224-201004

INDIANA'S INTERNATIONAL PORT/BURNS HARBOR GENERAL CARGO TERMINAL OPERATING AGREEMENT

entered into between

INDIANA PORT COMMISSION
150 West Market Street - Suite 603
Indianapolis, Indiana 46204
(317) 232-9200

RECEIVED
'96 NOV -7 AM 1:54
FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

and

INDIANA STEVEDORING AND DISTRIBUTION CORPORATION
15 North Franklin Street - Suite 290
Valparaiso, IN 46383
(219) 464-9512

FMC Agreement No. 224-_____
Marine Terminal Operating Agreement
Agreement Effective: _____
Current Expiration Date: December 31, 2008

EFFECTIVE
NOV 07 1996
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

Dated October 28, 1996

TABLE OF CONTENTS

Article		Page
	PREAMBLE	1
1	PURPOSE	2
2	TERM	3
	2.1 Base Term	3
	2.2 Extension Options	3
	2.3 Conditions Precedent	3
3	DEFINITIONS	4
4	SCOPE OF SERVICES	7
	4.1 General	7
	4.2 General Cargo Terminal and Stevedoring Services	7
	4.3 Personnel	7
	4.4 Primary ISD Point of Contact	8
	4.5 On-Site Offices	8
	4.6 Equipment	8
	4.7 FMT Operations	8
	4.8 FALLINE	9
	4.9 Agency Services	10
	4.10 Metals Warehouse Interface	10
	4.11 Duty of Cooperation	10
	4.12 ISD Marketing	10
	4.13 Support for Commission Marketing Efforts	10
	4.14 Annual Marketing Report	11
	4.15 Pricing Generally	11
	4.16 Terminal Operations Pricing	11
	4.17 Port Tariff Charges	11
5	RELATIONSHIP BETWEEN THE PARTIES	12
	5.1 Independent Contractor	12
	5.2 No Authority to Bind Commission	12
	5.3 No Creation of Property Interest in ISD	12

Article		Page
6	AVAILABILITY AND USE OF FACILITIES	12
	6.1 The Facilities	12
	6.2 Parcel 15	13
	6.3 Negotiation Rights	13
	6.4 Exclusive Use of the Facilities . . .	14
	6.5 Preferential Berthing Rights	14
	6.6 Facilities Use Purposes	15
	6.7 Turnover Condition of the Facilities .	15
	6.8 Condition of Facilities Upon Termination	16
7	MAINTENANCE AND IMPROVEMENT OF THE FACILITIES	16
	7.1 ISD's Responsibilities	16
	7.2 ISD Improvements	16
	7.3 Compliance	17
	7.4 Costs; Avoidance of Liens	17
	7.5 Notice of any Casualties or Structural Problems	18
	7.6 New Transit Shed	18
	7.7 Maintenance Building	19
	7.8 Traffic Building	20
8	COMPLIANCE WITH LAWS AND REGULATIONS	20
	8.1 Laws and Regulations	20
	8.2 The Port Tariff	20
	8.3 Declaration of Restrictions	20
	8.4 Non-Discrimination	21
	8.5 Stevedoring License	21
9	COMMISSION UNDERTAKINGS	21
	9.1 Facilities	21
	9.2 Berths	21
	9.3 Dredging	21
	9.4 Rail Tracks and Roadways	21
	9.5 Taxes	21
10	PAYMENT	22
	10.1 Annual Fee	22
	10.2 Volume Sharing Fee	22
	10.3 Port Tariff Charges	22
	10.4 Guaranteed Minimum Wharfage	22

Article		Page
	10.5 Tonnage Calculations	22
	10.6 Commission Invoices; Payment	23
	10.7 Interest on Late Payments	23
	10.8 Documentation	23
	10.9 Audit Rights	23
	10.10 Adjustments	24
11	UTILITIES	24
12	TAXES	24
13	INSURANCE	24
	13.1 Property Insurance	24
	13.2 Liability Insurance	25
	13.3 Terms of Insurance	25
	13.4 Blanket Coverage	25
	13.5 Proof of Insurance; Continuity	26
	13.6 Compliance with Insurance Company	26
	Requirements	26
	13.7 Effect of Termination	26
	13.8 Waiver of Liability/Subrogation	26
14	INDEMNIFICATION	27
	14.1 ISD Indemnification	27
	14.2 Dock Loading Limitations	27
	14.3 Commission Responsibility	27
15	DAMAGE BY CASUALTY	28
	15.1 Damage Not Preventing Facilities Use	28
	15.2 Damages Rendering Facilities Unfit	28
	15.3 Election to Continue Performance	28
16	PUBLIC POLICY REVIEW	29
	16.1 Public Policies and Objectives	29
	16.2 ISD's Public Policy Commitments	29
	16.3 Public Policy Review	30
	16.4 Notice of Review Results	30
	16.5 Unsatisfactory Performance	30
	16.6 Termination of Agreement	30
17	DEFAULT	30

Article		Page
	17.1 Events of Default	30
	17.2 Bankruptcy	32
18	REMEDIES	32
	18.1 Termination	32
	18.2 Notice of Termination	32
	18.3 Damages	32
	18.4 Other Remedies	32
	18.5 Cure Option	32
	18.6 Attorney's Fees	33
19	RIGHTS ON TERMINATION OR EXPIRATION	33
	19.1 Vacate Facilities	33
	19.2 Removal of Personal Property	33
	19.3 Commission's Right to Direct Removal of Improvements	33
	19.4 Title to Improvements	34
	19.5 Payment of Amounts Due	34
	19.6 Continuing Obligations	34
20	REMEDIES CUMULATIVE	34
	20.1 Remedies Cumulative and Not Exclusive	35
	20.2 Non-Waiver	35
21	DISPUTES	35
	21.1 Informal Resolution	35
	21.2 Arbitration	35
	21.3 Costs	36
	21.4 Continuing Performance	36
22	ENVIRONMENTAL HAZARDS; INDEMNIFICATIONS	36
	22.1 Definitions	36
	22.2 Limitations on Use	37
	22.3 Compliance with Legal Requirements	37
	22.4 Self-Certification of Compliance	37
	22.5 Notice of Any Violations or Claims	38
	22.6 ISD Release	38
	22.7 Non-Installation of Any Tank	38
	22.8 ISD Indemnification	38
	22.9 Testing Wells	39
	22.10 Withholding of Consent	40

Article		Page
	22.11 Increased Insurance Premiums	40
	22.12 Environmental Audits	40
	22.13 Removal of Hazardous Materials	41
	22.14 Security	41
23	ACCESS TO FACILITIES	41
24	SUBCONTRACTING	41
	24.1 Subcontracting of Terminal Services to FMT	41
	24.2 No Other Subcontracting	42
	24.3 Limits on Other Subcontracting	42
	24.4 No Waiver of Rights	42
25	ASSIGNMENT PROHIBITED	42
	25.1 Limitations on Assignment	43
	25.2 Limitations on Ownership Changes . . .	43
26	GOVERNING LAW	43
27	SEVERABILITY	43
28	FORCE MAJEURE	43
29	NOTICES	43
	29.1 Written Notices	43
	29.2 Receipt of Notices	45
	29.3 Telefax Notices	45
30	GENERAL PROVISIONS	45
	30.1 No Third Party Rights	45
	30.2 Fair Interpretation	45
	30.3 References	45
	30.4 Generic Terms	45
	30.5 Article Headings	45
	30.6 Counterparts	46
31	ENTIRE AGREEMENT	46
32	CHANGES	46
33	NON-COLLUSION AFFIDAVIT	46

Article		Page
34	APPROVAL REQUIRED	46
	EXECUTION	47
	APPROVALS	48
	TABLE OF EXHIBITS	49

INDIANA'S INTERNATIONAL PORT/BURNS HARBOR
GENERAL CARGO TERMINAL OPERATING AGREEMENT

THIS GENERAL CARGO TERMINAL OPERATING AGREEMENT ("Agreement") is made and entered into as of the 28th day of October, 1996, by and between the **INDIANA PORT COMMISSION,** a body corporate and politic existing under the laws of the State of Indiana, with its principal place of business at 150 W. Market Street, Suite 603, Indianapolis, IN 46204 (hereinafter referred to as "IPC" or the "Commission"), and **INDIANA STEVEDORING AND DISTRIBUTION CORPORATION,** a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at 15 North Franklin Street, Suite 290, Valparaiso, IN 46383-4859 (hereinafter referred to as "ISD"), each of said parties acting by and through its respective duly authorized officers.

PREAMBLE

WHEREAS the Commission is charged with the management and operation of the Ports of Indiana, including Indiana's International Port/Burns Harbor, located in Portage, Indiana (the "Port"); and

WHEREAS General Cargo operations generally have been conducted at the West Harbor Arm of the Port, while Bulk Cargo operations generally have been restricted to the East Harbor Arm, subject to the direction and authorization of the Port Director;

WHEREAS the Commission desires to enter into an agreement with a responsible, experienced company as an independent contractor to operate the Port's General Cargo terminal facilities described in this Agreement, and to provide a full scope of General Cargo terminal and stevedoring services at the Port on a cost-effective basis, both commencing as of January 1, 1999, so as to attract and retain potential users of the Port, and enhance the Port's status as the preeminent General Cargo port in the southern Lake Michigan marketplace; and

WHEREAS the Commission issued an "Invitation for Proposals" (the "IFP" or the "Solicitation") soliciting competitive proposals to provide such services, and to build and operate a metals warehouse and distribution facility; and

WHEREAS ISD's principals, Fednav Limited ("Fednav") and Alternative Distribution Systems, Inc. ("ADS"), submitted a joint proposal for ISD, acting through a subcontract to Federal Marine Terminals, Inc. ("FMT"), an indirectly wholly-owned subsidiary of Fednav,

to perform the subject services, and, acting through a separate subcontract to Roll & Hold Warehousing & Distribution Corp., a wholly-owned subsidiary of ADS ("Roll & Hold"), to build and operate a metals warehouse and distribution facility (the "MWDF"), and each agreed to jointly and severally guarantee the performance of ISD, FMT, and Roll & Hold"); and

WHEREAS the Commission selected the proposal submitted by ISD's principals ("ISD's Proposal") as offering the best value to the Commission, and desires to enter into this Agreement for General Cargo terminal and stevedoring services, and a separate "Lease and Metals Warehouse Development and Operating Agreement" (the "MWDF Agreement"), with ISD, as well as a "Joint and Several Guaranty Agreement" with ISD's principals under which each of such principals jointly and severally guarantees ISD's performance under this Agreement and the MWDF Agreement (the "Joint and Several Guaranty Agreement"); and

WHEREAS ISD desires, through the proposed subcontract to FMT, to perform General Cargo terminal and stevedoring services for the Commission on the bases set forth in the Solicitation and in ISD's Proposal, and to enter into this Agreement and the separate MWDF Agreement;

NOW THEREFORE, in consideration of the foregoing premises, the mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission and ISD hereby agree as follows:

ARTICLE 1. PURPOSE.

The Commission hereby retains the services of ISD, as an independent contractor, and acting through the proposed subcontract to FMT, to operate the portion of the Port's General Cargo terminal facilities covered by this Agreement, and to act as a General Cargo stevedore, both commencing at 12:01 a.m. (0001 hours) local time on January 1, 1999 (the "Operations Commencement Date") and continuing thereafter throughout the remaining term of this Agreement, and upon the terms and conditions set forth below, and ISD agrees to provide such services on such basis, to operate and maintain the subject Port General Cargo facilities starting on the Operations Commencement Date, and thereafter to provide cost-effective, full-service General Cargo terminal and stevedoring services at the Port for any potential users of the Port desiring to use ISD's services, to market such services, and to work with the Commission and other entities at the Port to help the Port grow and be the preeminent General Cargo port in the southern Lake Michigan marketplace, throughout the remaining term, and in full accord with the terms and conditions, of this Agreement.

_____

_____

ARTICLE 2. TERM.

2.1 Base Term: This Agreement shall be effective upon execution by both parties by their duly authorized representatives, approval by the Office of the Attorney General and by the Governor of the State of Indiana, and filing with the Federal Maritime Commission in Washington, D.C. or its successor (the "FMC") (the "Effective Date"), and shall continue in effect until midnight (2400 hours) on December 31, 2008, unless extended or earlier terminated pursuant to the terms and conditions set forth below. The foregoing notwithstanding, the subject Port facilities will not be made available to ISD, and ISD's obligations and right to maintain and improve those facilities, and to provide General Cargo terminal and stevedoring services, shall not begin until 12:01 a.m. (0001 hours) on January 1, 1999, it being expressly understood and acknowledged that the Commission has contracted with Lakes & Rivers Transfer, a Division of Jack Gray Transport, Inc., as the Commission's exclusive General Cargo terminal operator and stevedore at the Port under a separate terminal operating agreement which runs until midnight on December 31, 1998.

2.2 Extension Options: The term of this Agreement may be extended by ISD, on the then current terms and conditions, for up to two (2) five-year (5-year) extension option periods, provided that ISD has performed its obligations under this Agreement during the expiring term such that no Event of Default exists, and provided further that ISD notifies the Commission in writing of ISD's exercise of the respective option so that such written notice is received by the Commission no later than eighteen (18) months prior to the expiration of the then existing term of the Agreement. Each option period, if properly exercised, and conditioned upon ISD's performance and the non-existence of any Event of Default during the period from ISD's exercise of the option to the start of the option period, shall commence immediately upon the expiration of the previously existing Agreement term, and shall continue for a period of five (5) years from such starting date, ending at midnight (2400 hours) on the day preceding the fifth anniversary of such starting date.

2.3 Conditions Precedent: The performance of both parties under this Agreement is conditioned upon (1) the contemporaneous execution of both the MWDF Agreement between the Commission and ISD, and the Joint and Several Guaranty Agreement between the Commission, Fednav, and ADS, (2) the approval of all three agreements (this Agreement, the MWDF Agreement, and the Joint and Several Guaranty Agreement) by the Office of the Attorney General and the Governor of the State of Indiana, so that all three agreements become legally effective, and (3) satisfaction of the conditions precedent set forth in Section 1.3 of the MWDF Agreement. In the event that any one or more of the above conditions precedent can not be fulfilled within ninety (90) days after the Execution Date of this Agreement as set forth on page 1 above, or such longer period as the parties may mutually agree, or the third condition, if not fulfilled within such period, is not waived in writing by ISD, the Commission may terminate this Agreement and the parties shall be

released from all obligations and liabilities under this Agreement, except that ISD shall remain liable for anything arising out of any activities of ISD prior to the effective date of such termination, and this Agreement shall be of no further force or effect except as to any such activities of ISD prior to the effective date of such termination.

ARTICLE 3. DEFINITIONS.

When used in this Agreement, or in any correspondence with respect thereto, the following terms shall have the meanings set forth below:

"ADS" - means Alternative Distribution Systems, Inc., a privately-held Delaware corporation with offices in Homewood, IL, which, together with its subsidiaries, is engaged in providing fully integrated distribution services, including warehousing, transportation, and third party logistics services, to the metals industry, and which is a joint and equal owner of ISD with Fednav, and is, with Fednav, a joint and several guarantor of ISD's performance and obligations under this Agreement.

"Berth" - means the waterside area of the Port adjacent to a wharf, dock, pier, or apron owned and operated by, or under the jurisdiction of, the Commission (see generally Port Tariff Subrule 5).

"Berthing Apron" - means the portion of the wharf or dock adjacent to a Berth extending from the waterfront edge back 100 feet, except 75 feet in front of Transit Shed 2, and 50 feet in front of Transit Shed 1.

"Bulk Cargo" - means liquid or dry cargo that is carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except barges, is subject to mark and count, and therefore is not deemed Bulk Cargo for the purposes of this Agreement.

"Commission" - means the Indiana Port Commission, as identified in the opening paragraph of this Agreement, and any successor body or agency.

"Director of Engineering" - means John Hughes and any successor as the Commission's Director of Engineering.

"Effective Date" - means the date that this Agreement is filed with the FMC, after having been duly executed by both parties, and approved by the Office of the Attorney General and the Governor of the State of Indiana, as set forth in Article 2.1 above.

"Event of Default" - has the meaning set forth in Paragraph 17.1 below.

"Execution Date" - means the date on which the Commission, acting through its duly authorized representative, executed this Agreement, as set forth on the second line of page 1 above.

"FMC" - means the Federal Maritime Commission in Washington, D.C., and any successor agency or body with jurisdiction over marine terminal agreements in connection with common carriers operating by water in the foreign commerce of the United States.

"Facilities" - means the General Cargo facilities of the Port which are to be operated by ISD pursuant to the terms of this Agreement, including the Transit Sheds and Outside Storage Areas described in Paragraph 6.1 below, and any improvements or additions thereto pursuant to this Agreement.

"FALLINE" - means Federal Atlantic Lakes Line, which is operated by Fednav International Ltd., a wholly-owned subsidiary of Fednav.

"Fednav" - means Fednav Limited, a privately-owned Canadian company headquartered in Montreal, Canada, which, together with its subsidiaries, is engaged in the ocean transportation of commercial cargo on a worldwide basis, and which, by itself or through a directly or indirectly wholly-owned subsidiary, is a joint and equal owner of ISD with ADS, and is a joint and several guarantor, with ADS, of ISD's performance and obligations under this Agreement.

"FMT" - means Federal Marine Terminals, Inc., an Illinois corporation, which is an indirectly wholly-owned subsidiary of Fednav engaged in marine terminal and stevedoring services.

"General Cargo" - means all goods aboard a vessel, as "vessel" is defined in Subrule 5 of the Port Tariff, whether carried as revenue or non-revenue freight, or carried for the vessel owner, except: empty containers and the tare weight of loaded containers, all such containers having a capacity of 18 cubic meters or more; ship's fuel, ballast or stores, or crew; Bulk Cargo; and food and feed grains.

"IFP" - means the "Invitation for Proposals to Provide Services as a General Cargo Terminal Operator, and to Build and Operate a Steel and Metals Products Warehouse and Distribution Center, at Indiana's International Port at Portage, Indiana," issued by the Commission on June 5, 1996.

"ISD" - means Indiana Stevedoring and Distribution Corporation, an Indiana Corporation which shall be jointly and equally owned by Fednav (either directly or indirectly through a wholly-owned subsidiary) and ADS.

"MWDF" - means the Metals Warehouse and Distribution Facility which ISD is committing to build and operate at the Port under the separate "Lease and Metals Warehouse Development and Operating Agreement" which ISD is executing with the Commission contemporaneously with the execution of this Agreement.

"MWDF Agreement" - means the "Lease and Metals Warehouse Development and Operating Agreement" which ISD is separately executing with the Commission contemporaneously with the execution of this Agreement.

"Maintenance Building" - has the meaning set forth in Paragraph 7.7 below.

"New Transit Shed" - has the meaning set forth in Paragraph 7.6 below.

"Outside Storage Areas" - means the improved, open storage areas of the Facilities as defined in Paragraph 6.1 below, and any additional such areas which hereafter are added to or become part of the Facilities.

"Port" - means Indiana's International Port/Burns Harbor.

"Port Director" - means E. Peter McCarthy and any successor as the Port Director for Indiana's International Port/Burns Harbor.

"Port Management" - means the Port Director and the Port Director's staff at Indiana's International Port/Burns Harbor.

"Port Tariff" - means Burns International Harbor Port Tariff No. 007, issued by the Commission effective September 30, 1995, as such may be amended by the Commission from time to time hereafter, and any successor Port tariff.

"Public Policy Review" - has the meaning set forth in Paragraph 16.3 below.

"Ton" - means a net or short ton (i.e., 2,000 lbs) of cargo.

"Traffic Building" - has the meaning set forth in Paragraph 7.8 below.

"Transit Sheds" - has the meaning set forth in Paragraph 6.1 below, and includes the New Transit Shed once the construction thereof is completed.

"Volume Sharing Fees" - has the meaning set forth in Paragraph 10.2 below.

ARTICLE 4. SCOPE OF SERVICES.

4.1 General: Commencing January 1, 1999, and continuing thereafter throughout the remaining term of this Agreement, ISD, acting through a subcontract with FMT as set forth in Paragraph 24.1 below, shall operate and maintain certain of the Port's General Cargo facilities as set forth in Articles 6 and 7 below, and shall obtain insurance covering said facilities and ISD's operation and use thereof in accordance with Article 13 below.

4.2 General Cargo Terminal and Stevedoring Services: In accordance with the terms of this Agreement, ISD, acting through FMT, shall offer and provide full terminal and stevedoring services for the handling of General Cargo at the Port on a full-time basis throughout the term of this Agreement starting January 1, 1999, to all users of the Port desiring to use ISD's services. These terminal and stevedoring services shall be conducted in an efficient and cost-effective manner, and so as to ensure a safe and productive working environment, and maximize productivity. ISD shall cause its subcontractor FMT to obtain ISO 9002 Quality Management Certification for the proposed terminal and stevedoring operations at the Port as soon as is reasonably feasible after January 1, 1999, and shall thereafter maintain such certification, or comparable certification, for such operations throughout the term of this Agreement. ISD acknowledges and agrees that tenants at the Port may, directly or indirectly, stevedore their proprietary cargoes. ISD further acknowledges and agrees, as set forth in the IFP, that the Commission may authorize other parties to conduct terminal and stevedoring services for the handling of General Cargo at the Port during the term of this Agreement after December 31, 1998.

4.3 Personnel: ISD shall either directly or through FMT provide and maintain throughout the term of this Agreement commencing January 1, 1999, and as phased-in pursuant to Paragraph 4.7 below, adequate staff to perform the services required under this Agreement, composed of experienced, qualified administrative and operating personnel filling at least the various positions identified and set forth in Exhibit D to this Agreement. The operating and agency personnel will be located at the Port, while the administrative personnel will be located in Northwest Indiana within reasonable distance of the Port. ISD shall notify the Port Director in writing as to the names, qualifications, and experience of the on-site staff personnel as such personnel come on board and commence providing services within the scope of this Agreement, and also shall notify the Port Director in writing as to the names, qualifications, and experience of any replacement personnel during the term of this Agreement. All of the on-site operational personnel shall be fully dedicated to ISD's operations at the Port, unless ISD previously notifies and obtains the written consent of the Port Director in the event of unusual or special circumstances.

_____

_____

4.4 **Primary ISD Point of Contact:** ISD's primary point of contact with respect to any matters arising out of this Agreement, or which can not be resolved directly with the cognizant administrative or operational supervisory personnel, shall be Ted H. Winter, the Corporate Secretary of ISD and Executive Vice President of FMT, or any successor. ISD shall promptly notify the Port Director and the Commission in writing as to the name and qualifications of any replacement or successor.

4.5 **On-Site Offices:** ISD shall cause FMT to establish as soon as possible after January 1, 1999, and thereafter shall maintain throughout the term of this Agreement, offices at the Port to support FMT's on-site personnel and to conduct FMT's day-to-day operations. Such offices shall be open at least from 8:00 a.m. until 5:00 p.m., Monday through Friday, with such additional hours as are required by staff or customer needs. ISD shall cause FMT to provide, at its own cost, modular facilities to house its Traffic Department, which facilities shall be located within the designated Facilities near the main entry into the West Harbor Arm. ISD shall provide the Port Director with the name(s) and telephone number(s) of one or more ISD representatives who can be contacted at any time, as needed, outside of the regularly scheduled office hours.

4.6 **Equipment:** ISD shall cause FMT to provide, starting during the 1999 season, and thereafter shall maintain throughout the term of this Agreement, cargo-handling equipment at the Facilities which is functionally equivalent or superior to the equipment identified in Exhibit E to this Agreement, and shall provide such additional equipment as may be reasonably necessary from time-to-time to meet the needs of any person or entity desiring to use the Port's General Cargo facilities and ISD's services in an efficient and productive manner, specifically including, but not limited to, specialized project or heavy lift cargoes. Heavy lifts which exceed the capacity of FMT's existing or equivalent cargo handling equipment will be handled by leased or rented heavy lift equipment to the extent that such equipment is available and cost-effective. FMT shall maintain all of such equipment in good and safe operating condition, and shall construct, maintain, and utilize an equipment maintenance facility of not less than 4,000 sq. ft as set forth in Paragraph 7.7 below. ISD shall notify the Port Director as to any changes or substitutions to the equipment identified in Exhibit E, and may not remove any such equipment from service under this Agreement without replacing the same with functionally equivalent or better equipment without the Port Director's prior written approval and upon such conditions as the Port Director may reasonably impose, including the requirement to replace such equipment at a later time should subsequent conditions so warrant.

4.7 **FMT Operations:** ISD shall cause FMT to relocate from its facilities in Chicago to the Port during the first quarter of 1999, and thereafter to maintain at the Port throughout the balance of the term of this Agreement, FMT's main base of activities in Lake Michigan, including all of FMT's cargo handling cranes, forklift trucks and equipment

in Chicago, FMT's third-party cargo at Chicago to the extent the transfer of such can reasonably be accomplished, and most of FMT's Chicago-based staff. It is recognized that some cargo inventory from the 1998 season may still be at FMT's Chicago facilities when FMT's operations are transferred to the Port in January 1999. FMT may maintain some equipment in Chicago to complete the final delivery of any such cargo and handle any remaining stevedoring commitments in Chicago during the 1999 transition season. However, the majority of the Chicago-based cranes and forklifts will be transferred to the Port during the first quarter of 1999, and the balance will be transferred as soon as the balance of the 1998 cargo inventory has been delivered and the remaining stevedoring commitments met, and not later than the end of calendar year 1999. ISD shall cause FMT thereafter to dispose of, or otherwise reassign the use of, FMT's current facilities at 95th Street in Chicago, and Fednav and FMT have committed, and ISD shall ensure, that such facilities are not thereafter used by Fednav, FMT, or any entity in any way affiliated with either of them or ISD, for any purpose which could be competitive with ISD's proposed operations at the Port under this Agreement. For purposes of the foregoing sentence, the handling of barges, carrying cargoes not originating from or destined to the Port, and vessels carrying other than General Cargo, shall not be deemed competitive with ISD's proposed operations at the Port.

4.8 <u>FALLINE</u>: FALLINE is Fednav's dedicated liner service which operates between Europe and Great Lakes ports, and which currently makes regular discharge port calls at Chicago (FALLINE's current main base of operations in Lake Michigan), Milwaukee, and, on an occasional basis, at the Port, as well as at several other Great Lakes ports other than in Lake Michigan. Fednav has committed, and ISD shall cause Fednav, to relocate FALLINE's main base of operations in Lake Michigan from Chicago to the Port in time for the start of the 1999 Great Lakes shipping season in April of 1999, and thereafter to maintain FALLINE's main base of operations in Lake Michigan at the Port throughout the term of this Agreement, and during such period to direct FALLINE's vessel calls in the southern Lake Michigan market, which previously would have been discharged at Chicago, to the Port. It is recognized, notwithstanding the foregoing, that some FALLINE customers may need more time than that existing between the date this Agreement is executed and the start of the 1999 shipping season to adjust their practices to the new routing. Therefore, FALLINE may continue to call at FMT Chicago's facilities during 1999, if such is necessary, on a transition basis, and only until such time in 1999 as FMT is fully established at the Port. The Commission acknowledges and agrees that FALLINE vessels will continue to call at the Port of Milwaukee, and that, although FMT will no longer conduct General Cargo stevedoring activities in Chicago after 1999, Fednav's vessels are at liberty to load and/or discharge at marine terminal facilities in the Port of Chicago, which are operated by third parties not in any way affiliated with ISD, Fednav, or FMT, after 1999 if required to do so by Fednav's customers.

4.9 **Agency Services:** Fednav further has committed, and ISD shall cause Fednav, to relocate its ships agency and husbanding organization, Fedmar International, from its base in Chicago to the Port no later than April 1, 1999, and thereafter to provide such ships agency and husbanding services, including handling vessel support services such as tugs, lines, pilots, customs, and other husbanding details, at the Port throughout the remaining term of this Agreement.

4.10 **Metals Warehouse Interface:** ISD shall interface and coordinate its services and operations under this Agreement (the "Terminal Operations") with the distinct and separate services and operations which ISD is to provide under the MWDF Agreement (the "Warehouse Operations"), in such a manner as to maximize efficiencies and create synergies between the two operations that will result in additional utilization of the Port, and, to the extent practicable, create for those users of the Port desiring the services of both operations, a seamless link between the Terminal Operations and the Warehouse Operations, offering through services incorporating ocean shipping and a domestic distribution system. However, ISD must deal impartially and equally with all tenants and operators at the Port, and may not favor its operations by manipulating prices between the two separate operations.

4.11 **Duty of Cooperation:** ISD shall cooperate at all times with the Commission and Port Management, and with other persons or entities operating at the Port, including both Port tenants and labor, to maximize the efficient and productive use of the Port facilities and to provide smooth, efficient, and cost-effective services to the users of the Port. As a part of such cooperation, ISD shall do everything reasonably and economically practical to facilitate any third party use of Berths 11, 12, and 13 which may be authorized by Port Management, including the clearing of the adjacent berthing areas and any rights of way to permit reasonable unimpeded access and egress to such Berths. ISD also shall do everything reasonably and economically feasible to facilitate a smooth transition from the present General Cargo terminal operator at the Port, and to cooperate with Port Management and any successor operator to effect a smooth transition and turnover of the Facilities at the end of the Agreement, whether by expiration or upon any earlier termination.

4.12 **ISD Marketing:** ISD shall use its best efforts, and cause Fednav and ADS each to use their best efforts and respective worldwide and domestic offices, to market the Port and ISD's services at the Port to all potential users of the Port, including both exporters and importers of cargo, and including potential domestic and international barge cargoes, throughout the term of this Agreement.

4.13 **Support for Commission Marketing Efforts:** ISD also shall cooperate with and assist any marketing efforts of the Commission to promote General Cargo traffic at the Port. ISD shall cooperate with Port Management in this regard.

4.14 **Annual Marketing Report:** ISD shall provide the Commission, no later than April 1st of each year during the term of this Agreement, commencing April 1, 1999, a written report summarizing ISD's marketing activities to promote the Port during the preceding calendar year and setting forth ISD's marketing plan for the then current year. ISD shall coordinate such plan with the Commission Staff, and shall meet with the Commission annually, as requested, to discuss ISD's marketing plans and activities. ISD shall identify and mark those portions of such written report which contain proprietary business information the release of which could harm ISD's competitive operations, and the Commission shall retain the confidentiality thereof in accordance with Indiana law.

4.15 **Pricing Generally:** ISD's charges for its terminal and stevedoring services will be fair and competitive with comparable services in the region, and will be priced so as to attract maritime-related cargo and increase the utilization of the Port and the subject Facilities. In this regard, ISD's pricing will take into account its potential customers' needs, and will be based on a full recognition of the broad, competitive environment in which the Port operates. ISD will offer the same competitive prices, terms, and conditions to all users of its services, subject to tonnage volume, unit weight, dimensions, value, and commodity handling differences.

4.16 **Terminal Operations Pricing:** ISD shall establish and publish a Terminal Tariff setting forth the terms and conditions, and charges, for ISD's terminal services, including, but not limited to, the cost of delivering cargo to or from open storage or a Transit Shed onto or off rail or truck, or between the berthing apron and other Port facilities, and any storage charges. The provisions of such Terminal Tariff, including any volume discount provisions, shall be applied equally to users of such services. ISD will provide free time in the Transit Sheds or outside storage areas in accordance with standard industry practices, which may be extended so as to attract new cargoes to the Port and during the winter months, but reasonable time limits will always be set during the shipping season so as to ensure the availability of space for transit cargoes. ISD shall provide the Commission a copy of ISD's Terminal Tariff, and shall make copies of the same, as it may be amended from time to time, available throughout the term of this Agreement, for public inspection and information upon request by any interested users of the Port's facilities. ISD shall notify the Commission of any changes to ISD's Terminal Tariff, and shall provide the Commission a written explanation of the changes, no later than 30 days prior to the effective date of the changes, except in the case of immediate rate reductions.

4.17 **Port Tariff Charges:** ISD shall bill and collect all charges set forth in the Port Tariff in effect when such services are rendered, in addition to, and separately itemized and apart from, any other charges which ISD may charge for its services, and ISD shall keep records and make payments to the Commission on account thereof in accordance with Article 10 below. The Commission will give public notice of any proposed changes to the Port

Tariff affecting General Cargo operations no less than 30 days prior to submitting the finalized changes to the FMC or otherwise implementing any such changes, and will afford the public, including ISD, an opportunity to be heard with respect thereto, prior to final Commission action on the proposed changes.

ARTICLE 5. RELATIONSHIP BETWEEN THE PARTIES.

5.1 Independent Contractor: ISD and FMT shall act as independent contractors, and nothing contained herein shall be construed to make ISD or FMT, or any of their principals, owners, employees, subcontractors, or agents, nor shall ISD or FMT, or any of their principals, owners, employees, subcontractors, or agents, represent themselves as being, an agent, partner, joint venturer, employee or lessee of either the Commission or the Port.

5.2 No Authority to Bind Commission: ISD and FMT shall have no authority to, and may not, obligate or otherwise cause the Commission to be liable under any contract or otherwise.

5.3 No Creation of Property Interest in ISD: The parties hereto do not intend by entering into this Agreement to create or transfer to ISD any real or personal property interest in any of the Facilities or any of the Port's other facilities, and the Commission expressly retains full title to, and all property interests in, such facilities, including the right to enter such premises at all times.

ARTICLE 6. AVAILABILITY AND USE OF FACILITIES.

6.1 The Facilities: The Port is illustrated in Exhibit A to this Agreement. The portion of the Port's General Cargo facilities which is the subject of this Agreement is located on the West Harbor Arm, and consists of:

- Transit Sheds 1 and 2, totalling approximately 143,600 sq. ft of inside warehouse storage space, plus office space in Transit Shed 1 (hereinafter referred to individually as "Transit Shed 1" and "Transit Shed 2" respectively, and collectively, including, when completed, the New Transit Shed to be built by the Commission pursuant to Paragraph 7.6 below, as the "Transit Sheds");

- The Freezer Building, providing additional inside storage area measuring 48' x 80', which is located adjacent to Transit Shed 1, which building may be razed by the Commission to provide space for the expansion of Transit Shed 1 or other construction of the New Transit Shed, or, if not so razed, may be

used by ISD, at its election, for its proposed Maintenance Building per Paragraph 7.7 below;

- Approximately 9.4 acres of improved, open storage area, located to the south of the roadway right-of-way access to Berth 10, to the east of the Berthing Apron adjacent to Berths 11, 12, and 13, and to the west and north of the railroad track rights-of-way indicated on Exhibit B (which area, together with any additional open storage areas which hereafter may be added to the scope of this Agreement, is referred to as the "Outside Storage Areas").

These facilities, including any additional improvements thereto or thereon pursuant to this Agreement, and any additional areas which hereafter are included within the scope of this Agreement, are hereinafter collectively referred to as the "Facilities" and are illustrated (exclusive of said additional improvements and any future additions) in the attached Exhibit B which is hereby made a part of this Agreement. The Commission shall retain title to, and the right to enter, the Facilities at all times, and no vested interest in the Facilities is intended to be created in or transferred to ISD or FMT under or by virtue of this Agreement.

6.2 **Parcel 15:** The Commission is the owner of a 6.646 acre parcel, denominated "Parcel 15," which is located adjacent to the East of the Facilities and specifically to the East of the open storage area between Transit Sheds 1 and 2, and which is more fully described and depicted in the attached Exhibit D, which parcel presently is undeveloped, and which the IFP notified offerors could be made available for development and use as part of the facilities under appropriate circumstances, terms, and conditions. ISD is hereby granted a right of first refusal, valid for a period of five years from January 1, 1999, to add Parcel 15 to the Facilities covered by this Agreement, subject to ISD establishing a need for such area to meet then current and reasonably envisioned cargo needs and requirements, and further subject to (i) ISD's submission of a coherent and complete investment and development plan, in which ISD makes a financial commitment for the development and use of such area, which is acceptable to the Commission, (ii) the Commission's determination that such constitutes the best use of Parcel 15, and (iii) other mutually acceptable terms and conditions. In the event that the Commission receives an alternate proposal for the development of Parcel 15 during this right of first refusal period, the Commission shall so notify ISD, and ISD shall have thirty (30) days within which to notify the Commission of ISD's desire to exercise its first refusal right and to submit its development and use proposal for the Commission's consideration as set forth above.

6.3 **Negotiation Rights:** In the event that the Commission determines (i) to proceed with the development of any portion of the area on the West Harbor Arm to the North of Berth 10 and the adjacent existing outside storage area, and to the West of the present

Cargill facilities, including the construction of any additional berths, Berthing Apron, or outside storage areas in such area, or (ii) that the then existing Transit Sheds capacity is inadequate for the then existing and reasonably foreseen General Cargo traffic at the Port, and determines to build or consider authorizing the construction of additional General Cargo transit sheds, then, in either such event, and conditioned upon ISD's performance being in full compliance with the terms of this Agreement at such time, ISD shall have the first right to negotiate with the Commission to operate such additional facilities on mutually acceptable terms, and the Commission shall negotiate with ISD in good faith to reach mutually acceptable terms for such operation, provided that nothing herein shall operate to prevent the Commission from, and the Commission shall be free, without giving ISD any rights of negotiations, to, negotiate and enter into a separate operating agreement for any such additional facilities with any other company which commits to bring sufficient new cargoes to the Port to support and justify any proposed operations in such facilities. In the event that, after good faith negotiations, the Commission and ISD are unable to reach a mutually acceptable agreement with respect to the operation of any such additional facilities, the Commission shall be free to negotiate with any other entity for the operation of such facilities on terms no more favorable to such other entity than either (a) what the Commission was willing to extend to ISD, or (b) what the Commission was last offered by ISD.

6.4 **Exclusive Use of the Facilities:** ISD shall have the exclusive use of the Facilities, including the Transit Sheds and the Outside Storage Areas, subject to the indicated roadway rights-of-way providing access to the Berths and Berthing Apron adjacent to the west of the Facilities.

6.5 **Preferential Berthing Rights:** ISD shall have the first right of preference to use, subject to assignment by the Port Director upon application as provided in the Port Tariff, public Berths 11, 12, and 13, each measuring approximately 650' in length, and the Berthing Apron adjacent to such Berths (subject to any overlap at Berth 13 which may be necessitated by any authorized Roll-On/Roll-Off (RO-RO) vessel loading or unloading at Berth 14), located to the west of the Facilities (but not including any preferential right with respect to the use of public Berth 10 or its adjacent Berthing Apron, although ISD may request, and be considered for, the assignment of such Berth should circumstances so warrant (e.g., in the event that ISD requires the heavy lift capability of Berth 10, or Berths 11, 12, and 13 are otherwise in use), in which case ISD's application for such usage shall be considered on the same basis as would be the application of any other regular applicant to use such Berth). This first right of preference means that ISD, in effect, will have a first right of use as to the subject Berths 11, 12, and 13, and the adjacent Berthing Apron, and will be preferred in the assignment of each of such Berths until the point in time at which any of such Berths is assigned to another entity for a period as to which such Berth had not previously been requested by ISD. However, this first right of preference does not give ISD any exclusive rights as to any of such Berths, or the right to preclude the use of such Berths by

others, and the Commission expressly hereby reserves the right to accommodate any shippers, consignees, and water carriers seeking access to the Port facilities, and to assign the use of all of the Port Berths, including Berths 11, 12, and 13, in accordance with the Port Tariff. The Commission agrees that the Port Director will assign third party use of Berths 11, 12, and 13, only if all other Berths on the West Harbor Arm are being used or are otherwise unavailable, and subject to ISD's prior first preference rights. In assigning any third party use of Berths 11, 12, or 13, Port Management will make every effort, consistent with the terms of the Port Tariff, to ensure that the authorized user timely removes all its equipment and cargoes from the Berthing Apron, and leaves the Berthing Apron in a clean and usable condition, so as not to interfere with any subsequent scheduled use of such Berths and the Berthing Aprons by ISD. ISD shall leave the Berthing Apron in a clean and usable condition after each use of the Berthing Apron by ISD, and shall keep the Berthing Aprons clear of ISD's equipment and cargoes, except as authorized by the Port Director and the Port Tariff, so as not to interfere with any subsequent use of the Berths and Berthing Apron by any other party. ISD shall reasonably cooperate and coordinate with Port Management to permit shippers, consignees, water carriers, and others who are assigned use of any of the Berths to use such Berths in an efficient and economic manner, and to traverse and use as is reasonably necessary the Berthing Aprons and roadway rights-of-way to unload the authorized vessels or barges and to ingress and egress such Berths.

6.6 **Facilities Use Purposes:** ISD shall operate the Facilities to fulfill ISD's obligations under this Agreement, including the operation of a General Cargo marine terminal, and the rendering of all customary stevedoring and transitory storage services, and for no other purpose whatsoever, without the express prior written authorization of the Commission. ISD shall not handle Bulk Cargo at the Facilities, or on the adjacent Berths and Berthing Apron, without the express prior written authorization of the Port Director.

6.7 **Turnover Condition of the Facilities:** ISD and Port Management shall coordinate and conduct a joint inspection of the Facilities (including the carrying out and reporting on, by qualified environmental engineers mutually acceptable to both parties, of Phase 1 and Phase II environmental assessments of the property under Transit Sheds 1 and 2 and the Outside Storage Areas, and the ground water thereunder, the costs of which environmental assessments shall be borne equally by the Commission and ISD (the "Initial Environmental Study")) prior to the Facilities being turned over by the Commission, and being accepted by ISD, under the terms of this Agreement, and ISD and Port Management shall document, by video, photographic, and written means as appropriate, the condition of the Facilities, including any repairs which the Commission and ISD reasonably agree should be accomplished by the Commission, at its cost, for the safe and customary use of the Facilities. ISD shall not request any repairs which are primarily cosmetic in nature, or the result of normal wear and tear which do not adversely affect the safe use of the Facilities. Upon the completion of such inspection, ISD shall accept the Facilities, and agrees to accept responsibility for the

maintenance thereof, except for and subject to the Commission timely accomplishing the agreed repairs. ISD and Port Management shall document the making of the designated repairs, and the condition of the affected portions of the Facilities upon the completion of such repairs, and the condition of the Facilities as documented upon turnover and as improved by such repairs when completed shall be deemed "the Baseline Condition of the Facilities." **ISD HEREBY ACKNOWLEDGES THAT THE COMMISSION HAS MADE NO REPRESENTATIONS CONCERNING THE CONDITION OF THE FACILITIES OR THEIR SUITABILITY FOR ANY USE OR PURPOSE WHATSOEVER.**

6.8 **Condition of Facilities Upon Termination:** ISD shall vacate the Facilities promptly upon the expiration or earlier termination of this Agreement, and shall leave the same in good order (i.e., neat and cleared of all ISD/FMT personal property and trash), and in a state of repair and operating condition no less favorable than the Baseline Condition of the Facilities, subject to reasonable wear and tear and loss by casualty. The environmental condition of the Property under Transit Sheds 1 and 2, the Outside Storage Areas, and the ground water thereunder, at the time of such expiration or earlier termination, shall be determined by carrying out Phase I and Phase II environmental assessments thereof substantially in accordance with the terms and conditions of the Initial Environmental Study (the "Final Environmental Study"), which shall be carried out immediately before, or promptly after, the expiration or earlier termination of this Agreement. The costs of the Final Environmental Study shall be borne equally by the Commission and ISD.

ARTICLE 7. MAINTENANCE AND IMPROVEMENT OF THE FACILITIES.

7.1 **ISD's Responsibilities:** ISD shall keep in a clean and sightly condition, and shall maintain and repair, the Facilities, including all additions and improvements thereto and the interior portions of the Transit Sheds and any other buildings, but excluding those items identified and agreed to in writing based upon the parties' joint inspection of the Facilities as set forth in Paragraph 6.7 above until such items are repaired by the Commission, and excluding the exterior roof and any structural problems with respect to either of the Transit Sheds resulting from ordinary wear and tear, which shall remain the responsibility of the Commission throughout the term of this Agreement, in a safe and usable condition no less favorable than the Baseline Condition of the Facilities involved in the turnover per Paragraph 6.7 above, and in good condition as to any improvements or additions to the Facilities unless otherwise specifically provided in a written amendment to this Agreement, subject in all instances to reasonable wear and tear, and loss by casualty, throughout the term of this Agreement.

7.2 **ISD Improvements:** ISD may install equipment and fixtures, and construct such improvements to the Facilities, as ISD may reasonably deem necessary and convenient

to the performance of the services which are the subject of this Agreement, provided that such installation and/or construction shall be at ISD's sole expense and risk, and must be approved in writing in advance by the Port Director and the Commission's Director of Engineering. ISD shall provide plans and specifications for any such improvements to the Director of Engineering, and must obtain his written approval thereof prior to beginning any installation or construction (the "Work"), and all of the proposed Work shall be reviewed by the Director of Engineering. Such review and approval shall be for the sole benefit of the Commission, and the Commission makes no representations or warranties as to the suitability or soundness of the plans and specifications, or of any aspect of the Work. If the Director of Engineering advises ISD of any modifications which, in the Director of Engineering's reasonable opinion, are necessary for compliance with regulations and procedures promulgated by the Commission and the Declaration of Restrictions attached as Exhibit F and hereby made a part of this Agreement, ISD shall make appropriate modifications to the plans and specifications or Work.

7.3 **Compliance:** ISD shall perform any installations and construction, and the same shall be constructed and completed, in compliance with all requirements of law and all ordinances, regulations, rules, or orders of any public agency or authority relating thereto, and in accordance with all rules and regulations promulgated by the Commission. ISD shall obtain, at its sole cost and expense, all permits, releases, licenses, and approvals necessary for the performance of ISD's Work prior to commencement thereof. The Commission shall, if necessary to obtain the same, join in the application for any such permits, releases, and licenses. The Commission also shall join in any application for a grant of easement for electric, telephone, gas, water, sewer, and other public utilities and facilities, or access, ingress and egress easements, which are useful and/or necessary to any permitted use of the Facilities; provided, however, that the Commission shall retain the right to reasonably approve the location of any such easements. ISD hereby agrees to indemnify and hold the Commission harmless from and against any and all costs, expenses, liability, claims, actions, and causes of action actually incurred by the Commission or arising out of ISD's or FMT's violation of any legal requirements.

7.4 **Costs; Avoidance of Liens:** ISD shall promptly pay all expenses, costs, and charges of every kind and nature whatsoever relating to or arising out of any equipment installation in or improvements to the Facilities, and shall keep the Facilities and all improvements located therein or thereon free and clear of any and all mechanics', materialmen's and other liens for or arising out of, or in connection with, any work or labor done, services performed, or materials or appliances used or furnished for, or in connection with, ISD's operations, any alteration, improvement, or repairs or additions which ISD may make or cause to be made, or any work or construction by, for or permitted by ISD on or about the Facilities, or any obligation of any kind incurred by ISD, and, except as otherwise expressly provided for herein, shall promptly and fully pay and discharge or bond over any and

all claims on which any such lien is or could be based, and indemnify and hold harmless the Commission against all such liens and claims of liens and suits or other proceedings pertaining thereto. ISD shall give the Commission written notice no less than ten (10) working days in advance of the commencement of any substantial construction, alteration, addition, or improvement to the Facilities in order that the Commission may post appropriate notices of the Commission's non-responsibility in connection therewith. If ISD desires to contest any such lien, ISD shall notify the Commission of ISD's intent to do so within thirty (30) days after the filing of such lien.

7.5 Notice of Any Casualties or Structural Problems: ISD shall promptly notify the Port Director, in writing, as to any casualties or structural problems with respect to the Facilities, shall prepare and submit a proposal, including cost estimates, to repair or replace any such damage, and, upon approval of ISD's proposal by the Port Director, shall be responsible for repairing and replacing such damage to the extent that the proceeds from the insurance required under Article 13 below are made available to cover the costs of such repairs and replacements (although the Commission, and not ISD, shall be responsible for the cost of any actual repairs to the exterior roof and structural portions of the Transit Sheds occasioned by ordinary wear and tear). Any contrary terms contained in this Agreement notwithstanding, ISD shall be entirely responsible for any maintenance, repairs or improvements, including related costs, necessary to keep the Maintenance Building and Traffic Building in good order and repair.

7.6 New Transit Shed: ISD anticipates a need for additional transit shed storage space of at least 60,000 sq. ft, over and above the existing Transit Sheds capacity, in order to accommodate the additional cargoes which ISD will be bringing to the Port with the relocation to the Port of FMT and the FALLINE service. In order to support and finance the construction of such additional transit shed capacity, ISD hereby guarantees annual wharfage revenues to the Commission from a minimum of 200,000 Tons of "New General Cargo Tonnage" per year throughout the term of this Agreement, starting January 1, 1999, with such minimum to be calculated on a cumulative average going forward, with ISD advancing at year-end any amount necessary to maintain a cumulative average of 200,000 tons worth of wharfage payments per year. For purposes of this guarantee, "New General Cargo Tonnage" means imported finished steel tonnage initially brought to the Port by the relocation of FMT from Chicago to the Port, or by the re-routing of FALLINE and establishment of its main base of activities in the southern Lake Michigan market at the Port, any export steel cargoes loaded at the Port by Fednav vessels from non-Port tenants, and any identifiably new movements of General Cargo through the Port attributable to ISD's marketing efforts and which utilize the Transit Sheds. In consideration of, and based upon, such guarantee, and in order to accommodate such anticipated additional new cargo, the Commission agrees to provide ISD, by no later than April 1, 2000, approximately 60,000 sq. ft of additional transit shed storage space (the "New Transit Shed"), within the provided Facilities or in the immediate

adjacent vicinity. Such New Transit Shed may be either new construction, as a stand-alone facility or as an addition to the existing Transit Sheds, or may be an existing building suitable for such purposes in the event such becomes available. The Commission, in deciding upon the location of the New Transit Shed or the possible use for this purpose of an existing building, will consult with ISD and take into consideration, ISD's reasonable requests and preferences. ISD agrees that the Commission may raze, at the Commission's expense, the existing Freezer Building adjacent to Transit Shed 1 in order to facilitate the construction of the New Transit Shed if the Commission determines that such is appropriate. In the event that the Commission makes an existing building outside the confines of the specified Facilities available for this purpose, the parties shall negotiate an appropriate increase to the Annual Fee to compensate the Commission for the additional acreage being made available, in an amount not less than the then current standard Commission rental rate for such property. ISD shall cooperate and coordinate with the Commission with respect to the scheduling of any construction by the Commission of the New Transit Shed, and shall make available for such purpose such portions of the Facilities as may be reasonably necessary. It is estimated that the cost of constructing the New Transit Shed will be approximately $1.3 million. Title to the New Transit Shed shall immediately vest in and at all times belong to the Commission.

7.7 **Maintenance Building:** During calendar year 1999 ISD shall construct within the boundaries of the Facilities, at ISD's sole cost and expense, a maintenance building of at least 4,000 sq. ft (the "Maintenance Building"), which is to be utilized for the safe and proper maintenance of forklifts, cranes, and other equipment, and the storage of handling gear, relating to ISD's Terminal Operations. In the event that the Freezer Building is not to be razed as permitted in Article 7.6 above for the construction of the New Transit Shed area, then ISD may, at its sole election, determine to utilize and convert the Freezer Building into the Maintenance Building. In either event, the construction or conversion shall be deemed to be "Work" as defined in Article 7.2 above, and shall be subject to the terms and conditions of said Article 7.2. ISD has estimated that the cost of constructing the Maintenance Building will be approximately $120,000 (4,000 sq. ft @ $30). In the event that the total cost of such construction, or conversion of the Freezer Building if such is used, is less than $110,000, ISD commits to invest during calendar years 1999 and 2000 a total amount equal to the difference between (i) the actual incurred costs of such construction or conversion, and (ii) $110,000, in mutually agreed improvements to the Transit Sheds. Title to the Maintenance Building shall vest in the Commission immediately upon the completion of the construction thereof, and ISD shall execute any documents requested by the Commission to transfer title and effectuate said ownership by the Commission free and clear of any liens and encumbrances. The Commission thereafter shall have full title to and ownership of the Maintenance Building, and ISD shall be entitled to the free and exclusive use of the Maintenance Building as part of the Facilities during the remaining term of this Agreement. Any contrary term contained in this Agreement notwithstanding, during the

term of this Agreement, ISD shall be responsible for all maintenance and repair, including external roof and any structural problems resulting from ordinary wear and tear, of the Maintenance Building.

7.8 Traffic Building: During calendar year 1999, ISD, at its sole expense, shall make such improvements and, at a site near the main entrance of the Facilities to be approved in writing by Port Management, install a modular facility to be utilized for FMT's Traffic Department (the "Traffic Building"). The improvements and installation of the modular facility identified in the preceding sentence shall be deemed to be "Work" as defined in Article 7.2 above, and shall be subject to the terms and conditions of such Article 7.2. Any contrary terms contained in this Agreement notwithstanding, ISD shall (a) own the Traffic Building (not including the land thereunder), and shall be permitted to remove said Traffic Building upon the expiration or termination of this Agreement, and (b) be responsible for all maintenance and repair, including external roof and any structural problems resulting from ordinary wear and tear, of the Traffic Building; provided, however, that ISD shall return the underlying land to a condition reasonably acceptable to the Commission upon the expiration or earlier termination of this Agreement.

ARTICLE 8. COMPLIANCE WITH LAWS AND REGULATIONS.

8.1 Laws and Regulations: ISD shall comply with all rules and regulations promulgated by the Commission for the operation of the Facilities and navigation in the Port, as the same may be amended from time to time, as well as with all laws, statutes, regulations, ordinances or rules of applicable local, state and federal governmental agencies. ISD further agrees to conform to all rules and regulations promulgated by the Indiana Department of Environmental Management, the U.S. Environmental Protection Agency, and any and all other government agencies whose jurisdiction may apply.

8.2 The Port Tariff: ISD shall comply with the Port Tariff, as the same may be amended from time to time. The Commission reserves the unqualified and unconditional right to change, amend, or revise the Port Tariff, and to supplement, increase, or decrease the rates and charges specified therein, consistent with the notice and opportunity for comment provided in Paragraph 4.17 above, and the Commission's determination that the proposed changes are consistent with the Commission's mission and in the public interest, and provided that the Commission does not enforce or collect such Tariff in an arbitrary or discriminatory fashion.

8.3 Declaration of Restrictions: ISD shall comply with the Declaration of Restrictions attached as Exhibit F hereto, which the Commission deems to run with the property and apply to all use thereof, notwithstanding the language therein which refers to leases and

_____ _____

even though this Agreement does not create a leasehold or other property interest in ISD. For purposes of this Agreement, the term "Lessee" in the Declaration of Restrictions shall be interpreted to include or mean "ISD" when the context so requires.

8.4 **Non-Discrimination:** ISD agrees and commits that neither it nor any subcontractor providing services under this Agreement shall discriminate against any employee or applicant for employment in connection with its operations and use of the Facilities, with respect to such employee's or applicant's hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of such employee's or applicant's race, color, sex, handicap, religion, national origin, or ancestry.

8.5 **Stevedoring License:** ISD shall cause FMT to maintain the necessary qualifications, and to apply for and maintain, authorization from the Commission to act as a General Cargo stevedore at the Port throughout the term of this Agreement commencing January 1, 1999.

ARTICLE 9. COMMISSION UNDERTAKINGS.

9.1 **Facilities:** The Commission shall be responsible for maintaining the exterior roof and structural portions of the Transit Sheds against ordinary wear and tear, and shall undertake and be responsible for any capital repairs necessary to keep the Outside Storage Areas in good condition, except for repairs necessitated by ISD's possession and use of the Facilities, including any overloading of the surface caused by ISD, which repairs shall be the sole responsibility of ISD.

9.2 **Berths:** The Commission shall maintain the Berths and Berthing Apron in good condition.

9.3 **Dredging:** The Commission further will be responsible for maintenance dredging (to a minimum draft of 27 feet) of the access channels and along side the Berths, wharfs, and wharf aprons.

9.4 **Rail Tracks and Roadways:** The Commission shall cause the railroad tracks and roadways appurtenant to the Facilities to be maintained in good order and repair throughout the term of this Agreement, except for repairs necessitated by ISD's possession and use of the Facilities which shall be ISD's responsibility.

9.5 **Taxes:** The Commission will pay any real estate taxes which may be extended upon or assessed against the Facilities (excluding the Maintenance Building and the Traffic Building) which may be assessed against the Commission.

ARTICLE 10. PAYMENT.

10.1 Annual Fee: ISD shall pay to the Commission, starting January 1, 1999 and continuing thereafter throughout the remaining term of this Agreement, for the use of the Facilities, a fixed annual fee of $300,000, which shall be payable in equal amounts of $25,000 due on the 1st day of each month (the "Annual Fee").

10.2 Volume Sharing Fee: In addition, ISD shall pay to the Commission a volume sharing fee ("Volume Sharing Fee") for each ton of General Cargo handled by ISD across the docks at the Port over and above 300,000 Tons per year, which Fee shall be in addition to and separate from the standard wharfage fees assessed in accordance with the Port Tariff. This Volume Sharing Fee shall be in the amount of $0.20 per Ton for each Ton over 300,000 Tons up to 500,000 Tons, $0.25 per Ton for each Ton over 500,000 Tons up to 1,000,000 Tons, and $0.40 per Ton for each Ton over 1,000,000 Tons.

10.3 Port Tariff Charges: In addition, ISD shall collect and pay to the Commission all charges applicable to vessels/barges served by ISD, including wharfage, dockage, and water connection fees, in accordance with the Port Tariff in effect when the services are rendered. All collections are the responsibility of ISD, and the payments due to the Commission under the Port Tariff are payable to the Commission by ISD regardless as to whether payment therefor has been received by ISD.

10.4 Guaranteed Minimum Wharfage: ISD guarantees minimum annual wharfage payments to the Commission, in accordance with the Port Tariff, equivalent to 300,000 Tons per annum, starting January 1, 1999 and continuing thereafter for the remaining term of this Agreement (the "Minimum Wharfage Guarantee"). Any shortfall between this minimum and the actual tonnage handled by ISD shall be calculated and payable at the conclusion of each year. No tonnage handled by ISD for the account of Port tenants or users which have agreements with the Commission containing minimum wharfage guarantees shall be counted towards the fulfillment of ISD's Minimum Wharfage Guarantee, except that all tonnage carried by FALLINE on liner terms and discharged at the Port shall be counted even if said tonnage is designated to a Port tenant, and further except that any cargo handled for the MWDF over and above ISD's separate minimum wharfage guarantee set forth in the MWDF Agreement shall be counted. All new tonnage handled by ISD which is subject to the New General Cargo Tonnage guarantee set forth in Article 7.6 above, other than tenant cargoes excluded under this paragraph, may be counted towards fulfillment of the Minimum Wharfage Guarantee. In the event of the termination of this Agreement in the middle of any calendar year, the Guaranteed Minimum Wharfage obligation for such year shall be prorated to the termination date.

10.5 Tonnage Calculations: For the purpose of Paragraphs 10.2 and 10.4 above, any cargoes which are transshipped from barge to vessel, or vice versa, either directly or via the docks, shall be counted only once so long as the cargo remains the same and does not undergo any substantial transformation. The date the vessel or barge departs the docks at the Port shall be determinative of the time period to which the cargo is allocable.

10.6 Commission Invoices; Payment: The Commission shall invoice ISD periodically for all amounts due from ISD pursuant to the terms of this Agreement, and ISD shall pay such invoices within 30 calendar days of ISD's receipt of each such invoice. The Commission's invoices will be based upon the terms of this Agreement and the vessel activity reports prepared by Port Management. ISD shall pay such invoices in full, and shall promptly bring any discrepancies or asserted adjustments to the attention of the Commission Staff, with full supporting documentation. ISD may not unilaterally withhold or set off any claimed adjustment or amount due to ISD. Any necessary adjustments will be reflected in the Commission's next subsequent billing.

10.7 Interest on Late Payments: The Commission shall be entitled to assess a fee of eight percent (8%) per annum (compounded monthly) on any and all delinquent payments required to be made by ISD to the Commission under the terms of this Agreement, running from the date each such payment was due until the payment actually is received by the Commission.

10.8 Documentation: ISD shall submit to the Commission in a timely manner all directly relevant documents, including the vessel manifests covering all cargoes loaded/unloaded, as may be requested by the Commission with respect to ISD's activity at the Port under this Agreement. In addition, ISD shall submit to the Commission, within 45 calendar days after the conclusion of each calendar year, a certified statement detailing ISD's General Cargo activities and all related charges. Such statement is to be certified by an officer of ISD having direct personal knowledge of the contents of the statement, certifying that the statement accurately and completely reflects all of ISD's General Cargo activity and all related charges invoiced by, or otherwise due to, the Commission in connection with such activity during the subject calendar year.

10.9 Audit Rights: The Commission shall have the right to inspect or audit ISD's records relating to ISD's performance under this Agreement and operation of the Facilities, and ISD shall provide the Commission or its duly authorized representatives with access to such records at ISD's offices at the Port during normal working hours. The Commission shall conduct any such inspection or audit in such a manner so as not to unduly interfere with ISD's normal business operations.

10.10 **Adjustments:** ISD shall pay any discrepancy found to be due to the Commission as the result of any inspection or audit within fifteen (15) days after ISD's receipt of notice of such discrepancy. In the event any discrepancy is found to be due to ISD as the result of any inspection or audit, or otherwise, the Commission shall credit such amount to ISD on the Commission's next subsequent billing to ISD in connection with this Agreement.

ARTICLE 11. UTILITIES.

ISD agrees to pay all charges for sewer, water, gas, electricity, telephone, and all other utility services furnished to the Facilities during the term of this Agreement commencing January 1, 1999, including any and all tap-in fees, and all costs and expenses incurred in extending any utility service to the Facilities from the point provided by the Commission or the utility company, and ISD further agrees to indemnify and hold the Commission harmless from any and all liability resulting from any non-payment for any such services.

ARTICLE 12. TAXES.

ISD shall be responsible for, and shall pay and discharge when due, any and all federal, state, and local taxes which may accrue to, or be assessed against, ISD's operations and the operation of the Facilities commencing January 1, 1999, including, without limitation, any local property tax which may be asserted on any improvements to the Facilities made by ISD. Nothing contained herein shall be construed as limiting or otherwise preventing ISD from contesting or otherwise challenging such taxes for or on any account or reason in a proper forum and manner as prescribed by applicable law.

ARTICLE 13. INSURANCE.

13.1 **Property Insurance:** ISD shall procure and maintain in full force and effect throughout the term of this Agreement commencing January 1, 1999, on its own behalf and on behalf of the Commission as their respective interests may appear, fire and all-risk property insurance and boiler insurance, if applicable, upon all buildings and other insurable improvements located on the Facilities, including ISD's trade fixtures, furnishings, equipment, and all items of personal property on the Facilities, in an amount not less than the full replacement cost of the same. In addition, during the period of any construction ISD shall maintain Builder's Risk Insurance in an amount sufficient to cover all costs of construction and otherwise acceptable to the Commission.

13.2 **Liability Insurance:** ISD, at its sole expense, shall procure and maintain in full force and effect throughout the term of this Agreement starting January 1, 1999, commercial general liability insurance against claims for bodily injury, death, or property damage arising out of ISD's operations under this Agreement, such insurance to name the Commission as an additional insured, and otherwise in accordance with the requirements set forth in this Article, and providing at least the following coverages:

(i) Comprehensive general liability insurance and Stevedores Liability Insurance against claims for injury or death to persons or damage to property arising out of ISD's operations under this Agreement with minimum limits of liability of Five Million Dollars ($5,000,000) combined single limit for each occurrence. Such insurance shall include, but not be limited to, bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and projects/completed operations liability, and liability for property of others in the care, custody, and control of ISD and its subcontractors.

(ii) Comprehensive automobile liability insurance against claims for injury or death to persons or damage to property occurring at the Port in connection with ISD's operations under this Agreement, with minimum limits of liability of Five Million Dollars ($5,000,000) combined single limit for each occurrence. Such insurance shall include, but not be limited to, bodily injury liability, personal injury liability, property damage liability, hired car liability, and non-owned auto liability.

(iii) Workers compensation insurance as required by the laws of the State of Indiana, and, as applicable, all appropriate Federal Acts such as, but not limited to, the U.S. Longshoremen and Harborworkers Compensation Act, the Jones Act, and the Federal Employers Liability Act. The limit of liability under employers liability shall not be less than One Million Dollars ($1,000,000) for each occurrence.

The amount of such coverages shall be reviewed by the parties annually to determine if such coverage is adequate. Any commercially reasonable request for increases in such coverage by the Commission at the time of such review shall be honored by ISD.

13.3 **Terms of Insurance:** In addition to the terms set forth in Paragraphs 13.1 and 13.2 above, the insurance required in those paragraphs shall be issued by companies licensed or authorized to provide insurance in the State of Indiana and otherwise reasonably acceptable to the Commission. Such insurance shall be written in such a manner that the insurer shall have no rights of subrogation against either the Commission or ISD.

13.4 **Blanket Coverage:** Notwithstanding anything to the contrary contained in this Article, ISD's obligations to carry the insurance provided for herein may be brought within

_____

the coverage of a so-called blanket policy or policies of insurance carried and maintained by ISD; provided, however, that the coverage afforded the Commission will not be reduced, diminished, or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Article are otherwise satisfied. Such blanket policy shall contain an endorsement that names the Commission as an additional insured, references the Port and the Facilities, and guarantees a minimum limit available for the Port and Facilities equal to the insurance amounts required in this Agreement.

13.5 **Proof of Insurance; Continuity:** ISD shall provide the Commission from time to time with certificates of the insurance required under Paragraphs 13.1 and 13.2 above, to evidence that such insurance is continuously in force. Such insurance shall provide that the same may not be canceled or modified without at least thirty (30) days prior written notice delivered to the Commission. Appropriate renewal or replacement policies shall be deposited with the Commission as issued, with valid binder or commitment letters ensuring continuity of insurance being provided to the Commission no later than 48 hours after the previously scheduled expiration of the pre-existing insurance. If ISD shall fail or refuse to procure, pay for, or keep in force, the policies of insurance as set forth herein, or to deliver evidence of such insurance to the Commission, the Commission may, at its election, keep in force and/or from time to time renew such insurance, and all amounts expended therefor, together with interest thereon at an annual rate of ten percent (10%) per annum, shall be additional payment due from ISD to the Commission, payable within fifteen (15) days after invoice therefor delivered to ISD.

13.6 **Compliance with Insurance Company Requirements:** ISD shall comply with all requirements of the insurance companies providing the foregoing insurance.

13.7 **Effect of Termination:** If this Agreement is forfeited or terminated by ISD for any reason, then all policies of insurance, and all insurance proceeds or money due or to become due at the time of the forfeiture or termination, shall belong to the Commission to the extent of any unpaid obligations under this Agreement, free and clear of any claim thereon or thereto on the part of ISD, or anyone claiming through or under ISD.

13.8 **Waiver of Liability/Subrogation:** Subject to the provisions of Article 14.1 below, ISD hereby waives any and all rights of recovery against the Commission, or against any Commissioner or the Commission's officers, employees, agents, or representatives, for loss or damage to ISD or its property, or the property of others under ISD's control, if such loss or damage is insured against under any insurance policy in force at the time of such loss or damage, or should have been insured against pursuant to the requirements of this Agreement. ISD shall, upon obtaining the policies of insurance required hereunder, give notice

to the insurance carriers or carriers of the foregoing waiver of subrogation as contained in this Agreement, and such waiver of subrogation shall be noted on all such insurance policies.

ARTICLE 14. INDEMNIFICATION.

14.1 ISD Indemnification: ISD hereby agrees to indemnify and hold the Commission, and its members, officers, employees, and agents, harmless from any and all losses, costs, claims, liabilities, damages, or expenses, including attorney's reasonable fees (collectively, "Damages"), arising out of, or in any way relating to, ISD's performance of the subject services at the Port or ISD's use and occupancy of the Port and the Facilities, or arising out of any breach or default of ISD in the performance of its obligations under this Agreement, except to the extent that such Damages are attributable to the misconduct and/or negligence of the Commission, and/or any breach or default of the Commission in performing the Commission's obligations under this Agreement, in which event responsibility for said Damages shall be apportioned between the parties in accordance with their respective degree of fault as may be mutually agreed by the parties or determined by any arbitrator or the Courts under Article 21.2 below. In the event that any action or proceeding is brought against the Commission by reason of any such claim which is not wholly attributable to the misconduct and/or negligence of the Commission, or which is not attributable to any breach or default of the Commission's obligations under this Agreement, ISD agrees to defend such action or proceeding, and to promptly pay and discharge any final judgment which may be rendered against the Commission in such action or proceeding, to the extent of ISD's interests.

14.2 Dock Loading Limitations: The Commission does not guarantee that the docks will sustain specific weights in excess of 500 pounds per square foot, and ISD hereby agrees to indemnify and save harmless the Commission from any damage which the Commission may sustain by reason of collapse or damage resulting from ISD's loading of the docks in excess of 500 pounds per square foot.

14.3 Commission Responsibility: The Commission fully releases ISD from, any and all claims, causes of action, demands, suits, costs, expenses, and damages, associated with any and all Environmental Conditions (as hereinafter defined) existing on the Facilities on or before December 31, 1998. Furthermore, the Commission agrees to assume all responsibility and liability for any and all claims, causes of action, demands, suits, costs, expenses, and damages associated with any and all Environmental Conditions existing on the Facilities on or before December 31, 1998. "Environmental Conditions" means any matters, activities, events, circumstances, commissions, threatened or actual release, and conditions in any way related to any federal, state, local, municipal law, municipal corporation, port

commission or authority, or any agency of the foregoing, law, regulation, ordinance, rule, or order, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 6901 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. § 651 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 1101 et seq., and the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.

ARTICLE 15. DAMAGE BY CASUALTY.

15.1 Damage Not Preventing Facilities Use: If any damage to the Facilities is not such that ISD would be prevented from using the Facilities for the specified purposes of this Agreement, then this Agreement shall remain in full force and effect, and ISD shall proceed to make all necessary repairs to the Facilities to the extent that insurance proceeds from the insurance required under Article 13 above are made available to effect such repairs.

15.2 Damages Rendering Facilities Unfit: If during the term of this Agreement the Facilities made available to ISD are so damaged by fire or other casualty that the Facilities are rendered unfit for occupancy and use for the purposes specified in this Agreement, the Agreement shall cease and terminate, such termination to be effective as of the date of such damage, unless ISD and the Commission mutually determine to replace the damaged Facilities and continue the Agreement, and agree upon mutually acceptable alternate facilities which will allow ISD to continue its operations in some reasonable manner under the circumstances in the interim. In the event of termination under this provision, ISD shall pay charges based upon its use of the Facilities and the amount of cargo handled up to and including the date of the occurrence of such damage, and immediately shall vacate the Facilities and terminate operations under this Agreement.

15.3 Election to Continue Performance: If ISD so elects, ISD may continue to operate using the undamaged portion of the Facilities, or such other facilities as the Commission may be able to make available on an interim basis, and may repair the Facilities to the extent that proceeds of the insurance required to be maintained under Article 13 above are available, paying all charges as hereinabove set out, subject to a pro rata adjustment in the Annual Fee payment under Paragraph 10.1 above and any other adjustment appropriate to recognize the reduced extent of the Facilities.

ARTICLE 16. PUBLIC POLICY REVIEW.

16.1 Public Policies and Objectives: As a public body, the Commission is charged to maintain and operate the Port at all times in a manner promoting and benefitting the public interest, including maximizing the public's use of the Port's facilities by ensuring the provision of cost effective and productive general cargo terminal and stevedoring services to all potential users, and promoting employment in the regions surrounding the Port. The Commission has the objectives to make the Port the leading Port in the southern Lake Michigan marketplace and to maximize revenues to the Commission from the use of the General Cargo facilities.

16.2 ISD's Public Policy Commitments: ISD understands and supports the Commission's foregoing public policies and objectives. In furtherance thereof, ISD hereby agrees to:

(i) Promote waterborne commerce at the Port, and foster the creation of employment within the region, by operating as efficiently as possible, and at a reasonable, competitive cost to shippers and consignees;

(ii) Create a favorable environment for the promotion of commerce at the Port through attention to increased customer service levels and productivity;

(iii) Cooperate fully with the Commission in its efforts to maximize waterborne commerce at the Port, including providing services to all cargo interests desiring to avail themselves of ISD's services, and by facilitating access to the Berths by any interests authorized to use the same by Port Management;

(iv) Foster harmonization of labor-management relations throughout the Port;

(v) Promote synergies between ISD's general cargo terminal and stevedoring operations and other maritime and industrial operations and facilities at the Port;

(vi) Cooperate with any other operators at the Port, and avoid unproductive forms of intra-port rivalry; and

(vii) Except for FMT's terminal operations in Milwaukee, Wisconsin, or as expressly approved in this Agreement, refrain from acting, or permitting Fednav and ADS, or any company affiliated with either of them, to act, as a terminal operator or stevedore at any other port within the Lake Michigan market, without the prior written consent of the Commission.

16.3 **Public Policy Reviews:** The Commission shall have the right to conduct periodic reviews of ISD's adherence to the foregoing commitments and promotion of the Commission's public policies and objectives (the "Review"). To assist the Commission in conducting this Review, and within twenty (20) calendar days after receipt of written notice from the Commission, ISD shall provide the Commission a written report summarizing ISD's performance under this Agreement and contributions to the accomplishment of the foregoing public policies and objectives. ISD also shall make available, for inspection by the Commission or its duly authorized representatives, all records, statistics and financial data concerning ISD's operations at the Port.

16.4 **Notice of Review Results:** The Commission will advise ISD as to the results of the Commission's Review, and specifically as to any areas of concern requiring improvement.

16.5 **Unsatisfactory Performance:** In the event that the Commission reasonably determines that ISD's performance with respect to the matters covered by the Review is unsatisfactory, the Commission shall give ISD written notice thereof. ISD shall have the right to respond thereto in writing within twenty (20) calendar days, setting forth any explanation or mitigating factors or considerations, as well as ISD's proposed corrective action, if any. ISD also shall have the opportunity, along with any other interested parties, to address such issue with the Commission at the Commission's next monthly meeting.

16.6 **Termination of Agreement:** Failure on the part of ISD to implement reasonable corrective action within a reasonable period of time shall, if such failure is material to ISD's performance of its obligations under this Agreement, constitute an Event of Default under Section 17.1(f) below (except that no further notice shall be required other than what is provided in this Article above).

ARTICLE 17. DEFAULT.

17.1 **Events of Default:** The happening of any one or more of the following events shall be deemed to be an "Event of Default" by ISD:

(a) Any cessation of General Cargo terminal and/or stevedoring services by ISD, and any unjustified refusal by ISD to provide such services for any prospective user of the Port desiring to use such services;

(b) Failure by ISD to pay any amount which is due to the Commission under this Agreement when due, within thirty (30) calendar days after written notice thereof;

(c) Failure by ISD to permit the Commission access to the Facilities or any records relating to ISD's performance under this Agreement and ISD's services at the Port;

(d) Failure by ISD to maintain insurance in effect as required under Article 13 above, or to provide evidence of such insurance to the Commission upon request;

(e) Any subcontracting or assignment of the terminal and stevedoring services to be provided by ISD under this Agreement without the express prior written consent of the Commission, except as expressly permitted in Article 22 below;

(f) A material breach of any of ISD's other obligations and commitments under this Agreement, which breach shall continue more than thirty (30) calendar days after ISD's receipt of written notice thereof;

(g) The making by ISD of any assignment for the benefit of ISD's creditors which was not approved in writing and in advance by the Commission;

(h) The levying of a writ of execution or attachment on or against the Facilities or any of ISD's property thereon, if the same is not stayed, suspended, released, or discharged within sixty (60) calendar days after notice thereof from the Commission to ISD (provided, however, that if a stay or suspension is lifted, ISD shall be entitled to only the number of days within the sixty (60) day period which had not expired prior to the stay or suspension within which to seek a release or discharge); or

(h) Institution of proceedings in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of ISD, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of ISD, and if said proceedings are not stayed, suspended or dismissed, and any receiver, trustee or liquidator appointed therein discharged, within one hundred twenty (120) calendar days after the institution of said proceedings (provided, however, that if a stay or suspension is lifted, ISD shall be entitled to only the number of days within the one hundred twenty (120) day period which had not expired prior to the stay or suspension within which to seek a release or discharge).

In the event that any such claimed default (other than a default under subparagraphs (a), (b), (c), (d), and (e) above) is of a nature that it is capable of being cured, but cannot be cured within the specified time limits, no Event of Default shall be deemed to have occurred so long as ISD is diligently pursuing appropriate action to cure the default, if such action was commenced within the time period as provided above after the giving of notice of the default.

17.2 **Bankruptcy:** Subject to applicable law, in the event that ISD is adjudicated to be a bankrupt, this Agreement shall automatically terminate and be of no further force or effect. The Commission may then pursue an action for any outstanding amounts then due to the Commission, as well as recovery of all other amounts payable on account of the Annual Fee and Minimum Wharfage Guarantee over the remainder of the then current term of this Agreement.

ARTICLE 18. REMEDIES.

18.1 **Termination:** Upon the occurrence of an Event of Default, the Commission may terminate this Agreement and all rights of ISD under this Agreement, without terminating ISD's obligations under the Agreement, and may remove all persons and property from the Facilities, and the Commission shall not be liable for damages or otherwise by reason of any such action.

18.2 **Notice of Termination:** The Commission shall give ISD written notice of any termination of this Agreement, stating the grounds for such termination, and shall include the effective date of the termination.

18.3 **Damages:** The Commission shall be entitled to recover immediately, as damages from ISD, the balance of any payments which are at that time due to the Commission under this Agreement, and the difference between (a) the sum of (i) the committed Annual Fee payments and (ii) the Minimum Wharfage Guarantee payments, and (b) the amounts committed for similar payments which the Commission is able to obtain, after having acted expeditiously to mitigate its damages hereunder, from any successor general cargo terminal operator at the Facilities. In addition, ISD shall be liable for any costs, including reasonable attorneys' fees, which may be incurred by the Commission as a result of, or to complete, the removal of ISD's personnel and property from the Facilities, as well as to restore the Facilities to the condition required in Paragraph 6.6 above.

18.4 **Other Remedies:** The Commission also shall be entitled to exercise any other right or remedy available to the Commission at law or in equity, in addition to, or as an alternative to, any of the other rights and remedies of the Commission herein specified upon the occasion of any Event of Default.

18.5 **Cure Option:** On the occasion of any Event of Default by ISD, the Commission may, at its option, cure such breach or default for the account, and at the expense, of ISD. Any cost or expense incurred by the Commission in curing such a breach or default for the account of ISD, together with interest at an annual rate of ten percent (10%) per annum, shall be deemed additional payment due from ISD to the Commission on the first

day of the month following the payment of such money or incurrence of such costs or expenses and the certification of the amount thereof to ISD by the Commission.

18.6 **Attorney's Fees:** In the event that the Commission employs attorneys to enforce all or any part of this Agreement, to collect any amounts due or to become due, or to remove ISD's personnel or property from the Facilities, ISD agrees to reimburse the Commission for the attorney's fees reasonably incurred thereby.

ARTICLE 19. RIGHTS ON TERMINATION OR EXPIRATION.

19.1 **Vacate Facilities:** ISD shall vacate the Facilities no later than the expiration or earlier effective termination date of this Agreement, unless ISD is provided less than fifteen (15) calendar days advance notice of the effective date of any termination, in which case ISD shall have fifteen (15) calendar days from ISD's receipt of such notice.

19.2 **Removal of Personal Property:** ISD shall have the right to remove all of its fixtures, equipment and other personal property within the time periods set forth in Paragraph 19.1. Any such property of ISD which shall remain in or upon the Facilities for more than ninety (90) calendar days after ISD has vacated the Facilities (whether pursuant to expiration or termination of this Agreement, or any other voluntary vacating of the Facilities) shall be deemed to have been abandoned by ISD, and, at the option of the Commission, such property (a) shall be retained by the Commission as its property; (b) shall be disposed of by the Commission in such manner as the Commission shall determine, without accountability to ISD or any other person; or (c) shall be promptly removed by ISD, at ISD's expense, upon written request therefor from the Commission. The Commission shall not be responsible for any loss or damage occurring to any property owned by ISD.

19.3 **Commission's Right to Direct Removal of Improvements:** Except as otherwise provided in this Agreement, upon the termination or expiration of this Agreement, the Commission shall have the right to require that ISD demolish and remove from the Facilities all or any part of any improvements made by ISD. Such election by the Commission shall be made by written notice from the Commission to ISD given at least three (3) months prior to expiration of the Agreement, or within ten (10) calendar days after the issuance of any termination notice. In the event of such election by the Commission, ISD shall commence and complete, subject to unavoidable delays, such demolition or removal, at ISD's sole cost and expense, prior to the expiration of the Agreement, or in the event of termination, within a reasonable time after ISD's receipt of the termination notice, and ISD shall restore the Facilities substantially to their condition as of the date such Facilities were turned over to ISD, except for normal wear and tear and any casualty damage. Before commencing any demolition or removal, ISD shall furnish to the Commission reasonable security

_____ _____

assuring completion of the demolition and removal. In the event that ISD shall fail to complete such demolition and removal within a reasonable time, the Commission shall be entitled to complete the same, and the costs thereof to the Commission shall be payable by ISD as additional sums due to the Commission as of the date of such Agreement expiration or termination.

19.4 **Title to Improvements:** Unless otherwise directed by the Commission pursuant to Paragraph 19.3 above, ISD shall leave any improvements to the Facilities in place, and shall deliver to the Commission (a) such documents, instruments, and conveyances as the Commission may reasonably request to establish the Commission's ownership of the improvements and any personal property left on the Facilities, including, without limitation, a bill of sale (ISD shall not be required to make any representations or warranties about the condition of the improvements or personal property in any such documents); (b) all construction plans, elevations, specifications, surveys, permits and other documents (excluding proprietary information and trade secrets) relating to, and necessary or convenient for, the operation of any improvements or any personal property left on the Facilities; and (c) all warranties on any improvements to the full extent such warranties are assignable.

19.5 **Payment of Amounts Due:** In addition, ISD shall pay to the Commission all appropriate amounts due to the Commission under the circumstances under the terms of this Agreement, and also shall pay an amount equal to any accrued but unpaid impositions and insurance premiums with respect to ISD's performance of services at the Port or the Facilities, prorated to the date of expiration or termination. Impositions which are a lien for prior years will be paid in full, and impositions which are, or will become, a lien for the year of termination shall be prorated to the date of termination based upon the best available information as to the amount of imposition due.

19.6 **Continuing Obligations:** Notwithstanding the exercise by the Commission of its termination rights under Article 18 above, or the expiration of this Agreement, ISD shall be obligated to pay and/or perform all amounts and indemnities set forth in this Agreement, which obligations shall survive the termination or expiration of this Agreement.

ARTICLE 20. REMEDIES CUMULATIVE.

20.1 **Remedies Cumulative and Not Exclusive:** The various rights and remedies contained in this Agreement and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute, and said rights and remedies may be exercised and enforced concurrently, and whenever and as often as occasion therefor arises.

20.2 **Non-Waiver:** No delay or omission to exercise any right or power by either party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term, or condition of this Agreement by either party shall not be construed by the other party as a waiver of any subsequent or continuing breach of the same covenant, term, or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

ARTICLE 21. DISPUTES.

21.1 **Informal Resolution:** This Article governs all claims, controversies, or disputes arising out of or relating to this Agreement or any asserted breach thereof ("Disputes"). Should any Dispute arise with respect to this Agreement, both parties agree to act immediately to resolve any Dispute, and that time is of the essence in the resolution of Disputes. Any Dispute that is not disposed of by written mutual agreement will be preliminarily reviewed by the Port Director, who will, within ten (10) business days after determining that the matter will not be resolved by mutual agreement, render a preliminary written report on the issues in dispute (the "Port Director's Report"), and furnish a copy of such Report to ISD. If ISD does not accept the Port Director's Report, ISD may, within five (5) business days after ISD's receipt of the Port Director's Report, request, by written letter succinctly stating ISD's grounds of disagreement with such Report, that the Dispute be reviewed and negotiated by the Executive Director on behalf of the Commission and the President of ISD on behalf of ISD (the "Senior Management Review"). If ISD timely requests a Senior Management Review, the Executive Director on behalf of the Commission and the President of ISD on behalf of ISD (each hereinafter referred to as a "Senior Manager"), shall use their respective reasonable efforts to resolve the Dispute within ten (10) business days. If the Senior Managers are unable to resolve the Dispute within ten (10) business days, either Senior Manager may deliver to the other party a notice of impasse ("Notice of Impasse"), whereupon there shall be no further obligation on the part of either party to continue negotiations pursuant to this Section 21.1 with respect to the Dispute.

21.2 **Arbitration:** Within ten (10) business days of receipt after a Notice of Impasse, the parties may mutually agree to submit the Dispute to arbitration for a determination, or otherwise the Dispute shall be submitted to an Indiana court of competent jurisdiction. Upon the timely agreement to submit a Dispute to arbitration, the Dispute will be arbitrated pursuant to the Commercial Rules of the American Arbitration Association ("AAA"), before a single arbitrator (the "Arbitrator"). The Arbitrator shall be randomly selected from a pool of three AAA-approved arbiters mutually selected by ISD and the Commission. The Port Director's Report will not bind the Arbitrator, and will not prejudice the legal position of

either party in the arbitration. Any such arbitration will be held at a mutually agreeable location in northwest Indiana in the vicinity of the Port, unless otherwise agreed. The Arbitrator will apply the law of the State of Indiana. The decision of the Arbitrator will be final and conclusive upon the parties. Judgment upon an award rendered by the Arbitrator may be entered in any court of competent jurisdiction. Except as may be necessary to enforce the decision of the Arbitrator, neither party will institute any action or proceeding against the other party in any court concerning any Dispute which the parties agreed to submit to arbitration.

21.3 **Costs:** The parties will share the costs of any arbitration equally, subject to final apportionment by the Arbitrator.

21.4 **Continuing Performance:** In the event of the existence of a Dispute, each party agrees that it will continue without delay to carry out all of its continuing responsibilities under this Agreement which are not affected by the Dispute. Should either party fail to continue without delay to perform any continuing non-Disputed responsibilities under this Agreement, any additional cost incurred by such party or the Commission as a result of such failure to proceed shall be borne by the party failing to carry out its responsibilities, and the party failing its obligations shall bear and make no claim against the other party for such cost.

ARTICLE 22. ENVIRONMENTAL HAZARDS; INDEMNIFICATIONS.

The Commission and ISD agree as follows with respect to the existence, use, generation, treatment, storage, disposal, or transportation of Hazardous Material (as hereinafter defined) in, from or about the Facilities or otherwise in the Port:

22.1 **Definitions.** **(a)** "Environmental Laws" means all federal, state, or local statutes, laws, ordinances, orders, rules, regulations or moratoria, or rules of common law, relating to the protection of health, safety, or the environment, including without limitation the following: the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (the "Clean Water Act"), the Solid Waste Disposal Act (42 U.S.C. §§ 6902 *et seq.*) ("RCRA"), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*) (the "Clean Air Act"), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*) ("CERCLA"), the Toxic Substances Control (15 U.S.C. § 2601 *et seq.*) ("TSCA"), or the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 *et seq.*), Title 13 of the Indiana Code, and/or any federal, state, or local law, regulation, or ordinance implementing any of the aforementioned federal or state statutes.

(b) "Hazardous Materials" means hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Indiana, or the United States, including, without limitation, any element, compound, solution, mixture, substance, material, or other matter of any kind, including solid, liquid, or gaseous material which is (i) listed or defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," or "toxic substance" under any of the Environmental Laws, (ii) petroleum, oil and gas, or any by-product or derivative thereof, (iii) polychlorinated biphenyl, (iv) asbestos, (v) designated a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (vi) defined as "hazardous waste" pursuant Section 1004 of RCRA, (vii) defined as a "hazardous substance" pursuant to Section 101 of CERCLA, (viii) defined as a toxic substance in TSCA, (ix) a contaminant of soil or ground water and causes degradation of the soil, air, and/or water to the extent that mitigation methods are needed to restore the soil, air, or water to its natural state, (x) fertilizer (liquid or solid), or (xi) a cause or contributor to damage to human health or the environment.

22.2 **Limitations on Use:** ISD shall not use, store, generate, treat, transport, dispose of, handle, stevedore, or warehouse any Hazardous Materials, in, from, under, or about the Facilities or otherwise in the Port, provided, however, that such Hazardous Materials as may be necessary for the day-to-day business of ISD, may be used and may be located in reasonably small quantities at the Facilities if such substances are kept in compliance with all Environmental Laws. All Hazardous Materials besides those permitted in this subsection are prohibited.

22.3 **Compliance with Legal Requirements:** ISD, at its sole cost and expense, shall perform its obligations, exercise its rights, and operate its business as required in this Agreement in compliance with all applicable Environmental Laws.

22.4 **Self-Certification of Compliance:** On or before each anniversary date of this Agreement, ISD shall provide the Commission with written certification that ISD is performing its obligations, exercising its rights, and operating its business as required under this Agreement in compliance with all Environmental Laws, or shall specify the extent of any non-compliance and set forth ISD's intended course of action and time frame for coming into compliance. ISD shall additionally provide the Commission with a duplicate copy of any emergency preparedness and response plans, or any environmental compliance audits or self-analyses, which ISD has prepared, or has had prepared, pursuant to any legal requirement or for any other reason. The Commission assumes no responsibility for reporting or implementing the plan by virtue of possession of said duplicate copy. The Commission shall maintain all environmental compliance audits provided to it by ISD as confidential, and shall not disclose said documents or any of the information contained therein without ISD's prior written permission or unless required by law.

22.5 **Notice of Any Violations or Claims:** ISD shall provide the Commission with a copy of any notice of alleged violation(s) by ISD, or of any claim against ISD, relating to Environmental Laws, or any changes to ISD's emergency preparedness and response plans. ISD shall provide such copies to the Commission within ten (10) days of ISD's receipt of any such notice or making any such change. ISD shall give written notice to the Commission within one (1) business day after the date on which ISD learns, or first has reason to believe, that any material release, spill, discharge, or emission of any Hazardous Material not otherwise permitted by any government agency with authority over such release, spill, discharge, or emission has occurred on, in, or about the Facilities.

22.6 **ISD Release:** ISD, on its own behalf and on behalf of its successors and assigns, hereby releases and forever discharges the Commission, its officers, directors, employees, and agents, both in their capacities as corporate representatives and as individuals, from any and all claims, actions, or liabilities of any manner whatsoever, whether in law or equity, whether now or hereafter claimed or known, which ISD now has or may have in the future against the Commission arising from or relating in any way to releases or threatened releases of Hazardous Material brought upon, generated or discharged from, or stored or used in or about the Facilities or otherwise in the Port by ISD, its successors, assigns, agents, employees, contractors, or invitees, or which arise from ISD's failure or alleged failure to comply with all Environmental Laws.

22.7 **Non-Installation of Any Tank:** ISD shall not install any tank (as such term is defined in 40 C.F.R. §260.10) on the Facilities without the prior written approval of the Commission.

22.8 **ISD Indemnification:** If the presence of any Hazardous Material in the Facilities or otherwise in the Port caused or permitted by ISD (even if consented to or allowed by the Commission) or ISD's use, storage, treatment, transportation, generation, or disposal of Hazardous Material results in contamination (in any amount or degree) of the Facilities, the Port, other property not a part of the Port, or injury to any person, then ISD shall indemnify, defend, and hold the Commission harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Facilities or the Port, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Facilities or the Port, damages arising from any adverse impact on marketing of space in the Port, and sums paid in settlement of claims, actual attorneys' fees, consultant fees, and expert fees) which arise during or after the term of this Agreement as a result of such contamination or injury. This indemnification of the Commission by ISD includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, response, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Facilities or

other property not a part of the Port. In the event the presence of any Hazardous Material requires further investigation or corrective action, the Commission shall provide ISD copies of any plans and documents pertaining to any proposed further investigation and remedial efforts by the Commission, and shall provide ISD a period of ten (10) days to review and comment thereon (unless the circumstances or legal requirements mandate a shorter period), and shall consider, but not be bound by, any ISD's comments by ISD. The indemnification and hold harmless obligations of ISD under this Section 22.8 shall survive the expiration or termination of this Agreement until all applicable statutes of limitation under the Environmental Laws and otherwise expire. Without limiting the foregoing, if the presence of any Hazardous Material in the Facilities or otherwise in the Port caused or permitted by ISD results in any contamination of the Facilities or the Port, ISD shall promptly take all actions at its sole expense as are necessary to return the Facilities or the Port to the condition existing prior to the introduction of any such Hazardous Material to the Facilities or the Port; provided that the Commission's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions, in the Commission's sole and absolute discretion, would not potentially have any materially adverse long-term or short-term effect on the Facilities or the Port. ISD shall not enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Material in any way connected with the Facilities without first notifying the Commission of ISD's intent to do so and offering the Commission the opportunity to participate in any such proceedings.

22.9 **Testing Wells:** The Commission shall have the right, at times and locations reasonably designed to minimize interference with ISD's operations, to cause at least four (4) permanent testing wells to be installed in the Facilities in locations selected by the Commission at the Commission's sole discretion, and may, at its option, cause the ground water to be tested to detect the presence of Hazardous Material at least once every twelve (12) months during the term of this Agreement by the use of such tests as are then customarily used for such purposes. The Commission shall reasonably promptly supply ISD with copies of such test results. The costs of such tests, and of the maintenance, repair, and replacement of such wells shall be for the Commission's account, unless Hazardous Materials are discovered, in which case the costs shall be for ISD's account unless the Hazardous Materials are attributable to the negligence of the Commission or action of some other known entity. ISD shall have the right at any time during the term of this Agreement to conduct its own test of the ground water underlying the Port by using such wells so long as each of the following conditions are satisfied: (i) such tests are conducted by or on behalf of ISD at ISD's own expense; (ii) ISD repairs any damage to such wells caused by such tests; and (iii) ISD delivers copies of the results of such tests to the Commission. ISD and the Commission shall maintain any water analysis results as confidential, and shall not disclose the results to any governmental authority or third-party (not including legal or consultant

_____

personnel working with the Commission who shall similarly treat such analysis results as confidential) without the written consent of the other party or unless required by law.

22.10 Withholding of Consent: It shall not be unreasonable for the Commission to withhold its consent to any proposed subcontracting or assignment or sublease pursuant to Articles 24 and 25 below if (i) the proposed subcontractor's or assignee's anticipated use of the Facilities involves the use, generation, storage, treatment, or disposal of Hazardous Wastes or the release into the environment of Hazardous Materials; (ii) the proposed subcontractor or assignee has been required by any prior lessor, lender, or governmental authority to take remedial action in connection with Hazardous Material contaminating a property if the contamination resulted from such subcontractor's or assignee's actions, omissions or use of the property in question; or (iii) the proposed subcontractor or assignee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material. This provision in no manner alters or limits the provisions of Articles 24 and 25 below regarding the Commission's consent to any subcontract or assignment.

22.11 Increased Insurance Premiums: Any increase in the premiums for necessary insurance on the Facilities or the Port which arises from ISD's use, generation, transport, and/or storage of Hazardous Materials shall be solely at ISD's expense. ISD shall procure and maintain at its sole expense such additional insurance as may be necessary to comply with any requirement of any Federal, State, or local government agency with jurisdiction. ISD shall provide to the Commission evidence of insurance or other financial resources available to ISD sufficient to assure ISD's ability to comply with its obligations under this Article and the Environmental Laws.

22.12 Environmental Audits: In addition to the Final Environmental Study required in Article 6.8 above, the Commission shall have the right, from time to time, as reasonably deemed necessary by the Commission, to perform environmental inspections, audits, or site assessments of the Facilities ("Environmental Audits") to ascertain ISD's compliance with the terms of this Article. The Commission shall conduct any audits at times reasonably designed to minimize any interference with ISD's operations; provided, however, that the Commission shall not be required to give ISD more than one hour's notice of such audits. In the event the Commission's Environmental Audits reveal non-compliance, the Commission shall so notify ISD ("Commission's Non-Compliance Notice"), and ISD shall have a period of sixty (60) days or other reasonable compliance period as may be mutually agreed in writing by ISD and the Commission from ISD's receipt of the Commission's Non-Compliance Notice to remedy such non-compliance. In the event that ISD fails to remedy the non-compliance in the aforesaid period, the Commission shall have the right to do so and ISD shall, upon demand, reimburse the Commission for the costs thereof plus interest thereon at eight and no/100 per cent (8%) per annum from the date such costs are incurred to the

date such costs are repaid to the Commission. The Commission may also provide a copy of such Environmental Audits to any federal, state, or local governmental agency having jurisdiction over the Facilities or Hazardous Materials. The responsibility for paying for any such Environmental Audits shall be borne equally by the Commission and ISD.

22.13 Removal of Hazardous Materials: Prior to the expiration or earlier termination of the term of this Agreement, ISD shall (a) cause all Hazardous Materials then currently or previously owned, stored, or used by ISD to be removed from the Facilities and disposed of in accordance with applicable Environmental Laws; (b) remove any above ground or underground storage tanks or other containers installed or used by ISD to store any Hazardous Materials on the Facilities, and repair any damage to the Facilities caused by such removal; (c) cause any soil or other portion of the Facilities which has become contaminated by any Hazardous Materials stored or used by ISD on the Facilities to be decontaminated, detoxified, or otherwise cleaned- up in accordance with the requirements of the Environmental Laws or applicable governmental authorities, unless such contamination is attributable to the Commission's negligence; and (d) surrender possession of the Facilities to the Commission free of contamination attributable to Hazardous Materials generated, used, stored, treated, or disposed of by ISD, or stored or disposed of by any other party other than the Commission in or on the Facilities during the term of this Agreement.

ARTICLE 23. ACCESS TO FACILITIES.

As the owner of the Facilities, the Commission retains the right to enter the Facilities at any time, including for the purpose of inspecting the same to determine that ISD is fully performing all of its obligations under this Agreement. The Commission shall use reasonable efforts to minimize any interference with ISD's performance of services under this Agreement.

ARTICLE 24. SUBCONTRACTING.

24.1 Subcontracting of Terminal Services to FMT: The Commission understands that ISD's proposal is based upon and sets forth ISD's intent to subcontract the General Cargo terminal operation and stevedoring services contemplated under this Agreement to FMT, and the Commission, without waiving any of ISD's obligations or the Commission's rights against ISD or any other party, hereby authorizes ISD to subcontract such operations and services to FMT, and ISD shall cause FMT to enter into such a subcontract, subject to, and conditioned upon, FMT's written agreement to perform such operations and services in full accordance with, and to be fully bound by, the terms and conditions of this Agreement, and subject to the Commission's prior review and approval of the terms and condi-

tions of the proposed subcontract. ISD shall implement any changes to the proposed subcontract which the Commission may reasonably request. ISD shall provide the Commission a copy of the final executed subcontract with FMT (the "FMT Subcontract"), and shall not amend or change such FMT Subcontract without prior written notice to, and the written approval of, the Commission. The FMT Subcontract shall be amended to reflect and incorporate any changes to this Agreement. Upon the execution of the FMT subcontract, all references to ISD in this Agreement shall be deemed to include FMT.

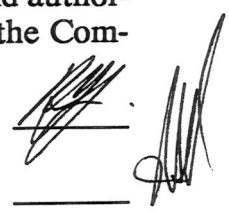
24.2 **No Other Subcontracting:** The terminal operation and stevedoring services to be provided by ISD through FMT upon execution of the FMT Subcontract, may not be subcontracted by ISD other than to FMT as set forth in Paragraph 24.1 above, or by FMT after the approval and execution of the Subcontract, and neither ISD nor FMT may have anyone else other than FMT perform any of the terminal operation and stevedoring services required under this Agreement without the Commission's express prior written approval, which approval may be withheld in the Commission's sole discretion.

24.3 **Limits on Other Subcontracting:** ISD may not subcontract other than to FMT, or have any party other than FMT, perform any of ISD's other duties under this Agreement without the express prior written approval of the Commission, which approval may be withheld in the Commission's sole discretion.

24.4 **No Waiver of Rights:** Under no circumstances shall the Commission's review and approval of any subcontract, including the FMT Subcontract, be deemed a waiver or relinquishment of any of the Commission's rights against ISD, and all covenants, conditions and obligations contained in this Agreement shall continue to be binding on ISD, and ISD shall be responsible for the acts of any subcontractors approved in accordance with the terms of this Article. All subcontracts between ISD and any authorized subcontractor, including the FMT Subcontract, shall provide, without limitation, that the subcontractor agrees to provide its services in accordance with, and to be bound by, the terms of this Agreement, and by entering into such subcontract, the subcontractor shall be deemed to have agreed to perform the subcontracted services in full compliance with the terms of this Agreement, and to be liable for any failure of performance or breach of the terms of this Agreement, regardless of any other terms of such Subcontract, except to the extent as may expressly be authorized by the Commission in its written approval of the particular subcontract.

ARTICLE 25. ASSIGNMENT PROHIBITED.

25.1 **Limitations on Assignment:** ISD may not assign or transfer this Agreement, or any interest under this Agreement, without the express prior written approval and authorization of the Commission, which approval and authorization may be withheld in the Com-



mission's sole discretion. Subject to the foregoing, this Agreement shall extend to, bind, and inure to, the benefit of the parties to this Agreement, and to their respective successors and assigns.

25.2 **Limitations on Ownership Changes:** ISD shall not change its ownership without prior written notice to, and the prior written consent of, the Commission, which consent shall not be unreasonably withheld provided that the interests of the Commission under this Agreement, the MWDF Agreement, and the Guaranty Agreement, are fully protected.

ARTICLE 26. GOVERNING LAW.

THIS AGREEMENT, AND ANY QUESTIONS OF INTERPRETATION OF ANY OF THE TERMS OF THE AGREEMENT, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF INDIANA.

ARTICLE 27. SEVERABILITY.

If any provision of this Agreement shall be held to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected or impaired, and such remaining provisions shall continue in full force and effect.

ARTICLE 28. FORCE MAJEURE.

Whenever this Agreement requires any act (other than the payment of a liquidated sum of money) to be performed by a certain time or within a certain period of time, the time for the performance of such act shall be extended by the period of any delays in such performance caused by war, strikes, lockouts, civil commotion, unpreventable material shortages, casualties, acts of God, or other conditions or events beyond the control of the party required to perform such act. However, ISD shall not be excused from the performance of any act on account of any delays by ISD's subcontractors unless such subcontractors would be similarly excused under the foregoing provisions.

ARTICLE 29. NOTICES.

29.1 **Written Notices:** All notices provided for in this Agreement shall be in writing, signed by a duly authorized representative of the party giving the notice. Such notices shall be deemed to have been duly given when sent by registered or certified mail, return

receipt requested, postage prepaid, or recognized overnight courier service, or receipted delivery by hand, addressed to the respective party as follows:

If to the Commission:

Indiana Port Commission
150 West Market Street - Suite 603
Indianapolis, IN 46204

Attention: Frank G. Martin, Jr.
Executive Director

with a copy to:

E. Peter McCarthy, Port Director
Indiana's International Port/Burns Harbor
6600 U.S. Highway 12
Portage, Indiana 46368

If to ISD:

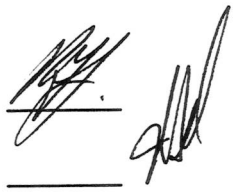
Indiana Stevedoring and Distribution Corp.
15 North Franklin Street, Suite 290
Valparaiso, IN 46383-4859

Attention: Ted H. Winter
Corporate Secretary

with a copy to:

Georges H. Robichon
Vice President & General Counsel
Fednav Limited
1000 de la Gauchetière Ouest, Suite 3500
Montreal, Quebec
Canada H3B 4W5

Either party may designate any further or different addresses or recipients to which subsequent notices shall be sent by like notice duly delivered in accordance with this Article.



29.2 **Receipt of Notices:** Any notice delivered to a party's designated address by (a) personal delivery, (b) recognized overnight national courier service, or (c) registered or certified mail, shall be deemed to have been received by such party at the time the notice is delivered to such party's designated address. Confirmation by the courier delivering any notice given pursuant to this Article shall be conclusive evidence of receipt of such notice. Each party to this Agreement agrees that such party will not refuse or reject delivery of any notice given under this Agreement, that such party will acknowledge, in writing, receipt of the same upon request, and that any notice rejected or refused by such party shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

29.3 **Telefax Notices:** Notices may be sent by telefax, and will be deemed sent and received when electronically acknowledged as having been received by a telefax number designated in a written notice by the receiving party as appropriate for such purpose (which notice shall be promptly provided upon written request), provided that the signed original notice also shall be sent that same day by registered or certified mail, return receipt requested, postage prepaid, or by recognized overnight courier service, addressed to the recipient party as specified in Paragraph 29.1 above.

ARTICLE 30. GENERAL PROVISIONS.

30.1 **No Third Party Rights:** Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto or their authorized assignees any rights or remedies.

30.2 **Fair Interpretation:** In the event of any uncertainty in the terms of this Agreement, such uncertainty shall be resolved fairly and in accordance with the intent of the parties as set forth herein, and without regard to which party caused such uncertainty to exist.

30.3 **References:** All references in this Agreement to "Article(s)" or "Paragraph(s)" are to Articles or Paragraphs of this Agreement, except as otherwise expressly indicated.

30.4 **Generic Terms:** The use in this Agreement of (i) the neuter gender includes the masculine and the feminine, and (ii) the singular number includes the plural, whenever the context so requires.

30.5 **Article Headings:** The Article and Paragraph headings, and the Table of Contents, in this Agreement are inserted for convenience only, and the words contained

therein shall in no way be held to expand, amplify, modify, or aid in the interpretation or construction of this Agreement.

30.6 **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 31. ENTIRE AGREEMENT.

This Agreement expresses the complete and final understandings of the parties with respect to the subject of the Agreement, and supersedes and cancels all previous understandings or agreements, whether written or oral, between the Commission and ISD with respect thereto.

ARTICLE 32. CHANGES.

This Agreement may not be changed except by a written modification mutually agreed to and executed by the respective duly authorized representatives of the parties, approved by the Office of the Attorney General and the Governor of the State of Indiana, and, if required, or otherwise deemed advisable by the parties, filed with the FMC.

ARTICLE 33. NON-COLLUSION AFFIDAVIT.

ISD hereby confirms and acknowledges that, incident to the execution of this Agreement, ISD has delivered to the Commission three Non-Collusion Affidavits, each executed by a duly authorized officer on behalf of ISD, Fednav, and ADS respectively, copies of which Affidavits are attached as Exhibit G to this Agreement, and which Affidavits are hereby made a part of the Agreement.

ARTICLE 34. APPROVAL REQUIRED.

This Agreement shall have no force and effect until approved by the Office of the Attorney General and by the Governor of the State of Indiana, and shall not be implemented until filed with the Federal Maritime Commission pursuant to Section 5 of the Shipping Act of 1984, 46 U.S.C. App. § 1704, and the implementing regulations at 46 C.F.R. § 560.402(b).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, consisting of a total of 48 pages, including the following approval page but not including the Cover Page and Table of Contents, plus attached Exhibits A (1 page), B (1 page), C (1 page), D (1 page), E (3 pages), F (6 pages), and G (3 pages), each page of which has been initialled or signed by both parties through their duly authorized representatives, as of the date first set forth above.

INDIANA STEVEDORING AND DISTRIBUTION CORPORATION

ATTEST:

Theodore H. Winter
Corporate Secretary

By: _____
Peter G. Jones
Vice-President

INDIANA PORT COMMISSION

ATTEST:

W. Ken Massengill
Vice-Chairman

By: _____
N. Stuart Grauel
Chairman

The foregoing Agreement is hereby approved as to form and legality, this 1st day of November, 1996.

Emily S. Rosko, Deputy
For Pamela Carter
Attorney General of Indiana

APPROVED:

This 4 day of November, 1996

The Honorable Evan Bayh
Governor of the State of Indiana

LIST OF EXHIBITS

Exhibit	Description of Exhibits
A	Map - Indiana's International Port/Burns Harbor
B	Map - West Harbor Arm Operating Area
C	Map and Legal Description - Parcel 15
D	FMT Personnel Positions
E	List of Equipment to be Maintained by ISD/FMT at the Port Facilities
F	Declaration of Restrictions
G	Non-Collusion Affidavit

EXHIBIT A

INDIANA'S INTERNATIONAL PORT/BURNS HARBOR

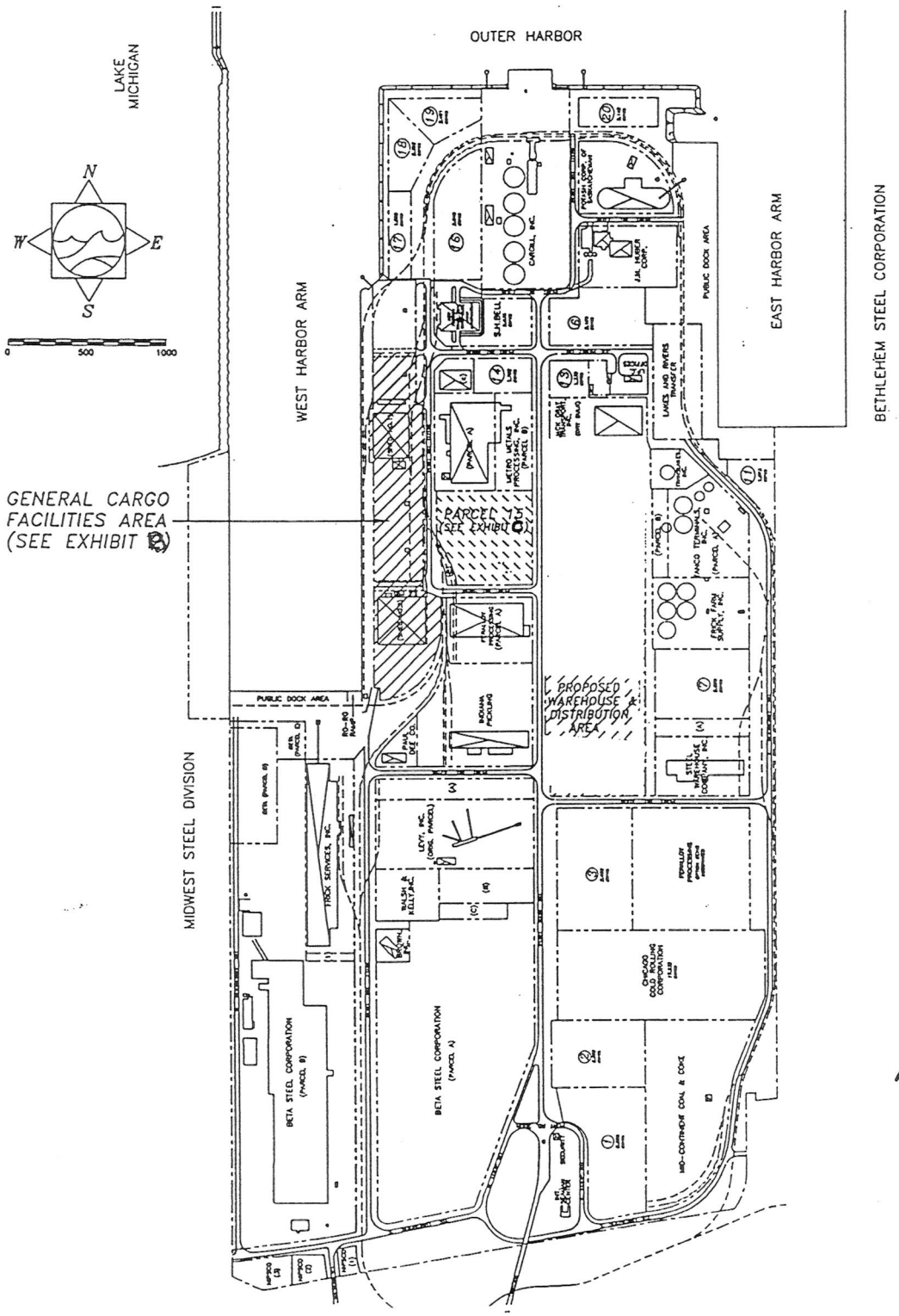


EXHIBIT B

WEST HARBOR ARM OPERATING AREA

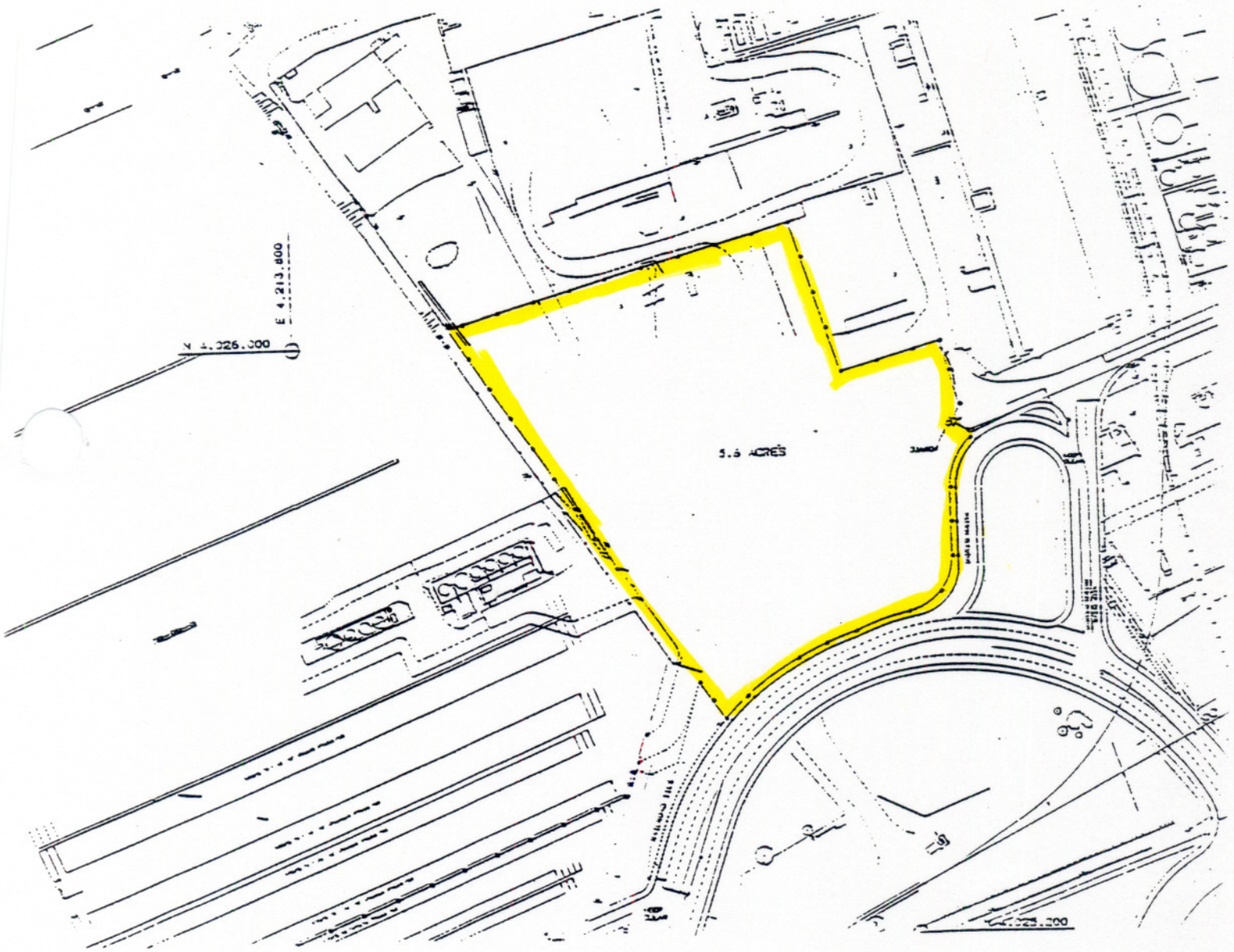


EXHIBIT A-1

EXHIBIT A-1

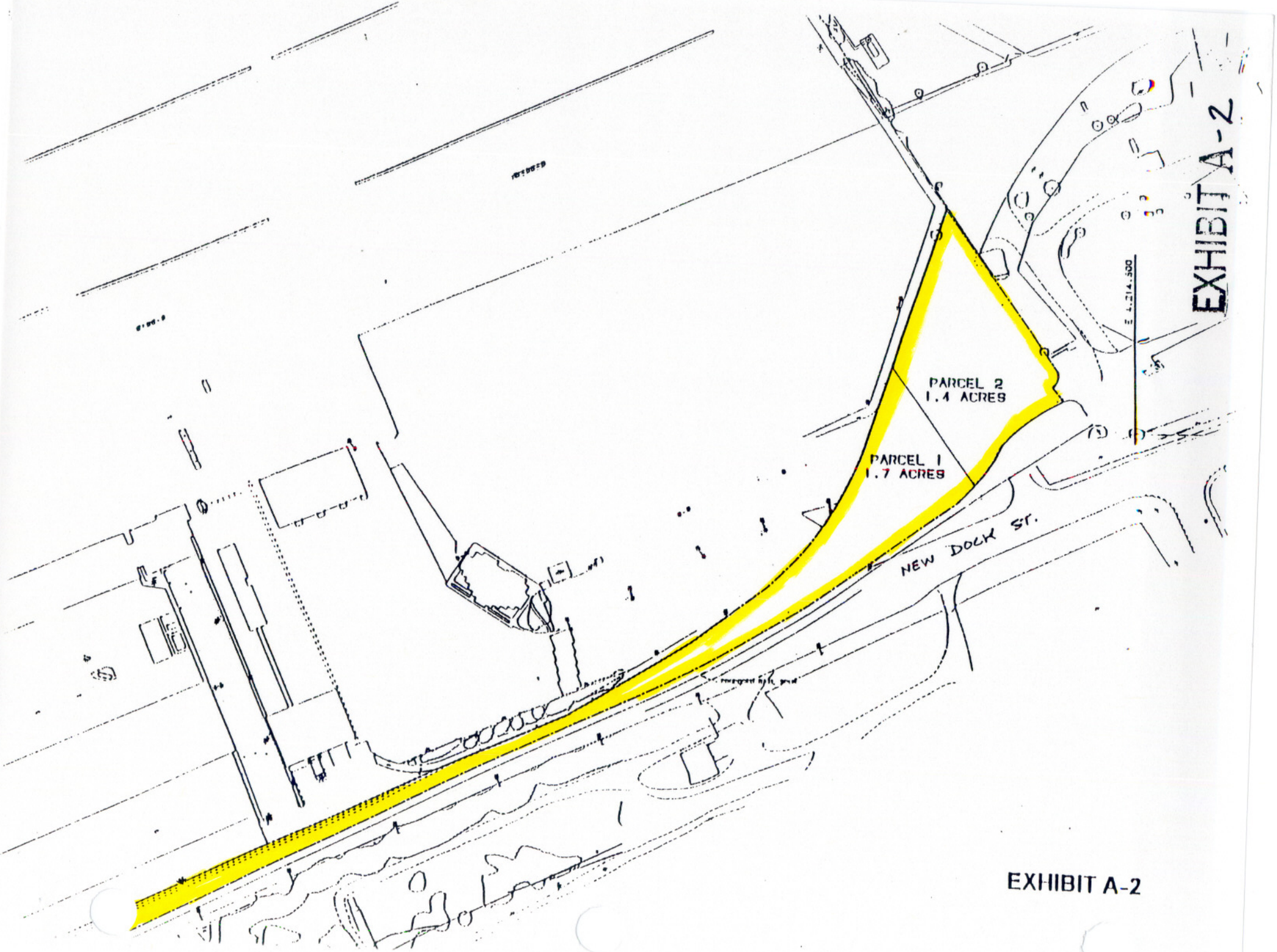

PARCEL 2
1.4 ACRES
PARCEL 1
1.7 ACRES
NEW DOCK ST.
E 4,214,300
EXHIBIT A-2

EXHIBIT A-2

EXHIBIT "B"

LIST OF TENANT-OWNED (MATSON TERMINALS. INC.) IMPROVEMENTS

Item No.	Leasehold Improvements	
1.	Civil engineering work on crane transfer device	$ 853,246
2.	Crane runway rail systme	4,952,769
3.	Crane stops	20,933
4.	Drains	118,174
5.	Natural gas system	22,753
6.	Petroleum facility	45,505
7.	Fenders	224,534
8.	Raised roof of strad building	208,151

PM6252

EXHIBIT B

EXHIBIT "C"

COMPENSATION TERMS

I. Minimum Annual Guarantee.

(1) Tenant shall remit to City fifty percent (50%) of all tariff dockage and wharfage charges, except wharfage charges for motor vehicles, accruing at the premises as provided in Section 4(a) and all wharfage charges owed by Tenant for cargo discharged or loaded at Berths 121-129 and Berths 302-395 in accordance with Agreement No. ____, as provided in Section 2(a)(4) (hereinafter "qualifying tariff charges") until City has been paid the minimum annual guarantee ("MAG") of Eight Million Seven Hundred Nineteen Thousand Eight Hundred Sixty-five Dollars ($8,719,865). All wharfage charges for motor vehicles will be paid 100% to City, but will count toward the minimum annual guarantee and the revenue sharing breakpoint as provided below in Section II. Tenant may retain the portion of the qualifying tariff charges provided in Section II below once the City has been paid the minimum annual guarantee. The minimum annual guarantee includes Tenant's right to use forty thousand (40,000) square feet of office space without additional charge.

(2) As provided in Section 4(b) of this Agreement, the "annual compensation period," referred to herein as "year," shall commence on the first day of each February during the term of this Agreement. If Tenant has not generated sufficient qualifying tariff charges to pay City the minimum annual guarantee by the end of each year, Tenant shall within thirty (30) days of the end of each year pay such additional sums as are necessary to assure City has been paid the minimum annual guarantee. All monies due and unpaid after this thirty (30) days elapses shall bear interest at the rate provided in Item 270 of Tariff (or its successor provision), currently 2% per month.

(3) If Tenant in any preceding year has been required to make up a deficiency in the minimum annual guarantee as provided in subsection (2) above or if City in its sole discretion has any substantial reason to question Tenant's financial condition, City may, at its sole election, require Tenant to pay the minimum annual guarantee for the balance of the term or any portion thereof in monthly installments at the beginning of each month. Each such payment shall be in the amount of 1/12 of the minimum annual guarantee or such adjusted amount as is necessary to assure City will receive the requisite amount each month to assure full payment of the minimum annual guarantee each year.

(4) In the event that areas are added to or deleted from the premises and no substitution for the deleted parcels is provided by City, the MAG shall be increased or reduced as follows:

(a) If Parcel No. 1A is deleted from the premises and no substitute parcel is provided by City, the MAG shall be decreased in the amount of Seventy-two Thousand Four Hundred Fifty Dollars ($72,450).

(b) If the 5.6 acres identified in Exhibit "A-1" outlined in yellow, or any portion thereof, is added to the premises, the MAG

shall be increased at the rate of Sixty-three Thousand Dollars ($63,000) per acre added, to a maximum of Three Hundred Fifty-two Thousand Eight Hundred Dollars ($352,800); the MAG shall be reduced by the same amount if such parcel is thereafter deleted from the premises.

(c) If the acreage added or deleted is within Parcels 1 or 2 shown in Exhibit "A-2," the MAG shall be increased or decreased at the rate of Sixty-three Thousand Dollars ($63,000) per acre.

If the effective date of such reduction or increase in the premises occurs anytime other than the first day of any year, the reduction or increase in compensation shall be applied pro rata. The reduction or increase in compensation shall also be adjusted to reflect any fractional acre deleted or added. Such reduction or increase shall be subject to any increase or reduction in the Tariff rate in accordance with Section 4(c) of this Agreement and Section III of this Exhibit "C."

II. Revenue Sharing.

(1) Tenant may, for each year of the term of this Agreement withhold fifty percent (50%) of the qualifying tariff charges accruing from the first dollar generated until City has been paid the MAG. In addition, after Tenant has paid City a total of Eight Million Seven Hundred Nineteen Thousand Eight Hundred Sixty-five Dollars ($8,719,865) from qualifying tariff charges, Tenant may thereafter retain seventy-five percent (75%) of all future qualifying tariff charges accruing during the year. One hundred percent (100%) of all wharfage charges for motor vehicles shall be paid to City and shall not be revenue shared, but such motor vehicle wharfage charges shall count, in addition to qualifying tariff charges, toward reaching the 75%/25% revenue sharing breakpoint.

(2) Tenant's right to share revenue is conditioned upon Tenant's payments to City being current. If, at any time during any year, Tenant receives a notice of delinquency from City, Tenant shall thereafter remit one hundred percent (100%) of tariff charges otherwise qualifying for revenue sharing to City until the delinquency has been cured. If Tenant fails to remit one hundred percent (100%) of all qualifying tariff charges to City after receiving the notice of delinquency, City shall have the right after sending Tenant a second notice of delinquency to cancel Tenant's right to share revenues for the balance of the year in which the delinquency continues. For purposes of this provision City shall give Tenant thirty (30) calendar days notice in the first notice and ten (10) calendar days notice in the second notice.

(3) In the event that areas are added to or deleted from the premises and no substitution for the deleted parcels is provided by City, the 75%/25% revenue sharing breakpoint shall also be increased or reduced as provided above in Section I(4), paragraphs (a), (b) and (c), of this Exhibit "C."

III. Tariff Changes.

On the effective date of an increase or decrease in the Tariff rate for Merchandise Not Otherwise Specified (N.O.S), the MAG and revenue sharing breakpoint established herein, including any increase or reduction in the MAG and revenue sharing breakpoint resulting from any addition to or deletion from the premises pursuant to Section 2(a) of this Agreement, shall at all times be subject to proportionate adjustment according to the provisions of Section 4(c) of this Agreement.

EXHIBIT D

TENANT'S TERMINAL EQUIPMENT

NAME	TYPE	WEIGHT	WHEEL LOADING	AREA OF USE
Mitsui	Crane	1872 K.	95.3 K.	6,995 Ft.^{2}
Paceco 318	Crane	1066 K.	70.6 K.	5,562 Ft.^{2}
Star 4120	Crane	1450 K.	73.1 K.	5,503 Ft.^{2}
Paceco 883	Crane	1258 K.	60 K.	5,564 Ft.^{2}
Morgan	Crane	1242 K.	104 K.	6,174 Ft.^{2}
Container Conveyor		140 K.	4 K.	2,232 Ft.^{2}
Transtainer		274 K.	67 K.	648 Ft.^{2}
Straddle Carrier		134 K.	24.5 K.	525 Ft.^{2}
Tractor/Chassis/Container/ Payload		80 K. Gross Weight	34 K. on any 2-axie	Marine Terminal at POLA Berths 206-209

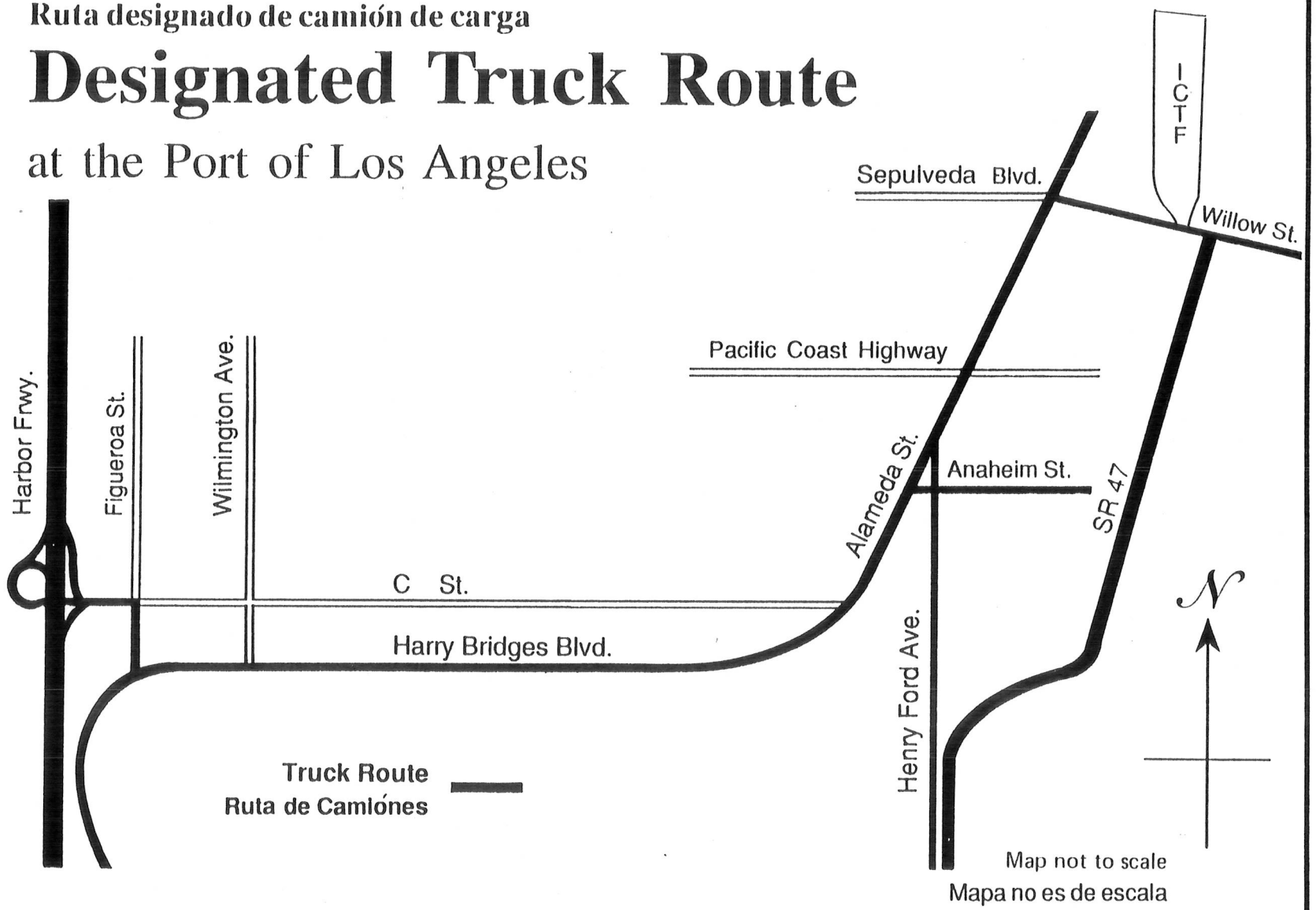
EXHIBIT D

TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.
CAMIÓNES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.

Ruta designado de camión de carga

Designated Truck Route

at the Port of Los Angeles



95-93

EXHIBIT E

EXHIBIT "F"

MARINE TERMINAL MAINTENANCE PROVISIONS
FOR ALL LEASE AGREEMENTS

I. Structural Maintenance & Repair Performed by City at City's Expense* Within Lease Area

1. Roofs
2. Exteriors of structures, including exterior painting
3. Wharf structure (as defined)
4. Wharf bulkheads
5. Rock slopes
6. Maintenance dredging
7. Replacement of deteriorated electrical conduit and pipeline system
8. High and low voltage systems, including switchgear and crane power trench
9. Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems

II. Maintenance & Repair Performed by City at Tenant's Expense Within Lease Area

1. Fender system repair (wharf damage procedure)
2. Refrigerated receptacle outlet (reefer) maintenance
3. Backflow devices and potable water systems
4. HVAC servicing and repair

III. Operational Maintenance & Repair to be Performed by the Tenant. Port Will Perform if Forces Available by Accommodation Work Order Within Leased Area at Tenant's Expense. Tenant, However, Remains Responsible for Sufficiency of All Work

This portion of the Exhibit describes the maintenance and repair of items commonly found on terminal premises granted to Tenants. Not all items listed below may be present on all terminal premises. This list is only illustrative of the items which Tenant must maintain.

1. All landscaping, including irrigation systems
2. Daily janitorial service***
3. Relamping of terminal wharf and backland light standards**
4. Interior painting
5. Elevator and escalator maintenance**
6. Clarifier maintenance & servicing***
7. All toxic waste removal***
8. Storm drain inlet maintenance and cleaning
9. Cleaning clogged drains, including toilet/urinal stoppages
10. Pneumatic tube system maintenance**
11. Emergency generator unit maintenance**
12. Mooring capstans
13. Mechanical ramps and loading dock boards

14. Passenger gantries**, baggage systems**, conveyor systems**
15. Replacement of all light bulbs
16. Traffic and backland area striping (requires permit & approval by Harbor Engineer)
17. Weigh scales**
18. Wheel stop maintenance
19. Fence and gate maintenance
20. Rolling and sliding door maintenance
21. Window, door glass replacement
22. Carpet, tile, and vinyl floor replacements
23. All mechanical, electrical, hydraulic and air equipment and devices used by Tenant to maintain Tenant-owned machinery and equipment
24. Gate house equipment, including gate arms and mechanical/electrical equipment therein
25. Recharging and servicing of fire extinguishers
26. Surface paving, wharf and backland (as defined in agreement)
27. All underground and above ground tanks, pipelines and appurtenances unless the Agreement specifically otherwise provides

* To be maintained at Tenant's expense, if damaged by Tenant.

** To be maintained to Port's standards and subject to periodic audits and inspection by the Port of Los Angeles

*** At no time does Port provide or perform

IV. City May, But is Not Obligated to, Maintain or Repair Items <u>Tenant Fails to Maintain or Repair at Tenant's Expense</u>

AFFIRMATIVE ACTION PROGRAM

A. Definitions

The following definitions shall apply to the terms used in this Exhibit:

"Affirmative Action" means the taking of positive steps by a contractor or subcontractor to ensure that its practices and procedures will promote and effectuate the employment, retention and advancement of a particular class or category of employee, generally referred to as a minority group, including women and any person or group described by race, religion, sex, ancestry, national origin, age, and physical handicap. The action may also involve the concept, when applicable, of remedying the continuing effects of past discrimination.

"Affirmative Action Plan" means a plan, program, scheme, or policy setting forth in detail acts to be taken, procedures to be followed, and standards to be adhered to to establish an Affirmative Action Program. It may include provisions for positive recruitment, training and promotion, and procedures for internal auditing and reporting to ensure compliance and measure the success of the program.

"Awarding Authority" means any Board or Commission of the City of Los Angeles, or any authorized employee or officer of the City of Los Angeles, including the Purchasing Agent of the City of Los Angeles, who makes or enters into any contract or agreement for the provision of any goods or services of any kind or nature whatsoever for or on behalf of the City of Los Angeles.

"Contract" means any agreement, franchise, lease, or concession, including agreements for any occasional professional or technical personal services, for the performance of any work or service, the provision of any materials or supplies, or the rendition of any service to the City of Los Angeles or to the public, which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

"Contractor" means any person, firm, corporation, partnership, or any combination thereof, who submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

"Employment Practices" means any solicitation of, or advertisement for, employees, employment, change in grade or work assignment, assignment or change in place or location of work, lay-off, suspension or termination of employees, rate of pay or other form of compensation including vacation, sick and compensatory time, selection for training, including apprenticeship programs, any and all employee benefits and activities, promotion and upgrading, and any and all actions taken to discipline employees for infractions of work rules or employer requirements.

EXHIBIT G

"Office of Contract Compliance" is that office of the Department of Public Works of the City of Los Angeles created by Article X of Chapter 13 of Division 22 of the Los Angeles Administrative Code.

"Subcontractor" means any person, firm or corporation or partnership, or any combination thereof who enters into a contract with a contractor to perform or provide a portion or part of any contract with the City.

B. During the performance of this contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, age or physical handicap.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work, or service category.

3. The contractor or subcontractor agrees to post a copy of paragraph B hereof in conspicuous places at its place of business available to employees and applicants for employment.

C. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, age or physical handicap.

D. At the request of the awarding authority or the office of Contract Compliance, the contractor shall certify on a form to be supplied, that the contractor has not discriminated in the performance of this contract against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, age or physical handicap.

E. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program of this contract, and on their or either of their request to provide evidence that it has or will comply therewith.

F. The failure of any contractor or subcontractor to comply with the Affirmative Action Program of this contract may be deemed to be a material breach hereof. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and

fair hearing after notice and an opportunity to be heard has been given to the contractor or subcontractor in accordance with the provisions of Section 22.359.3 of the Los Angeles Administrative Code.

G. Upon a finding duly made that the contractor or subcontractor has breached the Affirmative Action Program of this contract, this contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor or subcontractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor or subcontractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he shall establish and carry out a program in conformance with the provisions hereof.

H. In the event of a finding by the Fair Employment Practice Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any Court of competent jurisdiction that the contractor or subcontractor has been guilty of a willful violation of the Fair Employment Practice Act of California, or the Affirmative Action Program of this contract, there may be deducted from the amount payable to the contractor or subcontractor by the City of Los Angeles under this contract, a penalty of TEN DOLLARS ($10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of this contract.

I. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

J. The office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Affirmative Action Program of this contract, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.

K. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

L. At the time its bid is submitted, the contractor shall submit an AFFIRMATIVE ACTION PLAN to the awarding authority which shall meet the requirements of this ordinance. The awarding authority may also require contractors and suppliers to take part in a prebid or preaward conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of contract award or the date of first approval by the Office of Contract Compliance whichever is the earliest.

L. (1). Every contract or subcontract in excess of $5,000 which may provide construction, demolition, renovation, conservation, or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. (2). A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance.

M. Contractors and suppliers who are members in good standing of a trade association which has negotiated an Affirmative Action Program with the Board of Public Works, Office of Contract Compliance may make the program of such association their commitment for the specific contract upon approval of the Office of Contract Compliance, without the process of a separate prebid or preaward conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Office of Contract Compliance. Trade associations shall provide the Office of Contract Compliance with a list of members in good standing in such association.

N. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed approved Affirmative Action Nondiscrimination Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any affirmative action plan or change the affirmative action plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

O. The Affirmative Action Plan required to be submitted hereunder and the prebid or preaward conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

2. Classroom preparation for the job when not apprenticeable;

3. Preapprenticeship education and preparation;

4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the contractor's, subcontractor's, or supplier's geographical area for such work; and

6. The entry of qualified women and minority journeymen into the industry.

7. The provision of needed supplies or job conditions to permit persons with some unusual physical condition to be employed, and minimize the impact of any physical handicap.

P. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the City's affirmative action contract compliance program in purchasing and construction shall be accomplished by either or both an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement, or death and not by termination, lay-off, demotion, or change in grade.

Q. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the prebid or preaward conferences shall not be confidential and may be publicized by the contractor at his discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its contract compliance affirmative action program.

R. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors, subcontractors or suppliers engaged in the performance of City contracts.

Minority Business Enterprise/Women Business Enterprise. It is the policy of the City of Los Angeles to provide Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) [1] and all other business enterprises an equal opportunity to participate in the performance of all City contracts. Bidders and proposers shall assist the City in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including local MBEs and WBEs, have an equal opportunity to compete for and participate in City contracts. Bidders' or proposers' good faith efforts to reach out to MBEs, WBEs and all other business enterprises shall be determined by the following factors:

(1) The bidder's or proposer's efforts to obtain participation by MBEs, WBEs and other business enterprises could reasonably be expected by the Awarding Authority to produce a level of participation by interested subcontractors, including 18 percent MBE and 4 percent WBE as established by the Awarding Authority.

(2) The bidder or proposer attended pre-solicitation or pre-bid meetings, if any, scheduled by the Awarding Authority to inform all bidders or proposers of the requirements for the project for which the contract will be awarded. The Awarding Authority may waive this requirement if the bidder or proposer certifies it is informed as to those project requirements.

(3) The bidder or proposer identified and selected specific items of the project for which the contract will be awarded to be performed by subcontractors to provide an opportunity for participation by MBEs, WBEs and other business enterprises. The bidder or proposer shall, when economically feasible, divide total contract requirements into small portions or quantities to permit maximum participation of MBEs, WBEs and other business enterprises.

---

[1] Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) - for the purposes of this City policy Minority Business Enterprises and Women Business Enterprises are defined as any business, bank or financial institution which is owned and operated by a minority group member or woman, or such business, bank or financial institution of whom 50% or more of its partners or stockholders are minority group members or women. If the business is publicly owned, the minority members or stockholders must have at least 51% interest in the business and possess control over management capital earnings.

EXHIBIT H

(4) The bidder or proposer advertised for bids or proposals from interested business enterprises not less than 10 calendar days prior to the submission of bids or proposals, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media specified by the Awarding Authority.

(5) The bidder or proposer provided written notice of its interest in bidding on the contract to those business enterprises, including MBEs and WBEs, having an interest in participating in such contracts. All notices of interest shall be provided not less than 10 calendar days prior to the date the bids or proposals were required to be submitted. In all instances, the bidder or proposer must document that invitations for subcontracting bids were sent to available MBEs, WBEs and other business enterprises for each item of work to be performed.

The Mayor's Office of Small Business Assistance shall be available to help identify interested MBEs, WBEs and other business enterprises.

(6) The bidder or proposer documented efforts to follow up initial solicitations of interest by contacting the business enterprises to determine with certainty whether the enterprises were interested in performing specific portions of the project.

(7) The bidder or proposer provided interested enterprises with information about the plans, specifications and requirements for the selected subcontracting work.

(8) The bidder or proposer requested assistance from organizations that provide assistance in the recruitment and placement of MBEs, WBEs and other business enterprises not less than 15 days prior to the submission of bids or proposals.

(9) The bidder or proposer negotiated in good faith with interested MBEs, WBEs and other business enterprises and did not unjustifiably reject as unsatisfactory bids or proposals prepared by any enterprise, as determined by the Awarding Authority. As documentation the bidder or proposer must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for MBEs, WBEs and other business enterprises.

(10) The bidder or proposer documented efforts to advise and assist interested MBEs, WBEs and other business enterprises in obtaining bonds, lines of credit, or insurance required by the Awarding Authority or contractor.

Achievement of expected levels of participation in paragraph (1) above may only be used as one of the 10 indicia,

above, of whether a bidder or proposer has made a good faith effort to recruit MBEs, WBEs and other business enterprises. If the Awarding Authority has established expected levels of participation for MBE and WBE contractors, failure to meet those levels shall not by itself be the basis for disqualification of the bidder or proposer. An Awarding Authority's determination of the adequacy of the bidder's or proposer's good faith effort must be based on due consideration of all indicia of good faith as set forth above.

In the event that an Awarding Authority is considering awarding away from the lowest bidder or not awarding a contract to a proposer because the bidder or the proposer is determined to be nonresponsive for failure to comply with the good faith indicia set forth above, the Awarding Authority shall, if requested, and prior to the award of the contract, afford the bidder or proposer the opportunity to present evidence to the Awarding Authority in a public hearing of the bidder's or proposer's good faith efforts in making its outreach. In no case should an Awarding Authority award away pursuant to this program if a bidder or proposer makes a good faith effort but fails to meet the expected levels of participation.

GUARANTY

IN CONSIDERATION of the grant of Permit No. 776 by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to MATSON TERMINALS, INC., a Hawaii corporation, a wholly owned subsidiary of the undersigned MATSON NAVIGATION COMPANY, INC., a Hawaii corporation, it is hereby warranted and guaranteed that MATSON NAVIGATION COMPANY, INC. shall be responsible for the performance of all financial obligations and responsibilities to City and Board pursuant to the said Agreement, and shall, upon demand by City, promptly pay, perform and discharge each of the agreements, terms, conditions and obligations required by the Agreement in the event of any failure in the performance of such obligations by MATSON TERMINALS, INC.

Dated: 8/6, 1996

MATSON NAVIGATION COMPANY, INC.

By T.H. Reid
Name: T.H. Reid
Title: President

ATTEST
Name: Daniel E. Johnson Jr.
Title: Assistant Secretary

Approved

_____, 199_
JAMES K. HAHN, City Attorney

By _____
Catharine H. Vale
Assistant City Attorney
7/26/96

GUARANTY

IN CONSIDERATION of the grant of Permit No. 776 by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to MATSON TERMINALS, INC., a Hawaii corporation, a wholly owned subsidiary of the undersigned MATSON NAVIGATION COMPANY, INC., a Hawaii corporation, it is hereby warranted and guaranteed that MATSON NAVIGATION COMPANY, INC. shall be responsible for the performance of all financial obligations and responsibilities to City and Board pursuant to the said Agreement, and shall, upon demand by City, promptly pay, perform and discharge each of the agreements, terms, conditions and obligations required by the Agreement in the event of any failure in the performance of such obligations by MATSON TERMINALS, INC.

Dated: _____, 199_ MATSON NAVIGATION COMPANY, INC.

By _____
Name:
Title:

ATTEST _____
Name:
Title:

Approved

August 2, 1996
JAMES K. HAHN, City Attorney

By Catharine H. Vale
Catharine H. Vale
Assistant City Attorney
7/26/96

(b) Applicable Law. It is expressly understood and agreed that this Agreement and all questions arising thereunder shall be construed according to the laws of the State of California.

(c) Compliance with Applicable Laws. Tenant shall, at all times, in its use and occupancy of the premises and in the conduct of its operations thereon, comply with all laws, statutes, ordinances, rules and regulations applicable thereto, enacted and adopted by federal, state, regional, municipal or other governmental bodies, or departments or offices thereof. In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by Executive Director or his authorized representative under authority of any such law, statute, ordinance, rule or regulation.

(d) Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age or physical handicap. All assignments, subleases and transfers of interest in this Agreement under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached Exhibit "G" are incorporated herein and made a part hereof.

(e) Minority Business Enterprise/Women Business Enterprise. Tenant is aware of the Los Angeles Harbor Department's Minority Business Enterprise/Women Business Enterprise (MBE/WBE) policy (hereinafter "Policy"). Tenant shall comply with the Harbor Department's Policy for any construction it undertakes on the premises. Any construction contracts, assignments or subleases by Tenant involving the premises shall include the Department's MBE/WBE policy, attached as Exhibit "H" which is incorporated herein and made a part hereof.

Tenant acknowledges that Board reserves the right to amend or modify its Policy from time to time. Any such amendment or modification to the Policy shall be binding on Tenant from the date Board approves such changes at a public meeting after notice and an opportunity to be heard thereon. Any contracts including subleases entered into by Tenant pursuant to this Agreement prior to Board approval of changes to the Policy shall not be affected by such changes.

(f) License Fees and Taxes. Tenant shall pay all taxes and assessments of whatever character levied upon or charged against the interest of Tenant, if any, created by this Agreement in the premises or upon works, structures, improvements or other property thereof, or upon Tenant's operations hereunder. Tenant shall also pay all license and permit fees required for the conduct of its operations hereunder.

TENANT IS AWARE THAT THE GRANTING OF THIS AGREEMENT TO TENANT MAY CREATE A POSSESSORY PROPERTY INTEREST IN TENANT AND THAT TENANT MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED.

(g) Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment of any court of competent

jurisdiction, the remainder of the Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

(h) Waiver of Claims. Tenant hereby waives any claim against City and Board and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging 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.

(i) Conflict of Interest. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

(j) Visitors. Tenant shall allow Executive Director and his designated representatives access to the premises for the purpose of showing the premises and works, structures and improvements made by Tenant to visitors upon the giving of reasonable notice to Tenant, provided, however, that such entry shall not unreasonably interfere with Tenant's operations.

(k) Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services of the Office of City Attorney or house counsel of Tenant. The hourly rate recoverable by the Office of the City Attorney shall be no less than the hourly rate charged by Tenant's counsel. If however, either party prior to, during trial, or after any appeal, makes a written offer to settle the dispute for a sum less than ultimately obtained by the person refusing the offer, the prevailing party shall be deemed to be the party making the offer.

(l) Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City shall be addressed to Executive Director, Los Angeles Harbor Department, P. O. Box 151, San Pedro, California 90733-0151 and notice to Tenant shall be addressed to it at P.O. Box 7452, San Francisco, California 94120-7452 or such other address as may be set forth in a written notice delivered by Tenant to City. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

(m) Agent to Receive Service of Process. Tenant hereby irrevocably appoints the Terminal Manager at premises or an officer of company located at the address as set forth above as its agent for the purpose of service of process in any suit or proceeding which may be instituted in any court of the State of California or in any federal court in said State by City which arises out of or is based upon this Agreement. Delivery to such agent or, delivery to the terminal manager's office of a copy of any process in any such action shall constitute valid service upon Tenant. It is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event Tenant may be served with such process in or out of this State in any manner authorized by California law. It is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto. It is Tenant's obligation at all times, whether during the term of this Agreement or after its termination, to provide the Harbor Department Executive Director in writing a correct address where Tenant can be located. Tenant agrees all disputes shall be resolved in California courts in the County of Los Angeles unless the parties otherwise agree in writing.

(n) Waivers. No waiver by either party 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 the proper party. The subsequent acceptance of rent by Board shall not be deemed to be a waiver of any other breach by Tenant of any term, covenant or condition of this Agreement other than the failure of Tenant to timely make the particular rent payment so accepted, regardless of Board's knowledge of such other breach. No delay, failure or omission of either party to execute any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee 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 either party shall be required to restore or revive the time is of the essence provision hereof after waiver by the other party or default in one or more instances. No option, right, power, remedy or privilege of either party 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 City by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, in that the exercise of one right, power, option or remedy by City shall not impair its rights to any other right, power, option or remedy.

(o) Extent of Water Frontage. In case this Agreement or any improvements made hereunder or this Agreement or any part thereof shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation so that such person, firm or corporation shall then own, hold or control more than the length of water frontage permitted or authorized under Section 140(f) of the Charter of City or if Tenant shall hold or control such water frontage, then this Agreement and all rights hereunder shall thereupon and thereby be absolutely terminated, and any such attempted or purported assignment, transfer or sublease, or giving or granting of control to any person, firm or corporation which will then own, hold or control more than

such permitted or authorized length of water frontage shall be void and ineffectual for any purpose whatsoever.

(p) Integration. This Agreement constitutes the whole Agreement between City and Tenant. There are no terms, obligations or conditions other than those contained herein. No modifications of this Agreement shall be valid and effective unless evidenced by an agreement in writing.

(q) Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

(r) Extensions. Board shall have the right to grant reasonable extensions of time to Tenant for any purpose or for the performance of any obligation of Tenant hereunder.

(s) Vessels. Tenant shall file with the Executive Director upon acceptance of this Agreement, a statement in writing showing the names of persons, firms or corporations owning or operating any vessel or vessels which are represented by its customers, and the names of any vessel or vessels owned or operated by Tenant, and shall immediately file with Executive Director supplemental statements in writing showing any deletions from or additions to such statement.

(t) Agreement Superseded. This Agreement when effective supersedes existing Agreement No. 716 between City and Tenant for the same premises except to the extent either party has already incurred any rights or obligations under the superseded agreement. Except as expressly provided otherwise herein, such Agreement shall govern the rights and liabilities of the parties until the effective date of this Agreement. Thereafter, this Agreement controls for all of the premises held hereunder.

(u) Business Tax Registration Certificate. Tenant represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Charter 2, Sections 21.00 and following, of the Los Angeles Municipal Code) or is exempt. Tenant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first hereinabove written.

THE CITY OF LOS ANGELES, by
its Board of Harbor Commissioners

By _____
for Executive Director

Attest: _____
Secretary

MATSON TERMINALS, INC.

By _____
Thomas A. Marnane, Vice President Facilities & Maintenance
(Print/type name and title)

Attest: _____
Daniel L. Johnson, Jr., Secretary
(Print/type name and title)

APPROVED AS TO FORM

August 2, 1996
JAMES K. HAHN, City Attorney

By _____
Catharine H. Vale, Assistant

7/26/96