

## CONSENT TO ENTER AND CONSTRUCT AGREEMENT

Subject to the conditions herein, the City of Los Angeles (“COLA”) hereby grants permission to the City of Long Beach (“COLB”) and its employees, agents, and contractors to enter and use a portion (“Premises”) of the Property<sup>1</sup> currently owned by the City of Long Beach and the City of Los Angeles as tenants in common for purposes of completing the Work, as defined below. The Premises is shown as Parcels 10031-1 and 10031-2 in the Exhibit A attached hereto and incorporated herein by reference and also known by Assessor’s Parcel Number 7428-016-907.

COLB has informed COLA that the Premises is necessary for installing and modifying conduit and wiring to the existing signal house located on the Premises for the Locomotive Facility Project (“Work”), as further described and depicted in the Exhibit B attached hereto and incorporated herein by reference, which is part of the Pier B On-Dock Rail Support Facility Program (“Program”).

The term of this Consent to Enter and Construct Agreement is from the date of the last party to sign to the earlier of: i) three years; or iii) the date that the Work is completed and confirmed in writing by the parties (“Expiration Date”). Prior to such entry, COLB shall provide COLA with a thirty (30) day notice (“1<sup>st</sup> Notice”) and a ten (10) day notice (“2<sup>nd</sup> Notice”). COLB’s right to enter and use the Premises for the purposes set forth herein shall commence upon the entry date stated in the 1<sup>st</sup> Notice and expire on the Expiration Date. Such entry and use, as applicable, shall not unreasonably interfere with COLA’s continued use and operations on the Premises. There shall be no fee charged by COLA, and all improvements constructed or installed on the Premises shall be owned by COLB.

This permission is made subject to the Agreement, the applicable terms and conditions of which shall govern, including, but not limited to, the indemnity provisions in Section 3.b. (Several Liability) and 7.b (POLB Indemnity) of the Agreement and both parties’ obligations to timely cooperate with each other regarding rail improvement projects, such as the Program, as set forth in Section 2(k) of the Agreement. With respect to the Work, COLA and its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the named insureds. COLB shall procure and maintain at its expense, and keep in force at all times during the term of this Consent to Enter and Construct Agreement, the insurance requirements and limits specified in Exhibit C attached hereto and incorporated herein by reference. Notwithstanding the foregoing, COLB shall have the right to self-insure upon written approval by the Executive Director of COLA provided the terms and conditions are met in the Right to Self-Insure Requirements listed in Exhibit C.

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<sup>1</sup> Capitalized terms used herein without definition have the meanings assigned to them in that certain Tenancy in Common Agreement, dated July 6, 2012, by and between the City of Long Beach and City of Los Angeles, as amended by that certain First Amendment to Tenancy in Common Agreement, dated January 15, 2020 (collectively, the “Agreement”).

Where COLB utilizes contractor(s) to perform Work, COLB shall cause its contractor(s) to add, by scheduled endorsement, COLA and COLB as additional insured to liability coverage required in Exhibit C. COLB shall also cause its contractor(s) to procure and maintain Workers' Compensation policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the COLB and COLA.

COLB acknowledges this is a right to enter and construct and constitutes a license. COLA is not conveying any right, title, or interest in the underlying property.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF LOS ANGELES,  
acting by and through its Board of Harbor  
Commissioners


\_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Board Secretary

APPROVED AS TO FORM AND LEGALITY

June 13, 2024  
HYDEE FELDSTEIN SOTO, City Attorney  
Steven Y. Otera, General Counsel

By   
Steven Y. Otera, Assistant/Deputy

CITY OF LONG BEACH, a municipal corporation,  
acting by and through its Board of Harbor  
Commissioners

\_\_\_\_\_  
Mario Cordero, Chief Executive Officer

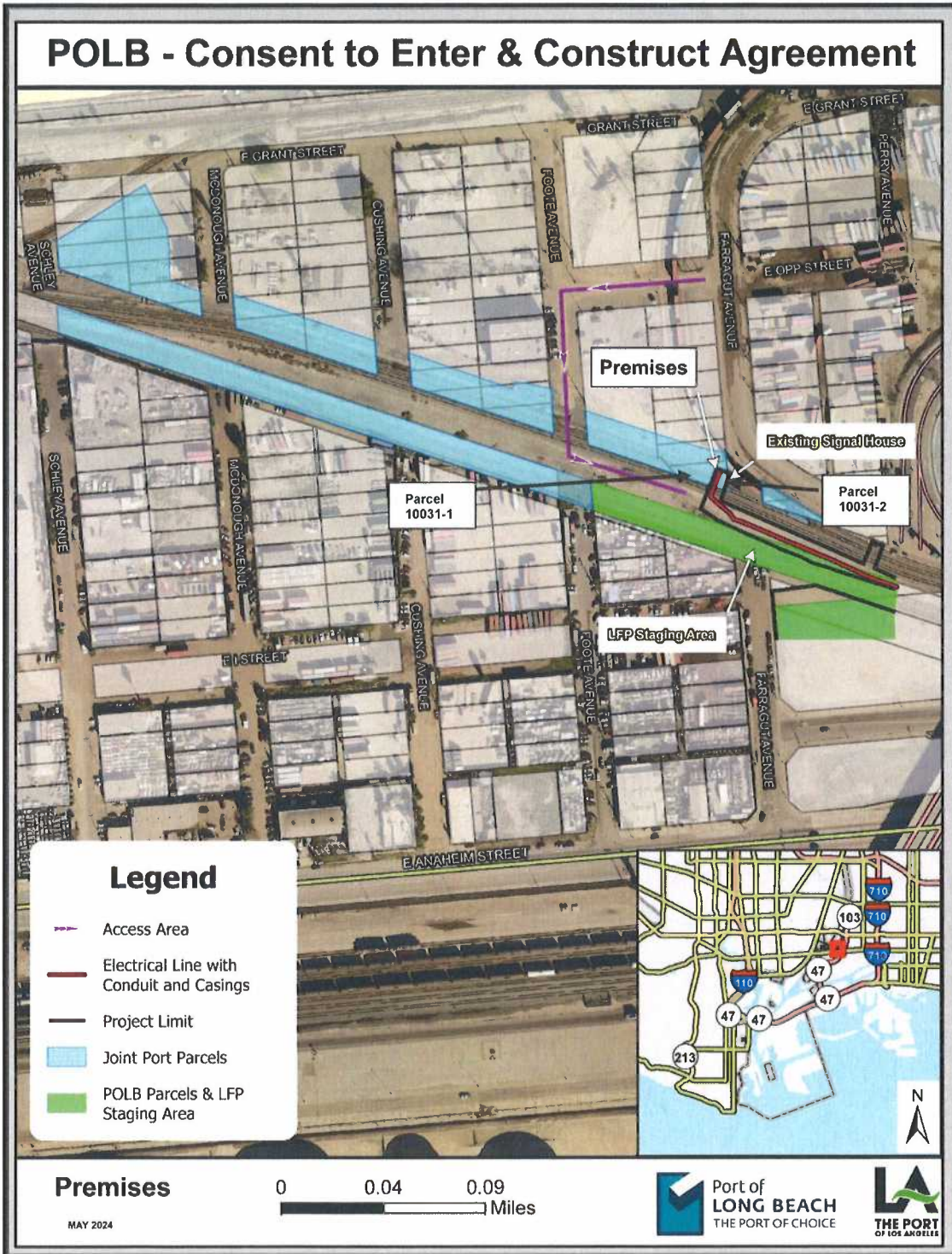
Date: \_\_\_\_\_

APPROVED AS TO FORM

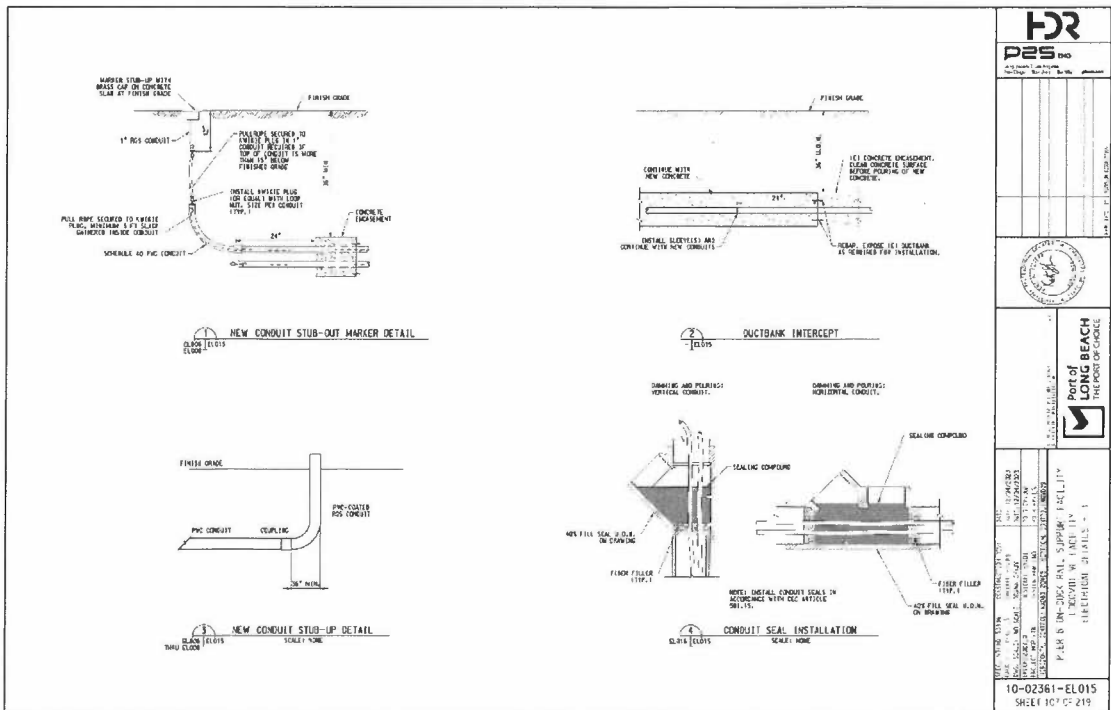
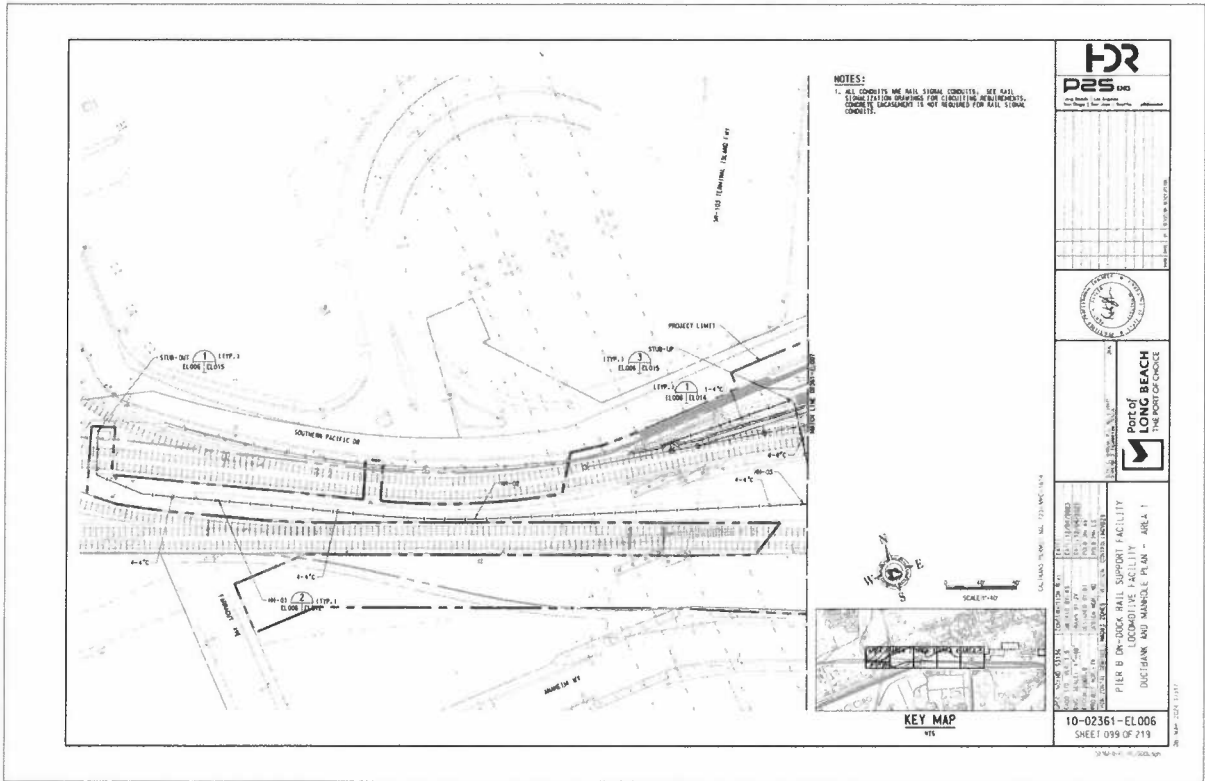
\_\_\_\_\_, 2024  
DAWN MCINTOSH, Long Beach City Attorney

By \_\_\_\_\_  
Thomas Y. Oh, Deputy City Attorney

EXHIBIT "A"  
PREMISES



# EXHIBIT "B" WORK



**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

**General Liability Insurance**

COLB shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the COLA, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to COLA if Best's is not available) within COLB's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of COLB. The retention or self-insurance provided shall provide that any other insurance maintained by COLA shall be excess of COLB's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the COLA, City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds. Where POLB's operations involve work within 50 feet of railroad track, COLB's Commercial General Liability coverage shall also have the railroad exclusion deleted.

**Auto Liability Insurance**

COLB shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to POLA if Best's is not available) within COLB's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision. Additionally, each policy shall include an additional insured endorsement (CA 2048 or equivalent) naming the COLA, City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

**Workers' Compensation and Employer's Liability**

COLB shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the COLB shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. COLB shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the COLA in any circumstance in which it is alleged that actions or omissions of the COLA contributed to the accident. Such worker's compensation and occupational disease requirements shall include coverage for all employees of COLB.

**Required Features of Coverage**

Insurance procured by COLB shall include the following features:

- 1) Acceptable Evidence

- (a) Electronic submission is the required method of submitting COLB's insurance documents. COLB's insurance broker or agent shall register with the City's online insurance compliance system, KwikComply, at <https://kwikcomply.org> and submit the appropriate proof of insurance on COLB's behalf.
- (b) At least thirty days prior to the expiration of any policy, COLB shall direct their insurance broker or agent to submit to KwikComply at <https://kwikcomply.org>, a renewal certificate showing that the policy has been renewed or extended, or, if new insurance has been obtained, evidence of insurance as specified above.
- (c) Upon request by COLA, COLB shall furnish a copy of the bind of insurance and/or full certified policy for any insurance policy required herein. This obligation is intended to, and shall survive the expiration or earlier termination of this Agreement.

2) Carrier Requirements

- (a) The coverage provided by the policy must be primary respect to any insurance or self insurance of the COLA.
- (b) For each insurance policy described above, the COLB shall give to the COLA Board of Harbor Commissioners a 10-days prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-days prior notice of cancellation for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, CA 90731.
- (c) Notice of occurrences or claims under the policy with respect to this Agreement, shall be made to the Risk Manager of the City of Los Angeles Harbor Department with copies to the City Attorney's Office.

**Right to Self-Insure**

Upon written approval by the Executive Director of COLA, COLB may self-insure if the following conditions are met:

- (a) COLB has a formal self-insurance program in place prior to execution of this agreement;
- (b) COLB agrees to protect the COLA, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this agreement;
- (c) COLB agrees to defend the COLA, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier;
- (d) COLB agrees that any insurance carried by COLA is excess of COLB's self-insurance and will not contribute to it;
- (e) COLB provides the name and address of its claims administrator;
- (f) COLB submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to the Executive Director's consideration of approval of self-insurance and annually thereafter;
- (g) COLB agrees to inform COLA in writing immediately of any change in its status or policy which would materially affect the protection afforded COLA by this self-insurance; and
- (h) COLB has complied with all laws pertaining to self-insurance.