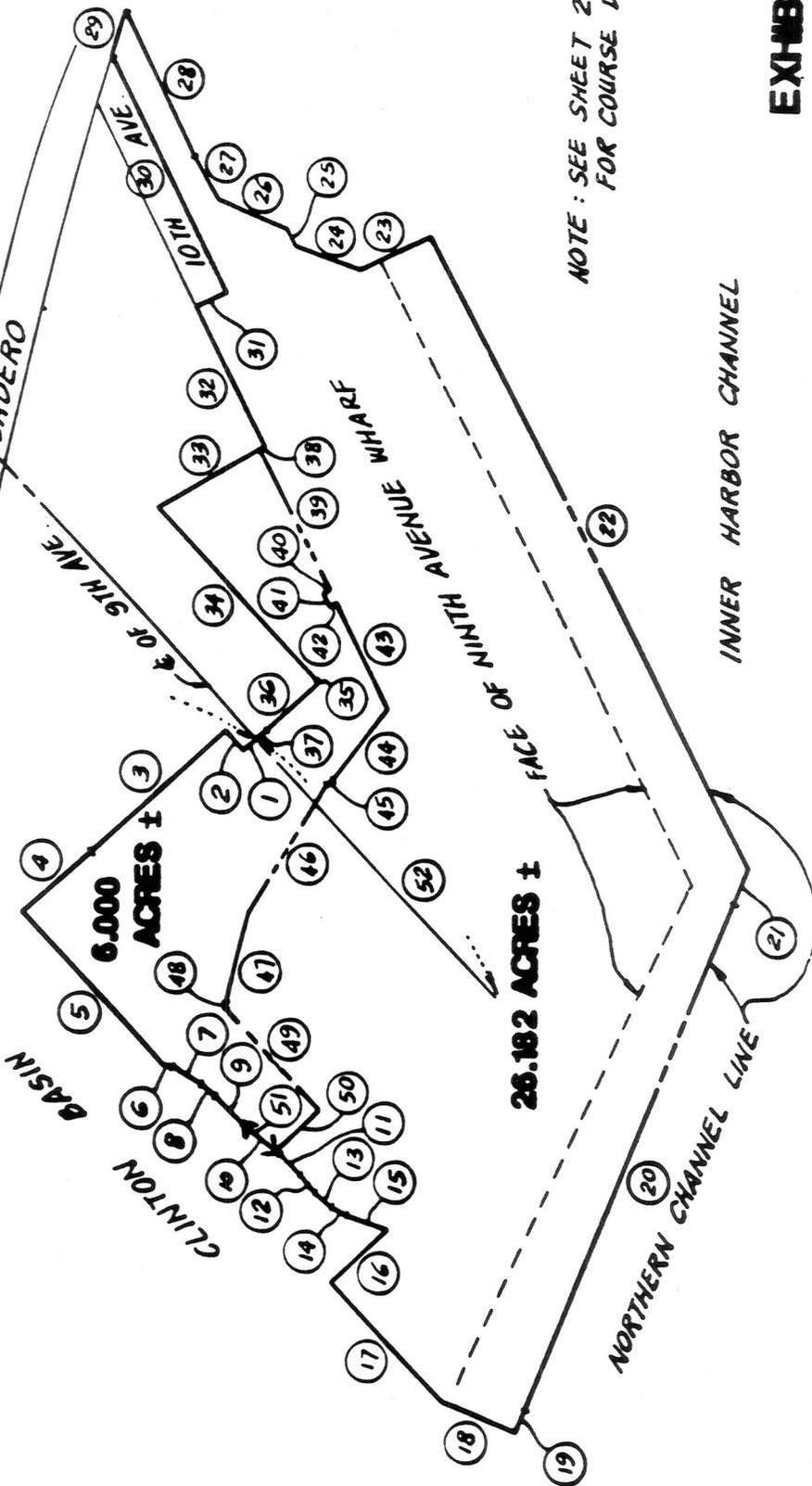
Said premises are shown upon that certain sketch marked Exhibit "A-1" attached hereto and by this reference made a part hereof. In the event that there is any discrepancy between the metes and bounds description hereinabove set forth and said exhibit, said metes and bounds description shall control.



SCALE: 1" = 300'

EAST
10TH STREET

1-880
EMBARCADERO



NOTE: SEE SHEET 2 OF 2
FOR COURSE DATA

INNER HARBOR CHANNEL

26.182 ACRES ±

6.000
ACRES ±

EXHIBIT A-1

SHEET 1 OF 2 NO 305.71 9-17-91

PLAT TO ACCOMPANY LEGAL
DESCRIPTION FOR THE
MAINTENANCE AGREEMENT
WITH MARINE TERMINALS
CORP.

PORT OF OAKLAND

530 WATER ST. OAKLAND, CALIFORNIA



Bissell & Kam A GREINER ENGINEERING COMPANY
ENGINEERS • PLANNERS • SURVEYORS • LANDSCAPE ARCHITECTS
2881 MERCED STREET, SAN LEANDRO, CALIFORNIA 94577 (415) 483-8178

POINT	BEARING	DISTANCE
1	N 42/00/43 W	29.247
2	N 47/59/17 E	46.738
3	N 42/00/43 W	315.750
4	N 42/00/43 W	156.997
5	S 47/59/17 W	360.440
6	S 07/00/00 W	16.000
7	S 32/00/00 W	60.000
8	S 40/00/00 W	28.790
9	S 45/00/00 W	70.940
10	S 39/30/00 W	80.000
11	S 46/15/00 W	48.000
12	S 52/00/00 W	39.000
13	S 41/45/00 W	38.000
14	S 28/30/00 W	30.000
15	S 20/00/00 W	73.340
16	N 42/00/43 W	130.460
17	S 47/59/17 W	277.468
18	S 23/41/09 W	134.150
19	S 66/18/51 E	40.000
20	S 66/18/51 E	952.330

21	S 66/18/51 E	66.520
22	N 64/21/50 E	1259.020
23	N 25/38/10 W	139.758
24	N 20/36/50 E	121.820
25	N 64/21/50 E	35.000
26	N 24/21/50 E	135.000
27	N 61/06/50 E	90.000
28	N 64/36/50 E	296.830
29	S 16/41/25 W ARC CENTER D= 0/39/45 L=	7326.000 84.709
30	S 64/21/50 W	484.155
31	N 25/38/10 W	60.000
32	S 64/21/50 W	284.111
33	N 30/17/15 W	219.113
34	S 47/59/17 W	416.520
35	S 64/21/50 W	4.860
36	N 42/00/43 W	124.630
37	N 42/00/43 W	20.750

38	N 30/17/15 W	11.900
39	S 64/21/50 W	283.500
40	N 25/38/10 W	13.000
41	S 64/21/50 W	26.000
42	S 25/38/10 E	13.000
43	S 64/21/50 W	205.000
44	N 52/06/32 W	155.691
45	N 41/31/57 W	14.500
46	N 58/40/00 W	261.491
47	N 75/59/09 W	163.287
48	N 86/35/02 W	10.630
49	S 48/17/17 W	238.217
50	N 41/42/43 W	98.840
51	N 39/30/00 E	71.040
52	S 47/59/17 W	612.510
53	N 47/59/17 E	1584.080

SHEET 2 OF 2 NO305.71 9-17-91

PORT OF OAKLAND



530 WATER ST. OAKLAND, CALIFORNIA

PLAT TO ACCOMPANY LEGAL
DESCRIPTION FOR THE
MAINTENANCE AGREEMENT
WITH MARINE TERMINALS
CORP.

Bissell & Kam A GREINER ENGINEERING COMPANY
ENGINEERS • PLANNERS • SURVEYORS • LANDSCAPE ARCHITECTS
2881 MERCED STREET, SAN LEANDRO, CALIFORNIA 94877 (415) 493-2170

N0305.71

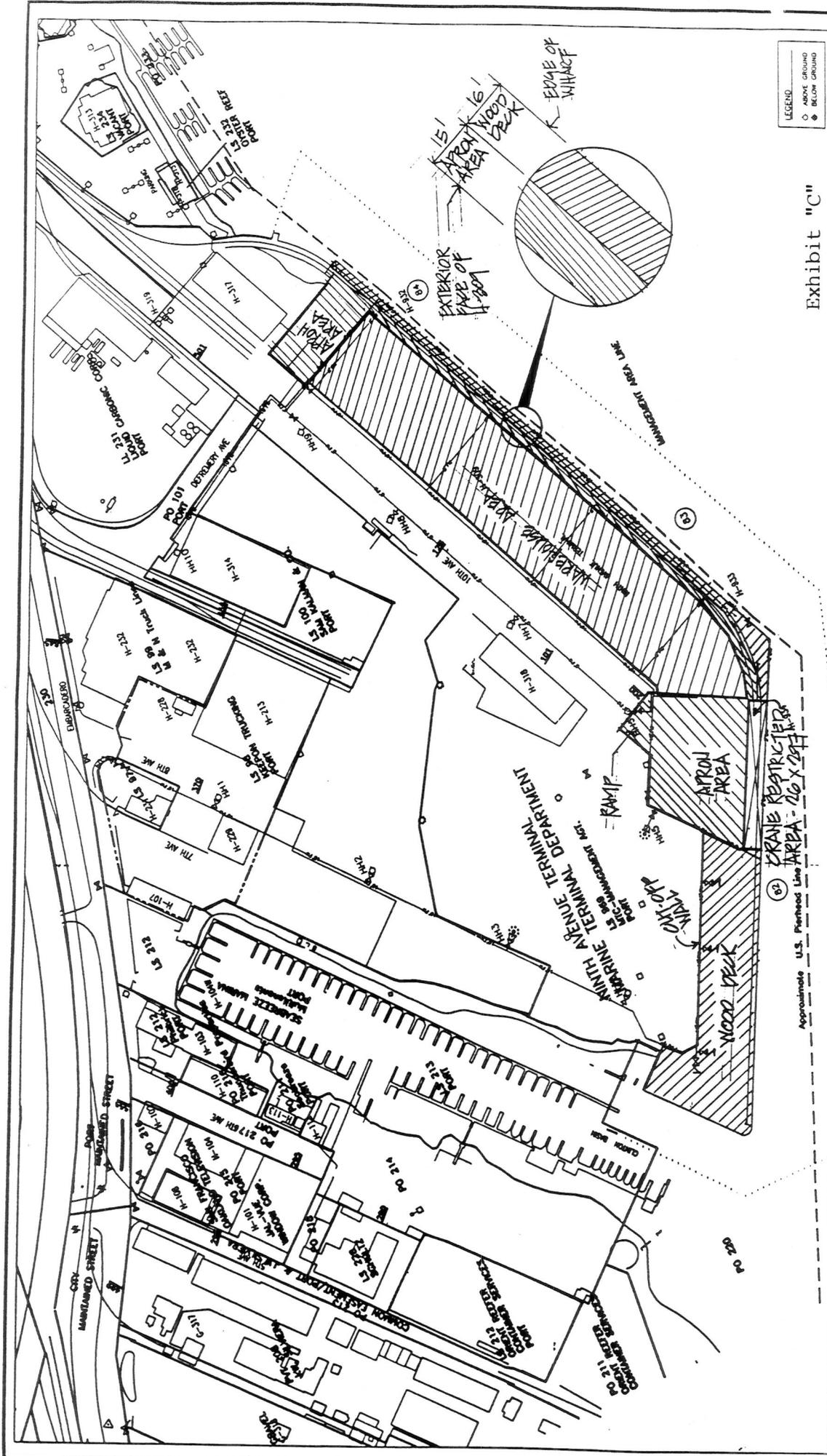
EXHIBIT "B"
(Parcel "B")

Portion Ala. Co. Assessors Parcels "0-460-4; 0-465-2 and 0-470-2"

BEGINNING at a point on the southwesterly extension of the centerline of Ninth Avenue, 59.1 feet in width, which point is distant thereon S 47° 59' 17" W, 1,584.08 feet from the southwestern line of East Tenth Street, said point also being distant thereon N 47° 59' 17" E, 612.51 feet from the intersection of said centerline with the rear concrete wall of the Port of Oakland's Ninth Avenue Pier; thence leaving said centerline extension N 42° 00' 43" W, 29.247 feet; thence N 47° 59' 17" E, 46.738 feet; thence N 42° 00' 43" W, 315.75 feet to a point on the northwestern right-of-way line of the street reserve known as Eighth Avenue; thence continuing N 42° 00' 43" W, 156.997 feet to a point on the existing fence line which is southeasterly of and adjacent to the top of the Bank of Clinton Basin; thence along the fence line the following courses: S 47° 59' 17" W, 360.44 feet; S 7° W, 16.0 feet; S 32° W 60.0 feet; S 40° W, 28.79 feet; S 45° W, 70.94 feet; thence S 39° 30' 00" W, 71.04 feet; thence leaving said fence line, S 41° 42' 43" E, 98.84 feet; thence N 48° 17' 17" E, 238.22 feet; thence S 86° 35' 02" E, 10.63 feet; thence S 75° 59' 09" E, 163.29 feet; thence S 58° 40' 00" E, 261.49 feet; S 41° 31' 57" E, 14.50 feet; thence S 52° 06' 32" E, 155.69 feet; thence N 64° 21' 50" E, 205.00 feet; N 25° 38' 10" W, 13.00 feet; N 64° 21' 50" E, 26.00 feet; S 25° 38' 10" E, 13.00 feet; N 64° 21' 50" E, 283.50 feet; N 30° 17' 15" W, 207.21 feet; thence S 47° 59' 17" W, 416.52 feet; S 64° 21' 50" W, 4.86 feet; N 42° 00' 43" W, 124.63 feet; thence N 42° 00' 43" W, 20.75 feet to the Point of Beginning.

Containing 6.0000 acres, more or less.

Said premises are shown upon that certain sketch marked Exhibit "A-1" attached hereto and by this reference made a part hereof. In the event that there is any discrepancy between the metes and bounds description hereinabove set forth and said exhibit, said metes and bounds description shall control.



LEGEND:
 ○ ABOVE GROUND
 ● BELOW GROUND

Exhibit "C"

DATE: 4/2/83
 SCALE: 1" = 175'
 SHEET: 10 OF 14 SHEETS
 FILE: map/utility/water_101

LAND RECORDS MANAGEMENT
PORT OF OAKLAND
 550 WATER STREET OAKLAND, CALIFORNIA

LAND RECORDS MANAGEMENT
PORT OF OAKLAND
 9TH AVENUE TERMINAL

APPROXIMATE U.S. FEET/INCH LINE
 CRANE RESTRICTED AREA - 76' X 28'

CRANE RESTRICTED AREA - 76' X 28'