

**AGENDA
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT**

DATE: February 13, 2014

TIME: 6:00 p.m. Executive Closed Session
7:00 p.m. Regular Session

PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 24 hours in advance of the meeting.

1. **Call to Order at 6:00 p.m.**
 - a. Move to Executive Closed Session pursuant to the provisions of the California Government Code Sections 54957.6 (Negotiations with Represented Employees) and 54956.8 (Conference with Real Property Negotiator)
 1. Conference with Labor Negotiator
Agency Negotiators: Chief Executive Officer, District Counsel, Two (2) or less of the members of the Board of Commissioners
Employee Organization: As recognized by the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District, including International Longshore and Warehouse Union, Local 14A.
 2. Conference with Real Property Negotiator
Agency Negotiators: Mike Wilson, Board President; Chief Executive Officer; District Counsel
Under Negotiation:
Potential terms for District property acquisition from Pacific Gas & Electric Company
2. **Adjourn Executive Closed Session**
3. **Call to Order Regular Session at 7:00 P.M. and Roll Call**
4. **Pledge of Allegiance**
5. **Report on Executive Session**
6. **Public Comment**

Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Commissioners. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District. The three (3) minute time limit for each speaker may be enforced by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District.

7. Consent Calendar

Note: All matters listed under the Consent Calendar are considered to be routine by the Board of Commissioners and will be enacted by one motion. There will be no separate discussion of these items. If discussion is required, that item will be removed from the Consent Calendar and considered separately.

- a. Consideration of approval of minutes from the October 10, 2013 Board Meeting.

Agenda for February 13, 2014 Regular Board Meeting

8. Communications and Reports

- a. Chief Executive Officers Report
 - Redwood Terminal 2 (Freshwater pulp mill site) Cleanup Update
- b. Staff Reports
- c. District Counsel's and District Treasurer's Reports
- d. Commissioner and Committee Reports
- e. Other

9. Non Agenda

10. Unfinished Business

11. New Business

- a. Consideration of Resolution 2014-03 A Resolution Designating Business Matters, Appointment and Authorization For the Humboldt Bay Harbor, Recreation and Conservation District for Calendar Year 2014.
- b. Consideration of Resolution 2014-04 A Resolution To Borrow Monies and Pledge Lease Revenues and Pulp Mill Assets as Collateral.
- c. Consideration of Loan Agreement with Coast Seafoods Company to remove and dispose of pulp mill liquors.
- d. Consideration of Coast Seafood Lease Addendum as Security Interest For Loan Agreement.
- e. Consideration of Standard Lump Sum Contract of Private Carriage for \$1,307,380.00 with Foss Maritime Company to transport by barge 2,724,367 gallons of pulp liquors to Longview Washington.
- f. Consideration of terminating the South Bay Marina Tide Submerged Lands Lease between the District and the Estate of G.A. Hunter.

12. Administrative and Emergency Permits

13. Adjournment

HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

RESOLUTION NO. 2014-03

A RESOLUTION DESIGNATING BUSINESS MATTERS, APPOINTMENT AND AUTHORIZATION FOR THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT FOR CALENDAR YEAR 2014.

BE IT RESOLVED THAT the Board of Commissioners for the Humboldt Bay Harbor, Recreation and Conservation District hereby appoints and/or authorizes the following Business Matters for the Calendar Year beginning January 1, 2014 and ending December 31, 2014 for all divisions of the Humboldt Bay Harbor, Recreation and Conservation District:

OFFICERS FOR THE BOARD OF COMMISSIONERS:

- President - Richard Marks
Vice President - Patrick Higgins
Secretary - Greg Dale
Commissioner - Aaron Newman
Commissioner - Mike Wilson

ENABLING LEGISLATION:

Appendix II of the State of California Harbors and Navigation Code: Humboldt Bay Harbor, Recreation and Conservation District, Recreation and Conservation District

FINANCIAL:

- 1. Auditors - Hunter, Hunter & Hunt, LLP
2. Budget Officer - Director of Administrative Services
3. Custodians of Funds - District Treasurer, Chief Executive Officer and Director of Administrative Services
4. Investment of Surplus Funds - Custodians of Funds
5. Custodians of State, Federal and other funds, whether loans or grants, to make application for, receive and expend - Custodians of Funds and Director of Conservation
6. Expenditures:
a. Checks require any two signatures of the following: Current Commissioner, District Treasurer, Chief Executive Officer and Director of Administrative Services

- b. Expenditures over \$5,000 shall follow § 36 of Appendix II of the State of California Harbors and Navigation Code: Humboldt Bay Harbor, Recreation and Conservation District, Recreation and Conservation District
 - c. Purchase Order for non-recurring, single expenditures over \$300.00
 - d. Board approval of any expenditure over \$5,000.00
7. Authorized Revenue Facilities:
- a. Local Bank Checking, Money Market & Savings Accounts – North Valley Bank, Eureka Branch
 - b. Humboldt County Treasurer to receive Humboldt County imposed tax revenues and other collected revenues for disbursement to the Humboldt Bay Harbor, Recreation and Conservation District

LEGAL NOTICE DESIGNATIONS:

- 1. Official Notice posting sites:
 - a. District Conference Room – aside main door on outside wall
 - b. District website: www.humboldtby.org
- 2. The Times-Standard (newspaper of general circulation) as the newspaper for legal publications
- 3. Email notification to News Media: The Times-Standard, North Coast Journal, The Arcata Eye, Ferndale Enterprise, McKinleyville Press, KEET-TV, KIEM-TV, KMUD Radio, KINS Radio, and KHUM Radio
- 4. Email notification to:
 - a. Cities: Eureka, Fortuna, Arcata
 - b. Counties: Humboldt
 - c. Chambers of Commerce: Eureka, Arcata

REGULAR MONTHLY BOARD MEETINGS:

- 1. Location: Humboldt Bay Harbor, Recreation and Conservation District; 601 Startare Drive; Eureka, CA
- 2. Time: Closed Session: 6:00 p.m. PST; Regular Session: 7:00 p.m. PST
- 3. When: 2nd and 4th Thursdays of each month January – October; 2nd Thursday in November; 1st and 3rd Thursdays in December

SPECIAL BOARD MEETINGS:

- 1. Location: Humboldt Bay Harbor, Recreation and Conservation District; 601 Startare Drive; Eureka, CA
- 2. When: As needed

OTHER BUSINESS:

- 1. Election Officer – Chief Executive Officer
- 2. Filing of Bonds - Chief Executive Officer
- 3. Legal Counsel – Paul Brisso of Mitchell, Brisso, Delaney & Vrieze, LLC

- Authorized to contract as necessary – Chief Executive Officer
4. Insurance Agent of Record – Special Districts Risk Management Authority (Property, Liability, Workers Compensation, Marina Operators Liability)
 5. Recognize the Humboldt Bay Harbor, Recreation and Conservation District as an equal opportunity employer.
 6. Designation of registered office and agent:
Office: 601 Startare Drive; Eureka, CA 95501
Agent: Chief Executive Officer
 7. Custodian of Public Records: Chief Executive Officer and/or Director of Administrative Services

PASSED AND ADOPTED by the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District at a duly called meeting held on the 13th day of February 2014, by the following polled vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**Richard Marks, President
Board of Commissioners**

ATTEST:

**Greg Dale, Secretary
Board of Commissioners**

CERTIFICATE OF SECRETARY

The undersigned, duly qualified and acting Secretary of the HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, does hereby certify that the attached Resolution is a true and correct copy of RESOLUTION NO. 2014-03 entitled,

**A RESOLUTION DESIGNATING BUSINESS MATTERS,
APPOINTMENT AND AUTHORIZATION FOR THE HUMBOLDT BAY HARBOR,
RECREATION AND CONSERVATION DISTRICT FOR CALENDAR YEAR 2014**

as regularly adopted at a legally convened meeting of the Board of Commissioners of the HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, duly held on the 13TH day of February 2014; and further, that such Resolution has been fully recorded in the Journal of Proceedings in my office, and is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of February 2014.

Greg Dale, Secretary
Board of Commissioners

**HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT**

RESOLUTION 2014-4

**A RESOLUTION TO BORROW MONIES AND PLEDGE
LEASE REVENUES AND PULP MILL ASSETS AS COLLATERAL**

WHEREAS, the Board of Commissioners of the HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, is empowered by the provisions of Section 31 of Appendix II of California Harbors and Navigation Code to borrow money and incur indebtedness; and

WHEREAS, the Board of Commissioners desires to borrow monies in the form of a loan from Coast Seafood (hereinafter referred to as "Coast"), not to exceed the sum of one million two hundred fifty thousand (\$1,250,000); and

WHEREAS, the Board of Commissioners will pledge future lease revenues from current Coast tideland leases and any future extensions; and

WHEREAS, upon receipt of funds generated from the sale of pulp mill assets, the Board of Commissioners will refund the indebtedness.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, that,

1. The President of the Board of Commissioners is hereby authorized to act on behalf of the Humboldt Bay Harbor, Recreation and Conservation District to borrow the sum not to exceed one million two hundred fifty thousand (\$1,250,000) from Coast on the terms set out in the loan instrument and lease extension attached; and
2. The President of the Board of Commissioners is authorized to sign and execute the Loan instrument document and whatever other documents as necessary or required by said Coast to evidence indebtedness of the Humboldt Bay Harbor, Recreation and Conservation District is to provide said Coast with a certified copy of these resolutions.

**PASSED AND ADOPTED THIS 13th DAY OF FEBRUARY 2014, BY THE FOLLOWING
POLLED VOTE:**

AYES:

NOES:

ABSENT:

ATTEST;

**Richard Marks, President
Board of Commissioners**

**PATRICK HIGGINS, Vice President
Board of Commissioners**

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LOAN AGREEMENT

February 13, 2014

The Humboldt Bay Harbor, Recreation and Conservation District, a California public entity, hereinafter referred to as "District", and Coast Seafoods Company, a wholly owned entity of Pacific Seafood Group, hereinafter referred to as "CSC", hereby agree as follows:

District has acquired what is known as the Freshwater Tissue Site—Parcel A, in the Samoa-Fairhaven waterfront area on Humboldt Bay in Eureka, Humboldt County, California for purposes including removal of toxic materials and clean up of the site for the public interest. The site includes an estimated 3 million gallons of various caustic pulp liquors from the former pulp mill operation that are stored in tanks showing signs of failure and pose a danger to the Humboldt Bay environment and the public. CSC's operations include shellfish production in Humboldt Bay.

The parties agree it is in their mutual interest, and the interest of the public generally, that the pulp mill liquors be removed and disposed of as soon as practical. CSC agrees to loan to District, and District agrees to borrow from CSC, up to \$1,250,000.00 (one million two hundred fifty thousand dollars) to facilitate the removal and disposal of the liquors on the terms and conditions set forth in this Agreement.

Terms and Conditions

1. CSC shall advance to District or its designees draws on the amount agreed (up to \$1,250,000.00 aggregate) within a reasonable time upon request, not to exceed 10 business days, upon receipt of invoices or other appropriate documentation reflecting District's payment or incurrence of obligations for work actually performed in removing the pulp liquors, including documentation reflecting the number of gallons removed and cost per gallon when applicable.
2. The Loan will be for a 2-year period. At the end of 2-years the loan will be paid in full. Over the 2-year period the loan will be paid interest only at 3.5% per annum on the amount drawn and current CSC lease payments will be used to offset interest payments. If the repayment is not achieved in the two year period then the long term lease for the tidelands will continue as additional security.
3. The amounts loaned by CSC under this Agreement shall be used by District solely for the removal and disposal of the pulp mill liquors by qualified

contractors and related costs determined to be appropriate by the District and applicable regulatory agencies.

4. CSC shall be named as co-insured or additional insured with District against all liability and claims associated with the removal of the pulp liquor in all insurance procured by District for the removal and disposal of the liquors.

5. CSC currently leases 1,602 tidelands acres from District that come up for renewal on September 7, 2015. As security for this Loan Agreement, if the District has not paid the obligations under this Agreement by that date the lease shall be extended to the expiration of this Agreement under the same terms and conditions as the present lease. subject to adjustments in the rental amounts pursuant to the Consumer Price Index. When the obligations under this Agreement are paid in full by the District, the lease between the parties shall convert to the current lease agreement terms of five year renewal terms. CSC, in its discretion, may use due lease payments as a credit against any amounts then owed by District to CSC under this Agreement.

6. CSC currently owns or leases over 4,000 acres in Humboldt Bay but currently only has permits to farm on 300 acres and actually farms approximately 78.79 acres. District shall use its best efforts to help CSC in its application process with other regulatory and permitting entities, including but not limited to the U.S. Army Corps of Engineers and the California Coastal Commission, to assist CSC to renew existing permits and obtain additional permits to increase CSC's operating footprint to a total of 600 acres in Humboldt Bay, provided that District, in its sole discretion, agrees that the specific proposals of CSC are in the best interest of the public.

7. District shall keep CSC informed and shall provide documentation to CSC concerning the District's efforts to remove and dispose of the pulp liquors, including but not limited to providing information on acceptance of the liquors by disposal sources, estimates of the costs associated with the removal and disposal of the liquors, the estimated timeframe and schedule for removal, and the status of approvals by regulatory entities for the removal and disposal.

8. District will use its best efforts to secure governmental or other grant funding to assist in the removal and disposal of the pulp liquors. CSC will use its best efforts to support and assist the District's efforts to obtain such additional funding.

9. Any legal action or proceedings between the parties arising out of the terms and conditions of this Agreement shall be governed by California law and shall be brought and maintained in Humboldt County, California.

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10. This Agreement is the full and complete Agreement by the parties. This Agreement cannot be modified or supplemented except in writing, signed by both parties.

Dated: February 13, 2014

HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT

By Richard Marks, President

ATTEST

Secretary

COAST SEAFOODS COMPANY

By John Petrie, President

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**LEASE ADDENDUM AS SECURITY
INTEREST FOR LOAN AGREEMENT**

February 13, 2014

Humboldt Bay Harbor, Recreation and Conservation District, a California public entity (hereinafter referred to as "Lessor"), and Coast Seafoods Company, a Washington corporation formerly known as Coast Oyster Company, a Washington corporation (hereinafter referred to as "Lessee") hereby agree as follows:

1. The parties have entered into prior agreements concerning the lease of certain premises located in Humboldt County, California, the most recent being an agreement entitled "Confirmation of Second Option of Renewal of Lease and Acknowledgement of Rent Increases" for a renewal period beginning September 8, 2010 and ending September 7, 2015.
2. Lessee has extended a loan to Lessor for the funding of removal of pulp mill liquors in the amount of \$1.25 million.
3. As security for said letter of credit, Lessor grants to Lessee an extension of the lease for up to 40 years or until the loan is paid in full, whichever occurs first. Upon payment in full of the line of credit, the lease will convert to a five year lease as of the date of the payment in full, plus an option to Lessee for one additional five year renewal term.
4. The parties agree that during the term of this renewal the rent shall be calculated by the existing terms of the lease, including annual adjustments as set forth in the lease documents.
5. The parties agree that all prior lease documents and modifications remain in full force and effect, unless a document or provision has been expressly modified by a subsequent written agreement signed by the parties. These include the "Lease of Water Bottoms for Aquaculture" dated January 13, 1983; the "Lease Renewal Endorsement and First Amendment to Lease for Water Bottoms for Aquaculture" dated on or about November 12, 1987; the "Lease Renewal Endorsement and Second Amendment to Lease for Water Bottoms for Aquaculture"; the lease assignment to Coast Seafoods Company on or about February 18, 1994; the "Renewal of Lease and Third Amendment to Lease of Water Bottoms for Aquaculture" dated

January 19, 1995; and the “Confirmation of Second Option of Renewal of Lease and Acknowledgement of Rent Increases” for a renewal period beginning September 8, 2010 and ending September 7, 2015.

HUMBOLDT BAY HARBOR, RECREATION AND
CONSERVATION DISTRICT

By Richard Marks, President

COAST SEAFOODS COMPANY,
A Washington Corporation

By John Petrie, President

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STANDARD LUMP SUM CONTRACT OF PRIVATE CARRIAGE

CARRIER

Foss Maritime Company
Name

1151 Fairview Avenue North
Street Address

Seattle, WA 98109
City, State and Zip Code

206-281-3800 mlauer@foss.com
Telephone Email

Mike Lauer/Director Marine Transportation
Contact Person

SHIPPER

Humboldt Bay Harbor District
Name

601 Startare Drive
Street Address

Eureka, CA 95501
City, State and Zip Code

707-443-0801 _____
Telephone Email

Jack Crider/Chief Executive Officer
Contact Person

TUG

Iver Foss 584331
Name Official Number

98.5' x 32' x 11.5' Ocean Tug
Dimensions (LxWxD) Type/Use

2400
H.P.

BARGE

FDH 26-1 1194209
Name Official Number

234' x 58' x 18.5' Tank Barge
Dimensions (LxWxD) Type/Use

24,633 BBL (@ 95%)
Capacity

STARTING

Eureka, CA
Starting Port/Place

March 12, 2014 – March 20, 2014
Estimated Starting Date/Time

DESTINATION

Longview, WA
Destination Port/Place

HIRE

Mobilization: US \$227,240 lump sum
Round-Trip voyage: US \$313,710 per voyage
One-Way voyage: US \$210,020 per voyage
Demobilization: US \$242,700 lump sum
Demurrage: US \$775/hr in port, US
\$1030/hr at sea
Freetime for Loading: 36 hours per voyage
Freetime for Discharge: 36 hours per voyage

DESCRIPTION OF CARGO

A total of 2,724,367 gallons of green, white and black pulp liquors, divided in 808,542 gallons green, 834,150 gallons white, and 1,081,675 gallons black.

Carrier's quote, which includes additional information, is attached hereto as Appendix A.

Carrier and Shipper, identified on the face hereof, agree as follows:

1. Basic Agreement.

A. *Private Carriage.* Carrier agrees to let and furnish the Tug and Barge(s) identified on the face hereof ("Vessels") and Shipper agrees to hire the Vessels pursuant to this Agreement for the purpose of providing transportation service with respect to Shipper's cargoes ("Cargo") described on the face hereof. It is agreed that the service to be provided by Carrier and the Vessels shall be that of the private carriage of Shipper's cargoes. Shipper shall not sublet or subcharter the Vessels or any parts thereof.

B. *Whole Reach.* Shipper shall be entitled to use the entire tank space of the Barge(s), subject to capacity, loadline, safety and similar limitations, as well as all fittings, gear and equipment aboard the Barge(s) at the time of delivery to Shipper. For purposes of this Agreement, the term Vessels shall be deemed to include any substituted vessels.

C. *Documentation.* All documentation for the Cargo shall be the sole responsibility of Shipper and Carrier shall not be responsible for any consequence arising through any act or omission of Shipper in connection with the export or entry declarations in respect of the Cargo. Any penalty incurred by Carrier by reason thereof shall be reimbursed by Shipper to Carrier, and for any delay caused to the Vessels thereby, Carrier shall receive additional compensation at the rate set forth in Article 2.C, below. Neither Carrier nor the Tug's master shall be required to issue a bill of lading or a receipt of any kind for any Cargo Shipper shall cause to be loaded on the Barge(s).

2. Hire and Other Charges.

A. *Hire.* Hire for the voyage shall be fully and irrevocably earned upon commencement of the voyage, Vessels lost or not lost. Payment of Hire shall be made to Carrier as follows:

- Mobilization charge due upon delivery of the vessels
- Voyage charges due upon completion of the loading for that voyage
- Demobilization charge due prior to discharge of the last cargo

B. *Fuel and Engine Lubricants.* The hire shall include all fuel and engine lubricants used by the Tug during the towage services. Fuel prices will be based on the price quoted at www.foss.com. If the fuel price exceeds \$3.15 per gallon as measured at the start of a voyage, then the fuel price for that voyage will increase by:

- Round-Trip Voyage: US \$140 per voyage per \$0.01 increase in fuel price
- One-Way Voyage: US \$70 per voyage per 0.01 increase in fuel price

C. Demurrage Rate.

i. Shipper shall be allowed such laytime for loading/discharging cargoes as is stated on the face hereof, with such laytime to be cumulative for the entire voyage, to be utilized at Shipper's discretion between loading and discharging ports. Counting of laytime shall commence upon Carrier's informal and/or oral notice of readiness to load/discharge at the loading/discharge port/place and shall continue uninterruptedly until loading or discharge has been completed and the Vessels may depart, with such counting to be to the next full hour. Any time which Shipper requires for loading or discharging cargoes in excess of allowed laytime shall be charged to Shipper at the demurrage rate identified on the face hereof. Demurrage shall be prorated to the next full hour.

ii. Any delay in the Vessels resulting from the manner in which the Cargo have been loaded, stowed or secured, occurring while the Vessels are at the loading port, in transit or in a discharging port (other than delay for which Carrier has assumed responsibility pursuant to the paragraph immediately below) or caused by Shipper (whether from negligence or otherwise), and any delay following completion of discharging Cargo required to remove Shipper's modifications to the Vessels and restore the Vessels to their condition upon delivery and/or to effect repairs for which Shipper is liable, shall be charged to Shipper at the demurrage rate, though Shipper shall have the option of applying any unused laytime to such demurrage charges.

iii. Carrier shall be responsible for all time consumed as a result of delays in the transportation of the Cargo caused by breakdown of the Vessels or resulting from the separate and direct negligence of Carrier.

D. Cargo Handling Rate. Shipper shall be responsible for all cost, risk and expense of loading, stowage, securing, and discharging of Cargo, including, if necessary, trimming the Barge(s) ("Cargo Handling"). In the event that Shipper requests and Carrier consents to use the services of the master and/or crew of the Tug to perform Cargo Handling, Shipper shall pay Carrier for such services at the cargo handling rate set forth on the face hereof. While so employed, Carrier's crew shall be completely under the supervision, direction and control and be deemed borrowed servants of Shipper with Shipper responsible for all loss, damage, and/or liability involving the Cargo and all third party loss, damage, and/or liability caused by the Tug crew while deemed borrowed servants of Shipper, but Carrier to remain responsible for payroll, withholding, employee benefits and similar direct employment obligations.

E. Other Charges. Shipper shall be liable for the direct payment, or reimbursement to Carrier if such shall be paid by Carrier (and if paid by Carrier the actual amount paid by Carrier plus an additional charge of twenty-one percent (21%) to cover handling and administrative charges), of (i) that portion of all port charges, pilotage fees, canal fees, dockage, wharfage, harbor entrance fees, agency fees, and similar fees for services or use of facilities, and all taxes (except net income taxes) incurred or accruing as a result of or in connection with services rendered under this Agreement, (ii) all fees, taxes and dues

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levied, assessed or accruing against the Cargo or the Tow, and (iii) ramp rental charges, additional tug assistance or barge shifting costs necessitated by Shipper's instructions or directions or otherwise deemed prudent by Carrier.

F. *Payments, Interest.* Payment of the lump sum hire shall be paid as set forth in subsection A, above. All other charges hereunder shall be invoiced to Shipper every thirty (30) days.

Shipper shall make all payments to Carrier, without discount or setoff, within twenty (20) days following the date of invoice at:

Foss Maritime Company
1151 Fairview Avenue North
Seattle, WA 98109

Interest on any amounts due Carrier but which have not been paid shall accrue interest at the rate of 1.5% per month until paid in full.

3. *Carrier's Warranties and Performance.*

A. *Delivery.* The Barge(s) shall be delivered by Carrier to Shipper at the port/place and on the date/time identified on the face hereof, ready to be utilized for the contemplated service with the deck(s) clean and free of debris, unless reasons beyond Carrier's control prevent or delay the same. Carrier's informal and/or oral notice of readiness shall constitute delivery of the Barge(s) for the purposes hereunder.

B. *Warranties.* Carrier warrants that: it shall use due diligence to tender the Vessels at the starting port/place in a seaworthy condition, properly equipped, documented and with all licenses and permits routinely required for the anticipated voyage. Other than the foregoing, Carrier shall not be held to any warranty whatsoever, whether express or implied, including any absolute warranty of seaworthiness, condition, fitness or suitability for a particular purpose or workmanlike service.

C. *Performance.* Carrier shall man, victual and operate the Vessels and shall have full and exclusive control over the Vessels for the duration of the Agreement. The service provided pursuant to this Agreement shall be subject to Shipper's general directions as to Cargo, but the manner and means of performance shall be left to the judgment, discretion, direction and control of Carrier and master of the Tug at all times, and nothing herein shall be construed as a demise of the Vessels to Shipper. Carrier shall proceed and perform with due dispatch, but does not promise or warrant any particular speeds or arrival/departure times to meet any particular market or in time for any particular use. Upon Shipper's reasonable request, Carrier shall provide informal reports identifying the location of the Vessels and estimated times for arrival/departure.

D. *Liberties.* Carrier, master of the Tug and Vessels shall be at liberty to sail with or without pilots, call at any port/place to pick up fuel, oil, stores, or other necessaries and/or to make repairs, land ill or injured persons at any port/place and/or select any route, towing speed or arrangement reasonable under the circumstances. Carrier, master of the Tug and Vessels shall be at liberty to deviate from the contemplated service and/or to go to the assistance of other vessels in distress to attempt to save life or property at sea. In the event of assistance for purposes of saving life or property, Carrier and master of the Tug shall make every reasonable effort to leave the Barge(s) in a position of safety. Shipper shall have no right to share in any salvage award to Carrier. In the event of accident, danger, damage, disaster or other event occurring after departure upon the voyage which, in the opinion of Carrier or master of the Tug, prevents or may prevent the safe completion of the voyage, the Vessels may call at any port/place and cause the Cargo to be restowed, discharged and/or stored at Shipper's sole risk, cost and expense.

E. *Vessel Substitution; Delegation.* Carrier shall have the right (but not the obligation) without restriction as to number of times to substitute other vessels for the Vessels, provided the substituted vessels shall be reasonably equivalent in capacity and capability to the Vessels. Any such substitution shall not alter the terms, covenants or conditions of this Agreement. Carrier shall have the right to delegate any of its duties under this Agreement, whether by subcontract or otherwise, and to assign this Agreement to an affiliate or successor in interest, provided that no such delegation or assignment shall diminish Carrier's responsibility to Shipper.

4. *Shipper's Warranties and Performance.*

A. *Inspection and Delivery.* Shipper shall be responsible, at its expense, for inspecting the Vessels prior to or at delivery to determine the suitability of the Vessels for Shipper's Cargo and the contemplated transportation service. Shipper shall expressly inform Carrier of any deficiency or concern arising from such inspection, and the parties shall work together to cure the same. The Vessels shall be deemed accepted by Shipper "AS IS, WHERE IS" and suitable for its Cargo and the contemplated transportation service upon completion of such inspection if Carrier was not expressly informed of any deficiency/concern or upon commencement of loading of Shipper's Cargo, whichever shall first occur. Any failure to so inspect shall be at Shipper's sole risk; if no inspection is made, Shipper shall be deemed to have waived its opportunity to inspect and the Vessels shall be deemed accepted by Shipper "AS IS, WHERE IS" and suitable for its Cargo and the contemplated transportation service upon delivery as defined herein. Such delivery and acceptance shall constitute Shipper's admission that Carrier has fulfilled its obligations under subsections 3.A and 3.B, above, and thereafter Shipper shall not be entitled to make any claim whatsoever regarding any representation or warranty, express or implied, with respect to the condition of the Vessels and/or their suitability or fitness for the contemplated transportation service.

B. *Redelivery.* After service hereunder has been completed, the Vessels shall be redelivered to Carrier in the same condition as when delivered, less normal wear and tear,

at the port/place and on the date estimated on the face hereof. If service hereunder is prolonged beyond the estimated date, redelivery shall be adjusted accordingly. Any damage to the Vessels, or any of them, attributable in whole or in part to loading, stowage or discharge of Cargo or trim of the Barge(s) pursuant to the terms hereof performed or to be performed by Shipper, its agents, employees, independent contractors or representatives, shall be repaired at the sole cost, risk and expense of Shipper (and if paid by Carrier, the actual amount paid by Carrier, plus an additional charge of twenty-one percent (21%) to cover handling and administrative charges). During the period of any such repair, which by the term hereof is the responsibility of Shipper, Shipper shall be liable for demurrage and damages for detention in accordance with the terms of Article 2.C. Whenever damage to the Vessels, or either of them, is discovered by either party hereto, that fact shall be immediately conveyed to the other party and as soon thereafter as is practicable, but in any event prior to further service by the damaged vessel, the parties shall cause a survey or inspection to be conducted to determine the extent of the damage. In the event repair is the responsibility of Shipper pursuant to the terms hereof, such repair shall be undertaken immediately, subject to the terms hereof. Any such repair shall be to the satisfaction of Carrier and in compliance with good marine practices and all requirements of vessel certification, specifically, but without limitation, those pertaining to load line, American Bureau of Shipping and U.S. Coast Guard.

C. *Lawful Trade; Prohibited Cargo.* Shipper shall not request the Vessels be employed in any unlawful carriage or trade whatsoever, and Shipper shall not deliver or cause to be delivered to Carrier any cargo or substance (including, but not limited to, narcotics or other controlled substances) for carriage pursuant to this Agreement, nor shall carriage thereof be required by the terms hereof, the possession or carriage of which may result in seizure of the Vessels, or any of them, by any governmental authority or other person, firm or corporation. Shipper shall not tender for transportation hereunder nor allow transportation of any cargoes of a hazardous or dangerous nature without the advance written permission of Carrier; if allowed, additional documentation for transportation of hazardous or dangerous cargoes shall be prepared by Shipper at its sole expense. Shipper shall not deliver, or cause to be delivered, any Cargo for transportation aboard the Vessels which would be unsafe for any reason, in Carrier's reasonable judgment, to carry aboard the Vessels.

D. *Safe Berth.* Shipper warrants the safety of each loading port/place and discharging port/place and each berth at such ports/places, and the Vessels will be able to safely proceed to, lie afloat at and depart from such ports and places at all times and at all stages of tide.

E. *Mooring and Berthing.* Shipper shall be responsible for all mooring and berthing arrangements for the Vessels at all loading and discharging ports/places, as well as licenses, permits and authorizations required at such ports/places for the loading and/or discharging of Cargo.

F. *Modifications.* Shipper shall be entitled to modify the Barge(s) for the purposes of loading, securing, stowing and discharging of the Cargo. All such modifications shall be solely at Shipper's risk, cost and expense and Shipper warrants that such modifications shall not adversely affect the safety of the venture or the structural integrity or seaworthiness of the Barge(s). All modifications shall be removed by Shipper at its sole risk, cost and expense prior to redelivery of the Vessels to Carrier and the Vessels shall be returned to Carrier in the same condition as upon delivery, less ordinary wear and tear.

5. *Liability for Cargo.* Neither the Vessels nor Carrier shall be liable for any loss, shortage, mixture, marking or packing of, or damage to, Cargo, or delay in the delivery thereof, however arising or resulting, even if caused by unseaworthiness of the Vessels or the sole or contributing negligence of Carrier, or lack of due diligence of Carrier. Insurance against all risks (including, without limitation, those of loading, stowage, and discharging) for all cargo loaded on the Vessels pursuant to this Agreement shall be carried by Shipper at its expense in accordance with Article 6. No underwriter on any Cargo loaded on the Vessels shall have any claim, by subrogation, loan receipt, or otherwise, against the Vessels or Carrier, for any loss paid, regardless of the nature of the circumstances thereof, and Shipper's policies of insurance shall be endorsed accordingly.

6. *Liability, Insurance, and Indemnity.*

A. *Intent.* It is the intent of the parties that the insurances identified in this section cover all losses, damages, claims, liabilities, and/or suits incident to the services being performed hereunder, and that the parties shall look solely to such insurances, in sequence of first party insurance before third party insurance, rather than maintain claims against each other based upon negligence or fault. To that end, Shipper agrees to procure and maintain the following insurances, to promptly submit and prosecute claims against such insurances and to look solely to such insurances for recovery. The lump sum charged by Carrier is based in part upon the allocation of liability and the insuring obligations set forth in this section.

B. *Required Insurances.*

(1) *Shipper's Insurance.* Shipper shall, during the entire period of its performance under this Agreement, procure and maintain at its sole expense the following policies of insurance:

- (a) All Risk Marine Cargo Insurance (including risks of loading and discharging) on any cargo aboard the Vessels in an amount equal to its full actual delivered value, plus freight, on terms equivalent to the broadest coverage available from American underwriters, provided, any deductible or franchise shall be for the sole account of Shipper.
- (b) Worker's Compensation and United States Longshoremen's and Harbor Workers' Compensation Act Insurance sufficient to cover any statutory

liability of Shipper in consequence of this Agreement, and any activities undertaken by Shipper in connection with this Agreement wherever and whenever such activities take place.

- (c) Charterer's and Wharfinger's Legal Liability Insurance with limits of not less than \$5,000,000.
- (d) Each of the aforesaid policies shall provide for thirty (30) days' notice to Carrier of termination, cancellation or modification. Each of the aforesaid policies shall further be endorsed as primary to any insurance maintained by Carrier for the same or similar risks or liabilities and shall expressly waive subrogation against Carrier and its affiliates, any vessel used by Carrier or its affiliates in the performance of this Agreement and the master and crew of any such vessel.
- (e) The policy required by subsection (a), above, shall also name Carrier and its affiliates, any vessel used by Carrier or its affiliates in the performance of this Agreement and the master and crew of any such vessel as additional insureds.

(2) *General Insurance Provisions.* Prior to commencement of services hereunder, Shipper shall provide Carrier with certificates of insurance confirming the existence of the forgoing policies. No act, including commencing performance under this Agreement, shall constitute a waiver of compliance with this Article 6.

(3) *Failure of Insurance.* In the event that Shipper fails to procure a required insurance, an insurance policy fails for any reason (including, without limitation, a breach of condition or warranty), or an insurer otherwise refuses or is unable to pay, Shipper shall be deemed the insurer or self-insurer, shall accept and pay all claims which would otherwise be covered by the failed insurance and shall indemnify and hold harmless (including legal fees and costs) Carrier of and from any loss, damage, claim, liability, and/or suit which would have been covered by that insurance.

C. *Indemnity.* In the event the insurances identified in Article 6.B, above do not cover a given loss, damage, claim, liability, and/or suit (other than by virtue of the failure of insurance provision set forth in Article 6.B(4), above), the parties allocate all other liabilities and indemnity based upon their respective degree of legal fault. All obligations and liabilities of the parties to indemnify the other shall survive termination, cancellation or expiration of this Agreement.

7. Both to Blame Collision Clause. If any of the Vessels comes into collision or contact with another vessel or object as a result of the negligence of the other vessel and any act, neglect or default of Carrier or of the master, mariners, pilot or servants of Carrier in the navigation, management or maintenance of the Vessels, Shipper will indemnify Carrier, its officers and employees, and the Vessels against all loss or liability to the other or non-

carrying vessel or her owners or any third parties insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of Shipper or Cargo or their underwriters, paid or payable by the other non-carrying vessel or her owners or any third parties to Shipper or the owners or underwriters of the Cargo and setoff, recouped, or recovered by the other or non-carrying vessel or her owners or any third parties as part of their claim against Carrier, its officers, employees, or any of Carrier's vessels. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

8. *Force Majeure.* Neither Carrier, Shipper, the Vessels, nor their respective owners, operators, agents and charterers shall be responsible for any loss, damage, injury, death, or delay or failure in performing this Agreement, arising or resulting from acts of God, force majeure, perils of the sea, ice, error or default in the navigation or management of the vessels, saving or attempting to save life or property at sea, latent defects in the Vessels not discoverable by due diligence, public or proprietary acts of any governmental authority (whether executive, legislative, judicial or otherwise), labor disputes of whatsoever nature not attributable to a violation of law, criminal acts by third parties, war or other hostilities, acts of terrorism, riot or civil commotion, and/or any other cause arising without the actual fault and privity of a party and/or over which that party does not have control. Regardless of whether or not the same have been arranged by Carrier, Carrier shall not have any liability with respect to the services of any assisting tugs which are not owned or operated by Carrier or its affiliates.

9. *Limitation of Liability.* Carrier, the Vessels, and their owners, operators, agents and charterers shall be entitled to assert by way of limitation of or exemption from liability any principle of law or any provision of any statute or regulation of the United States, or other applicable jurisdiction, that would afford a vessel and its owners a limitation of or exemption from its liability. The provisions of any such principle of law, statute or regulation, including, without limitation, the Limitation of Liability Statutes of the United States are incorporated into this Agreement by this reference as though fully set forth in this Article. Nothing contained in this Agreement shall be construed to deprive the parties of any other right to limit their liability. This Agreement shall not be deemed a personal contract or otherwise operate to deprive Carrier or Shipper (or the owner or charterer of any substituted vessel) of any benefit allowed by any statute, regulation, or other law allowing shipowners to limit their liability, and nothing in this Agreement shall be deemed a waiver of any such benefit and/or limitation.

10. *No Consequential Damages.* Except as otherwise specifically provided for herein, neither Carrier, Shipper, the Vessels, nor any other person, entity or vessel relative to this Agreement, shall be responsible for any indirect, consequential, or special damages whatsoever, including, without limitation, extra expense, loss of profits, loss of use of property, delay or damages consequential upon loss of use, whether resulting from negligence, breach hereof, or otherwise, and even if the possibility of such is or was foreseeable by Carrier, Shipper, or any other person or entity.

11. *Extension of Benefits.* All exceptions, exemptions, defenses, immunities, limitations of liability, privileges, and conditions granted or provided by this Agreement or by any applicable statute for the benefit of Carrier or Shipper shall be extended to and for the benefit of the Vessels, and any substituted vessel as well as their respective owners, demise charterers, operators, master, officers and crew, and shall further be extended to and for the benefit of all corporations parent of, subsidiary to, affiliated with, or under the management of Carrier or Shipper, as well as their respective directors, officers, employees, and agents.

12. *Carrier's Lien.* Carrier shall have a maritime lien on all the Cargo aboard the Vessels, and all freights and sub-freights, to secure payment of any amounts due under this Agreement.

13. *General Average Preclusion.* Notwithstanding Rule B of the York-Antwerp Rules, 1994, the Vessels and Carrier and Shipper shall be deemed separate interests not engaged in a common maritime adventure. If, during the course of performance hereunder, the Vessels put into any port or place because, in the judgment of the Tug's master, it shall be necessary to put into such port or place to restow and Cargo, all resulting costs and expenses shall be for the sole account of Shipper without contribution in general average from either Carrier or the Vessels.

14. *Counterparts and Facsimile Signatures.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together will constitute the same agreement, whether or not each party executes each separate counterpart. A facsimile signature shall be deemed equivalent to an original signature.

15. *Entire Agreement, Neutral Construction and Headings.* This instrument constitutes the entire agreement between the parties with respect to the intended towage service. Neither party is relying or may rely on any written or oral collateral, prior or contemporaneous agreement, assurance, representation or warranty not set forth in this instrument. No modification of this instrument shall be implied in law, equity or admiralty, nor shall any express modification be effective unless in writing signed by the party to be charged. This Agreement shall be construed neutrally, and as the commemoration of the mutual assent of both parties rather than for or against either party. Captions used in this Agreement are for convenience of reference only and shall have no force or effect or legal meaning in the construction or enforcement of this Agreement.

16. *Notices.* All notices and communications required by the terms of this Agreement from Carrier to Shipper and from Shipper to Carrier shall be made in writing and addressed to the respective address of the other party as set forth on the face hereof or such other address of which the party seeking to give notice has been advised in writing. All such notices and communications shall be deemed delivered upon receipt either by delivery in person, three days after deposit with the U.S. Postal Service, or upon

completion of transmission of facsimile to the facsimile phone number shown of the face hereof.

17. Governing Law and Jurisdiction. This Agreement and services hereunder shall be governed by the general maritime law of the United States, insofar as applicable, otherwise by the laws of the state of Washington.

With respect to any litigation arising out of this Agreement or out of the performance hereunder, the parties hereby submit to the exclusive jurisdiction of the United States District Court located in Seattle, Washington.

The substantially prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs. If any term or provision, or any part of any term or provision, of this Agreement is held by any court or other competent authority to be illegal or unenforceable, the remaining terms, provisions, rights and obligations shall not be affected.

CARRIER: Foss Maritime Company

SHIPPER: Humboldt Bay Harbor
District

Signature

Signature

By: _____
Printed Name

By: _____
Printed Name

Its: _____
Title

Its: _____
Title

Date: _____

Date: _____

AGENDA REPORT

For Agenda of: February 13, 2014

Title: Consideration of terminating the South Bay Marina Tide and Submerged Lands lease between the District and the Estate of G.A. Hunter

Place on Agenda: New Business

Summary of the Issue: Dennis Hunter has requested the termination of the South Bay Marina Tide and Submerged Lands Lease in Fields Landing. The Hunters have not used the lease area for many years, and recently sold the adjacent shoreline property. The new buyer has expressed no interest in the lease.

The lease allows the Lessee to terminate at will, and provides that the District has the option to require the Lessee to return the lease to original conditions upon termination. The only structures in the lease area currently are 7 pilings that used to support a dock.

Staff feels that it makes the most sense to leave the pilings in place rather than require the Lessee to remove them. They could be useful to an aquaculture tenant in their current state, they could be removed as a mitigation component of another project, or they could be rebuilt if a new dock is warranted at the site. Removal now would make it harder to rebuild them in the future. Staff is not proposing any charge to the Lessee for leaving the pilings in place.

The Lessee is current on the lease payments.

Fiscal Impacts: The lease rate is currently approximately \$7,000/yr, and that income to the District will be lost unless a new Lessee is found.

Staff recommendation:

Staff recommends the Board of Commissioners terminate the South Bay Marina Tide and Submerged Lands lease between the District and the Estate of G.A. Hunter, per the request of the Lessee.

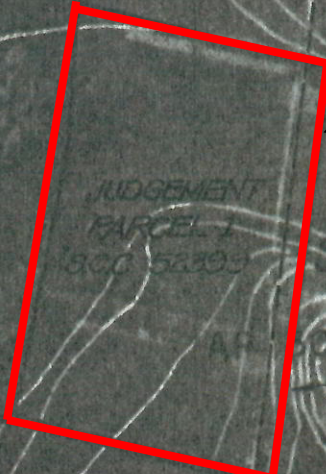
PLAT OF A REEF BOUNDARY

AP 305-201-01

ADJUSTED WEST LINE OF TIDELAND SURVEY
NO 101 PER WINZLER & KELLY CONSULTING EN

WL

SOUTH BAY MARINA TIDELAND LEASE BOUNDARIES



JUDGEMENT
PARCEL 1
SCC 52395

SOUTH BAY MARINA
250 OR 21

AP 305-201-03
WEST LINE TLS 101
PER SCC 52395

WEST LINE TLS 101
PER SURVEYS
TO NE 30E
245

BOUNDARY LINE

LEASE
WL 122 AREA 4 568

305-201-04
VITA-SEA CORP
245 OR 587

AL ROCCA
284 OR 328

BK 284 DEEDS
FG 328

TLS 101
TLS 90

SOUTH LINE OF
TIDELAND SURVEY NO 101
PORTION OF 245 OR 587

AP 305-201-06
S.W. CORNER TIDELANDS
SURVEY # 101

A.P 305-201-07

NOTE:

THIS EXHIBIT IS FOR
REFERENCE PURPOSES
ONLY

RAILROAD AVE

POCKET # 47 FOLDER # 1