

ORDER NO. 6690

IT IS HEREBY ORDERED by the Board of Harbor Commissioners that the First Amendment to Agreement No. 1784 granted by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL is hereby approved and the Executive Director and the Secretary of the Board is hereby authorized and directed to execute and attest to the same on behalf of the City of Los Angeles.

The Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners of the City of Los Angeles and shall cause a copy of the same to be presented to the City Council as provided by Section 140(e) of the Charter of the City of Los Angeles. If the Council shall approve this Order within 60 days after such Order shall have been presented to it, or if the Council shall fail to disapprove this Order within said 60 days, the Secretary shall cause this Order to be published once in a daily newspaper printed and published in the City of Los Angeles. Such Order, when published, shall, before the same becomes effective, be subject to the referendum provisions of said Charter relating to ordinances.

I HEREBY CERTIFY that the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting of ~~May 10, 2000~~
MAY 17 2000

Audrey Yamaki
AUDREY YAMAKI
for Board Secretary

APPROVED AS TO FORM

April 28, 2000
JAMES K. HAHN, City Attorney

By *Richard W. Haggerson*
-DAVID MCKENNA, Assistant
Richard W. Haggerson

DM:cg
04/26/00

FIRST AMENDMENT TO AGREEMENT NO. 1784
BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND
THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IT IS HEREBY mutually agreed by the parties hereto that Agreement No. 1784 between the City of Los Angeles and the California Department of Toxic Substances Control is amended a first time as follows:

- The title is deleted in its entirety and replaced with the following:

“AGREEMENT BETWEEN THE CITY OF LOS ANGELES
HARBOR DEPARTMENT AND THE CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL TO PERFORM OPERATION AND
MAINTENANCE AND RESTRICT USE OF PROPERTY”

- The text throughout this Agreement is modified by deleting “TSC” and in place thereof inserting “DTSC” (i.e., Department of Toxic Substances Control).
- To the text prior to ARTICLE I, the following is added:

“WHEREAS, DTSC has determined that an amendment to the Agreement needs to be made in order to protect human health and the environment; and,

WHEREAS, GATX no longer occupies the Site, and the City and GATX entered into an agreement, effective September 15, 1994, pertaining to the allocation of future liabilities pertaining to the Site including the care and maintenance of the soil cover.”

- ARTICLE I, Sections 1.01 and 1.02 are modified by deleting “Parcel No. 1” and in place thereof inserting “the Property.”
- ARTICLE II, Section 2.01 is modified by deleting “Parcel No. 1” and in place thereof inserting “the Property.”
- ARTICLE II, Section 2.02 is added as follows:

“2.02 Monitoring Wells. “Monitoring Wells” shall mean any wells which have been or may in the future be installed for purposes of

groundwater monitoring pursuant to the Remedial Action or Operation and Maintenance Plans, approved by DTSC.”

- ARTICLE II, Section 2.02 is renumbered as Section 2.03 and modified by deleting “Parcel No. 1” and in place thereof inserting “the Property.”
- ARTICLE II, Section 2.03 is renumbered as Section 2.04 and modified by deleting “Parcel No. 1” and in place thereof inserting “the Property.”
- ARTICLE II, Section 2.05 is added as follows:

“2.05 Property. “Property” shall mean Parcel No.1, as depicted on “Exhibit A,” and all Well Locations, as defined in Section 2.06.”
- ARTICLE II, Section 2.06 is added as follows:

“2.06 Well Locations. “Well Locations” shall mean the property, held in trust by the City, upon which any Monitoring Wells have been installed. “Well Locations” also includes any property held in trust by the City upon which any new Monitoring Wells DTSC may in the future require GATX to install. The Well Locations currently in existence are depicted generally on the “Site Plan, GATX Annex, San Pedro, California,” “Exhibit B” hereto.”
- The heading of ARTICLE III is modified by deleting “PARCEL NO. 1” and in place thereof inserting “PROPERTY.”
- ARTICLE III, Section 3.00 is added as follows:

“3.00 Jurisdiction. Pursuant to Health and Safety Code sections 58009, 58010, and 25300 et seq., and Civil Code section 1471(c), DTSC has determined that this Agreement is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence, on the land, of hazardous substances as defined in Health and Safety Code section 25316. The City and DTSC hereby agree that the use of the Property be restricted as set forth in this Agreement.”
- ARTICLE III, Section 3.01 is deleted in its entirety and replaced with the following:

“3.01 Restrictions on Use. City agrees that Parcel No. 1, or any portion thereof, as delineated in “Exhibit A”, shall not be used for residential purposes, parks (but not including landscaping or passive parks, not intended for use by the public, containing grass areas less than 10,000 square feet), hospitals for humans, schools for persons under 21 years of age, or day-care centers for children, without written approval by DTSC. City agrees to notify and obtain the approval of DTSC, pursuant to Section 3.07, before any improvements are made which require the removal of, addition of material to, or intrusion into any portion of the soil cover that is currently in place at Parcel No. 1. City further agrees to notify and obtain approval of DTSC thirty (30) days prior to undertaking any improvements which would require breaking and exposing the soil beneath the soil cover. City will repair the soil cover with clean soil or other material, that is mutually acceptable to the parties to this Agreement if the soil cover is broken or disturbed. City agrees to obtain the approval of DTSC, pursuant to Section 3.07, at least sixty (60) days prior to allowing any Improvements which would prevent access or endanger the integrity of the Monitoring Wells.”

- ARTICLE III, Section 3.02 is deleted in its entirety and replaced with the following:

“3.02 Conveyance of the Property. City agrees to provide thirty (30) days' advance notice to DTSC of the conveyance of any grant or conveyance of title, or issuance of any lease or permit of the Property to a third person and to further provide notice to a permittee, lessee or renter as required by Health and Safety Code Section 25359.7. The notice shall include the name and address of any proposed transferee. DTSC shall not, by reason of this Agreement, have authority to approve, disapprove, or otherwise affect, any permit, lease, or sublease of the Property except as otherwise provided by law.”

- ARTICLE III, Section 3.03.1 is added as follows:

“3.03.1 Notice via Physical Marker on Parcel No. 1. City agrees to provide signage at Parcel No. 1 which indicates that there are restrictions regarding use of Parcel No. 1 and a point of contact with the City for further information.”

- ARTICLE III, Section 3.04 is deleted in its entirety and replaced with the

following:

“3.04 Monitoring. DTSC may conduct any monitoring (in addition to the Monitoring Wells which have been installed or will be installed in the future for purpose of groundwater monitoring), which DTSC determines is necessary to protect public health and safety or the environment, and shall have access to Parcel No. 1 and adjacent parcels as necessary for such monitoring to the extent authorized under Section 25358.1 of the California Health and Safety Code. DTSC shall contact City and any tenant of the City that is in possession of Parcel No. 1 or adjacent parcels to arrange access.”

- ARTICLE III, Section 3.04.1 is added as follows:

“3.04.1 Monitoring Wells Relocation. City agrees to obtain the approval of DTSC, pursuant to Section 3.07, at least sixty (60) days prior to relocation of any Monitoring Wells. Prior to requiring the placement of any new wells, or relocating any existing wells, DTSC agrees to consult with City regarding placement of these wells. Absent a finding that it is necessary for the protection of human health and the environment, DTSC agrees not to require the placement of any of these wells in areas that have been improved with tenant occupied structures.”

- ARTICLE III, Section 3.06 is added as follows:

“3.06 Notification for GATX. City agrees to notify GATX at least sixty (60) days prior to disturbing, removing, or in any way hindering the effectiveness of the Monitoring Wells. The notification shall be sent to:

Mr. Eric J. Conard
Corporate Remediation Projects Manager
GATX Tank Storage Terminals Corporation
1363 North Gaffey Street
San Pedro, California 90731-1323”

- ARTICLE III, Section 3.07 is added as follows:

“3.07 Approval. To obtain approval of any Improvement in accordance with this Agreement, City shall provide to DTSC a written request describing the activity City wants to undertake. DTSC agrees to

respond in writing to the request within thirty (30) days. Oral approval or a failure to respond within thirty (30) days, shall not constitute approval. If DTSC fails to respond within thirty (30) days or disapproves of the request, City may elevate its request in accordance with Section 4.01. Approval by DTSC shall not be unreasonably withheld.”

- ARTICLE III, Section 3.08 is added as follows:

“3.08 Emergency Response Action/Notification. In the event of any action or occurrence constituting a threat or potential threat to public health and safety, or the environment (such as fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Agreement, City shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the DTSC's Project Manager for this site at 714.484.5300. City shall take such action in consultation with the DTSC's Project Manager and in accordance with all applicable provisions of this Agreement. Within thirty (30) days of the onset of such an event, City shall furnish a report to the DTSC, signed by City's Project Coordinator, setting forth the events which occurred and the measures taken in the response thereto. In the event that City fails to take appropriate response and DTSC takes action instead, City shall be liable to DTSC for all costs of the response action. Nothing in this section shall be deemed to limit any other notification requirement to which the City may be subject.”

- ARTICLE III, Section 3.09 is added as follows:

“3.09 Soil Cover. The soil cover on Parcel No. 1 is generally depicted on “Thickness of Clean Soil Layer and Final Rough Grade Elevations,” attached as “Exhibit C.” The description of the soil cover is as described in “Closure Report, GATX Terminals Corporation, Annex Terminal Site, San Pedro, California,” dated July 30, 1993.”

- ARTICLE III, Section 3.10 is added as follows:

“3.10 Soil Cover Maintenance. City shall maintain the soil cover on Parcel No. 1 so that the soil cover is consistent with the soil cover's original specifications, as detailed in the correspondence from McLaren

Hart to DTSC, dated October 22, 1992. Except as otherwise authorized by DTSC, City shall:

- a. Visually inspect in December and April of each year the entire soil cover area for large cracks (greater than ½" wide), erosional gullies, differential settlement, or any other damage that may compromise the integrity of the soil cover;
- b. Document the results of the inspection and maintain an inspection log;
- c. Provide a report to DTSC annually by June 30 of each year to document the inspections in Section 3.10 (a) and all relevant activities on the Property. The annual reports submitted to DTSC shall include: 1) date(s) of soil cover inspection and observations made; 2) date(s) and description of any activities or events which have disturbed the soil cover and/or the soil beneath the soil cover (including without limitation, utility installation, earth movement, construction of Improvements, severe storms, etc.); and, 3) date(s) and description of action taken by City to rectify the situation;
- d. Maintain the minimum soil cover thickness of 12-inches by repairing the soil cover with clean soil or other material, that is mutually acceptable to the parties within thirty (30) days of observing any soil cover irregularities;
- e. Maintain the approximate 2-percent slope over the entire soil cover to promote surface runoff and minimize ponding and infiltration of water;
- f. Maintain a contingency plan for the timely identification, reporting, and mitigation of damage to the soil cover caused by any unusual or unexpected activities or events;

- g. **Maintain the security features of the Property (i.e., fencing, signage as required by this Agreement, and gates); and,**
- h. **Place and maintain a total of four (4) markers of a type that is mutually acceptable to the parties to delineate the location and extent of the soil cover.**

Any activity which may disturb or threaten to disturb soil containing hazardous substances on Parcel No. 1, such as, but not limited to, excavations, shall be conducted in accordance with all applicable federal, state, and local laws and regulations.”

- ARTICLE III, Section 3.11 is added as follows:

“3.11 Property Access/Notice To Successors In Interest and Assigns. City agrees that access to the Property and any other property to which access is required for implementation of this Agreement shall be provided at all reasonable times to employees, contractors, consultants, designees, and any other parties performing response actions under DTSC oversight pursuant to sections 25185 and 25185.5 of the Health and Safety Code. City shall ensure that any successor in interest or assign of the Property are provided the Notice required in Section 3.03. City shall ensure that any leases, subleases, assignments or transfers of the Property are consistent with this Agreement.”

- ARTICLE IV, Section 4.01 is modified by deleting “land use restrictions” and in place thereof inserting “Restrictions,” and deleting “Parcel No. 1” and in place thereof inserting “the Property” in the first sentence.
- ARTICLE IV, Section 4.02 is modified by deleting “land use restrictions” and in place thereof inserting “Restrictions”; deleting “Parcel No. 1” and in place thereof inserting “the Property” in the first sentence; and, adding the following sentence to the end of the section: “Notwithstanding the above, DTSC and City may modify or terminate this Agreement at any time in writing approved by the City and DTSC.”
- ARTICLE IV, Section 4.03 is modified by adding the heading “De-Listing.” after the numeric reference to this section.

First Amendment to Agreement No. 1784
Between The City of Los Angeles Harbor Department and
The California Department of Toxic Substances Control

- ARTICLE IV, Section 4.05 is modified by deleting the last "Parcel No. 1" and in place thereof inserting "the Property."
- ARTICLE V, Section 5.01 is modified by deleting "Parcel No. 1" and in place thereof inserting "the Property."
- ARTICLE V, Section 5.02 is deleted in its entirety and replaced with the following:

"5.02 Notices. Whenever any person gives or serves any notice, demand, submittal or other communication with respect to this Agreement, each such notice, demand, submittal, or other communication shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, to City of Los Angeles Harbor Department and Department of Toxic Substances Control at:

Executive Director
City of Los Angeles Harbor Department
425 South Palos Verdes Street
P.O. Box 151
San Pedro, California 90733-0151

Ms. Nennet V. Alvarez
Branch Chief
Attn: Ms. Christine Chiu (2 copies)
Southern California Cleanup Operations Branch B
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630-4732"

- ARTICLE V, Section 5.07 is deleted in its entirety and replaced with the following:

"5.07 Liability. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of City. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating

First Amendment to Agreement No. 1784
Between The City of Los Angeles Harbor Department and
The California Department of Toxic Substances Control

to the deposit or disposal at any other location of substances removed from the Property. Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law to protect public health or safety of the environment and recovering the cost thereof.”

- ARTICLE V, Section 5.08 is added as follows:

“5.08 Effective Date of Amendment. The effective date of this First Amendment shall be the later of the date it is approved by the City pursuant to the provisions of the Charter or the date it is executed by DTSC; and, except as amended herein, all other remaining terms and conditions of this Agreement No. 1784, shall remain in full force and effect.”

- ARTICLE V, Section 5.09 is added as follows:

“5.09 Controlling Document. A restated copy of the Agreement incorporating the agreed upon changes, “Working Agreement Between The City of Los Angeles Harbor Department and The California Department of Toxic Substances Control to Perform Operation and Maintenance and Restrict Use of Property,” is attached herein as “Exhibit D.” In the event of any conflict between the restated Agreement and this amendment, the amendment will control.”

First Amendment to Agreement No. 1784
Between The City of Los Angeles Harbor Department and
The California Department of Toxic Substances Control

IN WITNESS WHEREOF, the parties hereto have executed this First
Amendment to Agreement No. 1784 on the date to the left of their signatures.

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

Dated: 6-15-00

By *Jerry A. Telle*
Executive Director

Attest: *Audrey H. Yamaki*
Board Secretary

THE CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL

Dated: 6-20-00

By *Nennet V. Alvarez*
Nennet V. Alvarez, Chief
Southern California Cleanup Operations Branch B

APPROVED AS TO FORM

June 15, 2000

JAMES K. HAHN, City Attorney

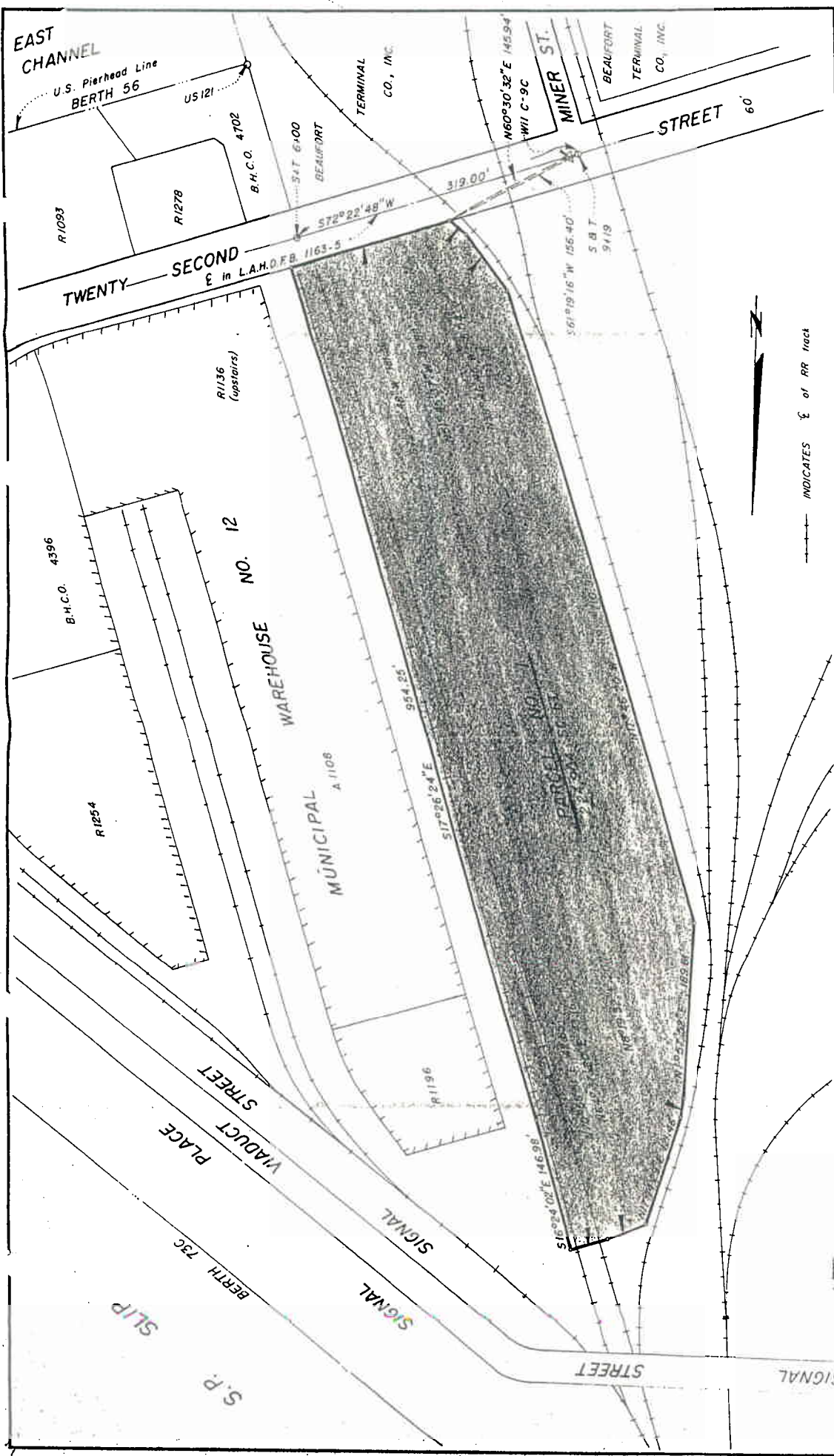
By *David McKenna*
DAVID MCKENNA, Assistant

Budget - FY <u>19</u> <u>1</u>
_____, Ctr. _____ Proj. _____
_____, available, Date _____

Janet Sherman 5/17/00
& increase

20 June, 2000

By *Garry Brown*
GARRY BROWN, Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control



NO. DATE DRAWN		REVISIONS		ENTG.	APPR.	SCALE 1" = 100'	DATE	RECOMMENDED FOR APPROVAL
						SEAL	1/10	1/17/77
						CHECKED	W.E.	CHIEF OF PROJECT
						DRAWN	M.P.O.	ASSISTANT CHIEF
						DESIGNED	M.P.O.	MANAGER ENGINEER
						INTERFERENCES	M.P.O.	
						DATE	1/10/77	
GATX TERMINALS CORPORATION				PERMIT MAP - BERTH 56		DRAWING NUMBER		
PORT OF LOS ANGELES				CHIEF HARBOR ENGINEER		ENGINEERING DIVISION		
P.O. BOX 131 SAN PEDRO, CALIF.				APPROVED		DRAWING NUMBER		45254

EXHIBIT A

EXPLANATION

- HC-3 LOCATION OF MONITORING WELL BY HART CROWSER
- W-17 LOCATION OF MONITORING WELL BY HARDING-LAWSON ASSOCIATES
- ▽ MC-3 LOCATION OF MONITORING WELL BY McLAREN/HART
- POLA PORT OF LOS ANGELES WELL
- * EC-1 SLIP MEASURING POINT
- RAILROAD TRACKS
- FENCE
- BUILDING OR WAREHOUSE



<F:\DATA\JOBS\6153\JULY96\FIGURES\FIG2.DRW>

PROJECT NAME: GATX ANNEX, SAN PEDRO, CA

SITE PLAN
GATX ANNEX, SAN PEDRO, CALIFORNIA
 EXHIBIT B

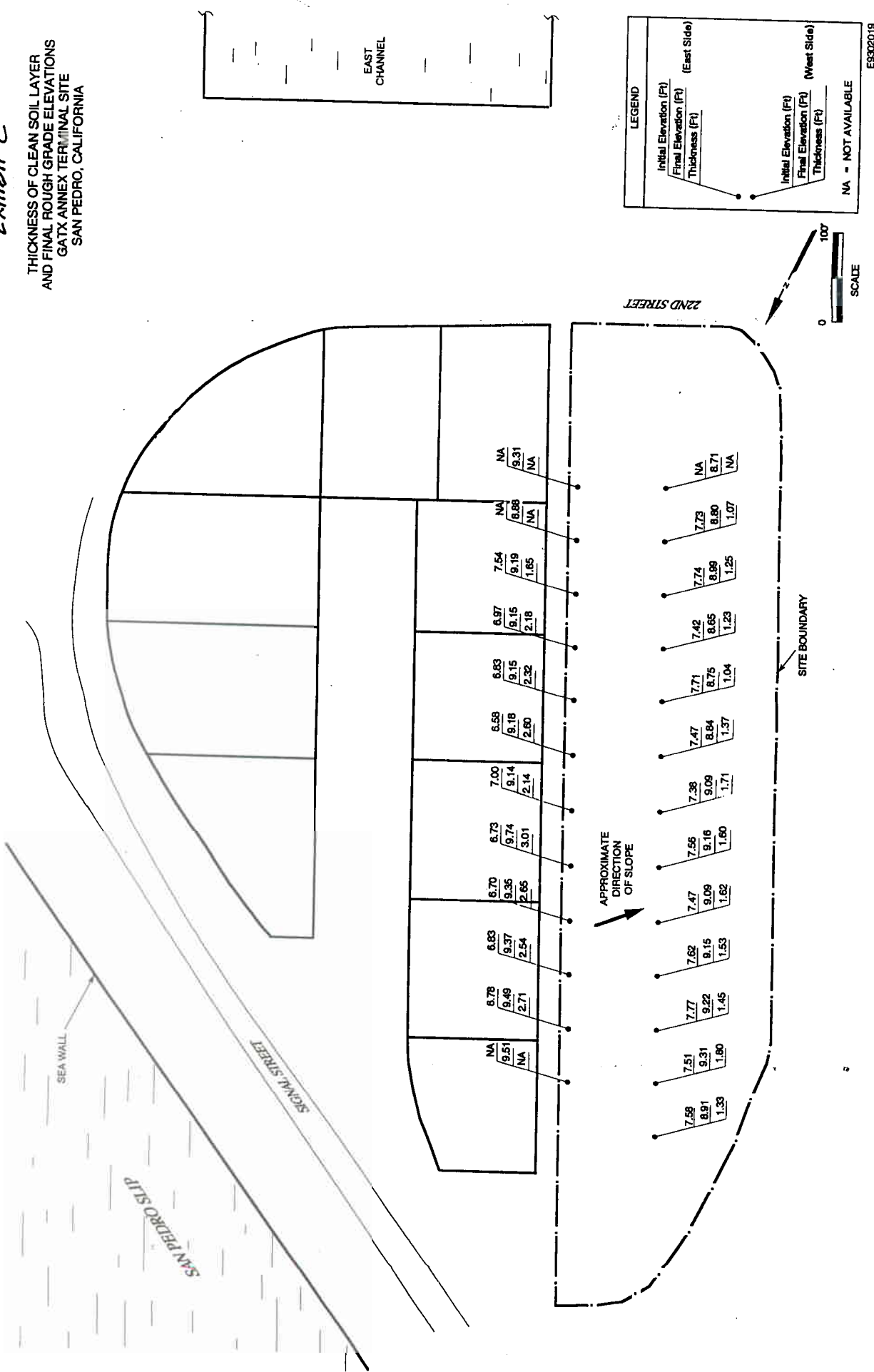
HARTCROWSER

PROJECT NO.: 6153

DATE: AUGUST 1996

EXHIBIT C

THICKNESS OF CLEAN SOIL LAYER
AND FINAL ROUGH GRADE ELEVATIONS
GATX ANNEX TERMINAL SITE
SAN PEDRO, CALIFORNIA



ES002019

EXHIBIT D

WORKING AGREEMENT* BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL TO PERFORM OPERATION AND MAINTENANCE AND RESTRICT USE OF PROPERTY

This Agreement is made and entered into as of this **29th day of June, 1994**, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as the "City"), acting by and through its BOARD OF HARBOR COMMISSIONERS (hereinafter referred to as "Board"), and the CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (formerly known as the California Department of Health Services) and its successor agencies, if any (hereinafter referred to as DTSC), with reference to the following recitals:

WHEREAS, the City is the trustee of those tide and submerged lands granted by a series of acts and amendments of the legislature of the State of California each entitled: "An act granting to the City of Los Angeles the tide and submerged lands of the state within the boundaries of said city" (hereinafter referred to as the "Tidelands Grant"); and,

WHEREAS, the City, pursuant to a series of permits beginning in 1969 and terminating with the expiration of Permit No. 392 in December 1983, granted to GATX Terminals Corporation (hereinafter referred to as "GATX") use of a parcel designated as Parcel No. 1 (sometimes referred to herein as "Premises") within said granted lands subject to the terms and conditions of said grant. Parcel No. 1 is delineated and more particularly described on Drawing No. 45254, a copy of which is attached hereto and marked "Exhibit A"; and,

WHEREAS, uses of the Premises permitted under Permit No. 392 included: Construction, maintenance and operation of tanks, pipelines and other facilities for storing, drumming and transporting chemicals; and,

WHEREAS, on expiration of Permit No. 392, GATX, while in the process of the removal of 62 storage tanks and restoration of the Premises, discovered hazardous substance contamination of the soil and groundwater; and,

WHEREAS, as a result of the discovery of contamination in the soil, DTSC designated Parcel No. 1 as a hazardous substance release site pursuant to the provisions of Section 25356 of the California Health and Safety Code; and,

WHEREAS, in accordance with DTSC requirements, GATX has prepared and submitted to DTSC a Site Characterization Plan and a Remedial Action Plan

including a "post-remediation risk assessment" (to address potential environmental and human health hazards associated with remediation activities and the residual contamination remaining after remediation, if any); and,

WHEREAS, on DTSC's review of the "post-remediation risk assessment", a disagreement arose between DTSC and GATX relative to DTSC's determination that the calculated health risks from residential use and construction activities associated with future development of Parcel No. 1 were unacceptably high, a determination disputed by GATX; and,

WHEREAS, DTSC has determined that it will not certify the Premises as having been remediated, pursuant to the Remedial Action Plan previously prepared by GATX and approved by DTSC, utilizing the innovative NOVATERRA in-situ air/steam stripper, developed as a demonstration project under the auspices of the State of California Department of Health Services Toxic Substance Control Division Alternative Technology Department (predecessor department to the State of California Department of Toxic Substances Control), without first securing a commitment from the City that it will agree not to use Parcel No. 1 for residential, park, hospital, school, or child day-care uses and that future grants of use by the City be conditioned to protect workers during excavation or construction; and,

WHEREAS, the City acknowledges that a disagreement exists between DTSC and GATX pertaining to the acceptability of the health risks presented at the Premises, nonetheless, the City desires that the proposed remediation of Parcel No. 1 by GATX proceed and is, therefore, willing to agree to certain land use restrictions defined herein subject to the terms and conditions provided in this Agreement, the limitations of the Tidelands Grant and the Charter of the City of Los Angeles¹; and,

WHEREAS, DTSC has determined that an amendment to the Agreement needs to be made in order to protect human health and the environment; and,

¹It is understood by the parties that the City is bound by Section 140 of the Charter of the City of Los Angeles which provides: "(a) All tidelands and submerged lands within the limits of the Harbor District, as the same now or may hereafter exist, whether filled or unfilled, are hereby declared to be required for use for the purposes in connection with, or for the promotion and accommodation of commerce, navigation, and fishery, and shall, except as hereinafter provided, continue to be withheld for such purposes. It shall be unlawful to grant, sell, convey, alienate, transfer, or otherwise dispose of, except as herein provided, any of the right, title or interest of the city in and to such tidelands and submerged lands, or any part thereof; provided, that grants of such lands may be made to the State of California or to the United States of America for public purposes, when authorized by a majority vote of the qualified voters of the city voting upon the question of authorizing any such grant at an election."

WHEREAS, GATX no longer occupies the Site, and the City and GATX entered into an agreement, effective September 15, 1994, pertaining to the allocation of future liabilities pertaining to the Site including the care and maintenance of the soil cover.

NOW THEREFORE, in consideration of the covenants, terms and conditions contained herein, the parties agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.01 Restrictions. This Agreement sets forth protective provisions, restrictions, and conditions, (collectively referred to herein as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, used, and leased. Each and all the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

1.02 Incorporation into Leases, Permits and Subleases. City agrees that the Restrictions set forth herein shall be incorporated by reference in each and all leases, permits and subleases of the Property or any other portion thereof.

ARTICLE II

DEFINITIONS

2.01 Improvements. "Improvements" shall mean all buildings, roads, driveways, underground utilities, regradings, and paved parking areas constructed or placed upon any portion of the Property.

2.02 Monitoring Wells. "Monitoring Wells" shall mean any wells which have been or may in the future be installed for purposes of groundwater monitoring pursuant to the Remedial Action or Operation and Maintenance Plans, approved by DTSC.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use any portion of the Property.

2.04 Owner. "Owner" shall mean the City or its successors in interest, if any, who hold title to all or any portion of the Property.

2.05 Property. "Property" shall mean Parcel No.1, as depicted on "Exhibit A," and all Well Locations, as defined in Section 2.06.

2.06 Well Locations. "Well Locations" shall mean the property, held in trust by the City, upon which any Monitoring Wells have been installed. "Well Locations" also includes any property held in trust by the City upon which any new Monitoring Wells DTSC may in the future require GATX to install. The Well Locations currently in existence are depicted generally on the "Site Plan, GATX Annex, San Pedro, California," "Exhibit B" hereto.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF PROPERTY

3.00 Jurisdiction. Pursuant to Health and Safety Code sections 58009, 58010, and 25300 et seq., and Civil Code section 1471(c), DTSC has determined that

this Agreement is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence, on the land, of hazardous substances as defined in Health and Safety Code section 25316. The City and DTSC hereby agree that the use of the Property be restricted as set forth in this Agreement.

3.01 Restrictions on Use. City agrees that Parcel No. 1, or any portion thereof, as delineated in "Exhibit A", shall not be used for residential purposes, parks (but not including landscaping or passive parks, not intended for use by the public, containing grass areas less than 10,000 square feet), hospitals for humans, schools for persons under 21 years of age, or day-care centers for children, without written approval by DTSC. City agrees to notify and obtain the approval of DTSC, pursuant to Section 3.07, before any improvements are made which require the removal of, addition of material to, or intrusion into any portion of the soil cover that is currently in place at Parcel No. 1. City further agrees to notify and obtain approval of DTSC thirty (30) days prior to undertaking any improvements which would require breaking and exposing the soil beneath the soil cover. City will repair the soil cover with clean soil or other material, that is mutually acceptable to the parties to this Agreement if the soil cover is broken or disturbed. City agrees to obtain the approval of DTSC, pursuant to Section 3.07, at least sixty (60) days prior to allowing any Improvements which would prevent access or endanger the integrity of the Monitoring Wells.

3.02 Conveyance of the Property. City agrees to provide thirty (30) days' advance notice to DTSC of the conveyance of any grant or conveyance of title, or issuance of any lease or permit of the Property to a third person and to further provide notice to a permittee, lessee or renter as required by Health and Safety Code Section 25359.7. The notice shall include the name and address of any proposed transferee. DTSC shall not, by reason of this Agreement, have authority to approve, disapprove, or otherwise affect, any permit, lease, or sublease of the Property except as otherwise provided by law.

3.03 Notice in Agreements. Any permit, lease, sublease, or other rental agreement relating to Parcel No. 1 shall contain the following statement:

"The land described herein may contain hazardous substances. To the extent not inconsistent with those legislative grants enacted by the California State Legislature pertaining to tide and submerged lands, such condition may render the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

3.03.1 Notice via Physical Marker on Parcel No. 1. City agrees to provide signage at Parcel No. 1 which indicates that there are restrictions regarding use of Parcel No. 1 and a point of contact with the City for further information.

3.04 Monitoring. DTSC may conduct any monitoring (in addition to the Monitoring Wells which have been installed or will be installed in the future for purpose of groundwater monitoring), which DTSC determines is necessary to protect public health and safety or the environment, and shall have access to Parcel No. 1 and adjacent parcels as necessary for such monitoring to the extent authorized under Section 25358.1 of the California Health and Safety Code. DTSC shall contact City and any tenant of the City that is in possession of Parcel No. 1 or adjacent parcels to arrange access.

3.04.1 Monitoring Wells Relocation. City agrees to obtain the approval of DTSC, pursuant to Section 3.07, at least sixty (60) days prior to relocation of any Monitoring Wells. Prior to requiring the placement of any new wells, or relocating any existing wells, DTSC agrees to consult with City regarding placement of these wells.

Absent a finding that it is necessary for the protection of human health and the environment, DTSC agrees not to require the placement of any of these wells in areas that have been improved with tenant occupied structures.

3.05 Enforcement. It is understood by City that failure of City to comply with this Agreement may be grounds for DTSC to file a civil and/or criminal action against City.

3.06 Notification for GATX. City agrees to notify GATX at least sixty (60) days prior to disturbing, removing, or in any way hindering the effectiveness of the Monitoring Wells. The notification shall be sent to:

Mr. Eric J. Conard
Corporate Remediation Projects Manager
GATX Tank Storage Terminals Corporation
1363 North Gaffey Street
San Pedro, California 90731-1323

3.07 Approval. To obtain approval of any Improvement in accordance with this Agreement, City shall provide to DTSC a written request describing the activity City wants to undertake. DTSC agrees to respond in writing to the request within thirty (30) days. Oral approval or a failure to respond within thirty (30) days, shall not constitute approval. If DTSC fails to respond within thirty (30) days or disapproves of the request, City may elevate its request in accordance with Section 4.01. Approval by DTSC shall not be unreasonably withheld.

3.08 Emergency Response Action/Notification. In the event of any action or occurrence constituting a threat or potential threat to public health and safety, or the environment (such as fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Agreement, City shall immediately take all appropriate action

to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the DTSC's Project Manager for this site at 714.484.5300. City shall take such action in consultation with the DTSC's Project Manager and in accordance with all applicable provisions of this Agreement. Within thirty (30) days of the onset of such an event, City shall furnish a report to the DTSC, signed by City's Project Coordinator, setting forth the events which occurred and the measures taken in the response thereto. In the event that City fails to take appropriate response and DTSC takes action instead, City shall be liable to DTSC for all costs of the response action. Nothing in this section shall be deemed to limit any other notification requirement to which the City may be subject.

3.09 Soil Cover. The soil cover on Parcel No. 1 is generally depicted on "Thickness of Clean Soil Layer and Final Rough Grade Elevations," attached as "Exhibit C." The description of the soil cover is as described in "Closure Report, GATX Terminals Corporation, Annex Terminal Site, San Pedro, California," dated July 30, 1993.

3.10 Soil Cover Maintenance. City shall maintain the soil cover on Parcel No. 1 so that the soil cover is consistent with the soil cover's original specifications, as detailed in the correspondence from McLaren Hart to DTSC, dated October 22, 1992. Except as otherwise authorized by DTSC, City shall:

- a. Visually inspect in December and April of each year the entire soil cover area for large cracks (greater than ½" wide), erosional gullies, differential settlement, or any other damage that may compromise the integrity of the soil cover;
- b. Document the results of the inspection and maintain an inspection log;

- c. Provide a report to DTSC annually by June 30 of each year to document the inspections in Section 3.10 (a) and all relevant activities on the Property. The annual reports submitted to DTSC shall include: 1) date(s) of soil cover inspection and observations made; 2) date(s) and description of any activities or events which have disturbed the soil cover and/or the soil beneath the soil cover (including without limitation, utility installation, earth movement, construction of Improvements, severe storms, etc.); and, 3) date(s) and description of action taken by City to rectify the situation;
- d. Maintain the minimum soil cover thickness of 12-inches by repairing the soil cover with clean soil or other material, that is mutually acceptable to the parties within thirty (30) days of observing any soil cover irregularities;
- e. Maintain the approximate 2-percent slope over the entire soil cover to promote surface runoff and minimize ponding and infiltration of water;
- f. Maintain a contingency plan for the timely identification, reporting, and mitigation of damage to the soil cover caused by any unusual or unexpected activities or events;
- g. Maintain the security features of the Property (i.e., fencing, signage as required by this Agreement, and gates); and,
- h. Place and maintain a total of four (4) markers of a type that is mutually acceptable to the parties to delineate the location and

extent of the soil cover.

Any activity which may disturb or threaten to disturb soil containing hazardous substances on Parcel No. 1, such as, but not limited to, excavations, shall be conducted in accordance with all applicable federal, state, and local laws and regulations.

3.11 Property Access/Notice To Successors In Interest and Assigns. City agrees that access to the Property and any other property to which access is required for implementation of this Agreement shall be provided at all reasonable times to employees, contractors, consultants, designees, and any other parties performing response actions under DTSC oversight pursuant to sections 25185 and 25185.5 of the Health and Safety Code. City shall ensure that any successor in interest or assign of the Property are provided the Notice required in Section 3.03. City shall ensure that any leases, subleases, assignments or transfers of the Property are consistent with this Agreement.

ARTICLE IV

MODIFICATION, TERMINATION, REMOVAL TERM AND CONTEMPORANEOUS AGREEMENT

4.01 Modification. City may request modification of the Restrictions imposed by this Agreement as they apply to all or any portion of the Property. City and DTSC regional staff agree to cooperate and attempt to resolve any such request for modification informally at the regional level. If, however, the City's request for modification cannot be resolved informally, City may in writing apply to DTSC for a hearing before the State Director of Toxic Substances Control or his designee

("Director"). The application for hearing shall contain: 1) the proposed modification; and 2) a statement of reasons in support of the granting of the modification. On receipt of an application for modification of the Restrictions provided herein, DTSC shall cause a hearing to be held within sixty (60) days. At the hearing, City must demonstrate by a preponderance of the evidence that the proposed modification will not cause or allow any of the following effects:

- a. The creation or increase of significant present or future hazards to the public.
- b. Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.
- c. Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public.

The hearing, at the option of either party, shall be reported by a certified court reporter and the testimony taken shall be reduced to writing and be made part of the administrative record. If, after the hearing, the Director determines that the Restrictions imposed on the Premises should not be modified, the Director shall issue and cause to be served on the parties his or her decision and findings of fact. The Director's findings of fact shall indicate the reasons for the determination, including what hazardous substances are on, under, or in the land, and the significant existing or potential hazards to present or future public health and safety. The decision of the Director shall be reviewable pursuant to the provisions of Section 1085 of the Code of Civil Procedure or any other remedy provided by law.

4.02 Termination. City may request termination of the Restrictions

imposed by this Agreement as they apply to all or any portion of the Property on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. City and DTSC regional staff agree to cooperate and attempt to resolve any such request for termination of Restrictions informally at the regional level. If, however, the City's request for termination of restrictions cannot be resolved informally, City may apply in writing to DTSC for a hearing before the Director to resolve the matter. Within sixty (60) days of receipt of an application for hearing on the termination of Restrictions, DTSC shall cause a hearing to be held before the Director. At the hearing, City must demonstrate by a preponderance of the evidence sufficient grounds for the Director to make a finding upon any of the following:

- a. The hazardous constituents that caused the land to be restricted have since been reduced, removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health.
- b. New scientific evidence is available, since the imposition of the restriction concerning either of the following:
 1. The nature of the above-referenced contamination that caused Parcel No. 1 to be restricted; or
 2. The geology or other physical environmental characteristics of the restricted parcel.

The hearing, at the option of either party, shall be reported by a certified court reporter and the testimony taken shall be reduced to writing and be made part of the administrative record. If, after the hearing, the Director determines that the Restrictions imposed on the Premises should remain in effect, the Director shall issue

and cause to be served on the parties his or her decision and findings of fact. The Director's findings of fact shall indicate the reasons for the determination, including what hazardous substances are on, under, or in the land, and the significant existing or potential hazards to present or future public health and safety. The decision of the Director shall be reviewable according to the provisions of Section 1085 of the Code of Civil Procedure or any other remedy allowed by law. Notwithstanding the above, DTSC and City may modify or terminate this Agreement at any time in writing approved by the City and DTSC.

4.03 De-Listing. Upon certification by DTSC that Parcel No. 1 has been remediated in accordance with the Remedial Action Plan prepared by GATX and approved by DTSC, DTSC within 90 days shall cause Parcel No. 1 to be removed from the list of hazardous substance release sites provided for in Section 25356 of the Health and Safety Code.

4.04 Term. The term of the Agreement shall be for a period of thirty (30) years from its effective date. Provided, however, if during the term the Restrictions imposed by this Agreement are not terminated as provided in paragraph 4.02 above or otherwise, on expiration of this Agreement, a successor agreement shall be negotiated by the parties, under the same terms and conditions provided herein, until such time as the referenced Restrictions are terminated. This Agreement shall become effective on the date it is approved by the City pursuant to the provisions of its Charter.

4.05 The Parties to this Agreement acknowledge that this Agreement is contemporaneous with a separate agreement between the City and GATX pertaining to the allocation of future liabilities the City or future occupants may incur as the result of the contamination present on Parcel No. 1 and the Restrictions placed on the uses of the Property.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or a dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, submittal or other communication with respect to this Agreement, each such notice, demand, submittal, or other communication shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, to City of Los Angeles Harbor Department and Department of Toxic Substances Control at:

Executive Director
City of Los Angeles Harbor Department
425 South Palos Verdes Street
P.O. Box 151
San Pedro, California 90733-0151

Ms. Nennet V. Alvarez
Branch Chief
Attn: Ms. Christine Chiu (2 copies)
Southern California Cleanup Operations Branch B
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630-4732

5.03 Article Headings. Headings at the beginning of each numbered Article of this Agreement are solely for the convenience of the parties and are not a part of the Agreement.

5.04 References. All references to Code sections include successor provisions.

5.05 Effective Date. The Restrictions on use imposed by Section 3.01 of this Agreement shall become effective upon this Agreement becoming effective and certification by DTSC that Parcel No. 1 has been remediated in accordance with the Remedial Action Plan prepared by GATX and approved by DTSC, provided, however, if upon completion of remediation of the Premises, post remediation testing indicates residual levels of contamination are at acceptable levels, this Agreement shall be null and void and have no further force or effect.

5.06 Location of Agreement. Copies of this Agreement shall be kept on file and available for public view in the offices of the Chief Harbor Engineer, the Director of Environmental Management, and the Director of Property Management, 425 South Palos Verdes Street, San Pedro, California 90731.

5.07 Liability. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of City. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Property. Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law to protect public health or safety of the environment and recovering the cost thereof.

5.08 Effective Date of Amendment. The effective date of this First Amendment shall be the later of the date it is approved by the City pursuant to the provisions of the Charter or the date it is executed by DTSC; and, except as amended herein, all other remaining terms and conditions of this Agreement No. 1784, shall

Exhibit D: Working Agreement Between The City of LA Harbor Dept.
and DTSC To Perform O&M and Restrict Use of Property

remain in full force and effect.

5.09 Controlling Document. A restated copy of the Agreement incorporating the agreed upon changes, "Working Agreement Between The City of Los Angeles Harbor Department and The California Department of Toxic Substances Control to Perform Operation and Maintenance and Restrict Use of Property," is attached herein as "Exhibit D." In the event of any conflict between the restated Agreement and this amendment, the amendment will control.

(Signature page omitted; refer to Agreement signed September 15, 1994.)

* This "working agreement" is the complete revised Agreement which incorporates the First Amendment changes into Agreement No. 1784 (effective September 15, 1994) for ease of reading a single document.