

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is by and between the City of Richmond, California, and the City Council of the City of Richmond (collectively, the “City”), on the one hand, and Levin Richmond Terminal Corporation, Richmond Pacific Railroad Corporation, and Levin Enterprises, Inc. (collectively, “Levin”); Wolverine Fuels Sales, LLC (“Wolverine”); Phillips 66 Company (“Phillips 66”); and the State of Utah (“Utah”), on the other hand. The City, Levin, Wolverine, Phillips 66 and Utah are collectively referred to as the “Parties,” and individually as a “Party,” to this Agreement.

RECITALS

WHEREAS, on February 4, 2020, the City approved an ordinance prohibiting the storage and handling of coal and petroleum coke (“petcoke”) within the City, effective March 5, 2020, and providing a 3-year “amortization period” for continued storage and handling of coal and petcoke at existing facilities. Ordinance No. 05-20 N.S., Richmond Municipal Code (“RMC”) Article 15.04.615, also amending RMC Section 15.04.104.010 (“Ordinance”).

WHEREAS, Levin owns and operates a marine terminal (“Terminal”) and related rail services in the City of Richmond that includes storage and handling of coal and petcoke.

WHEREAS, the Terminal was, at the time of adoption of the Ordinance, and is the only known existing facility in the City of Richmond that stores and handles coal and petcoke.

WHEREAS, the coal stored and handled by Levin is received by rail from Wolverine in Utah.

WHEREAS, the petcoke stored and handled by Levin is received by truck from Phillips 66 in Rodeo, California.

WHEREAS, on March 4, 2020, Levin filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Northern District of California alleging that the Ordinance violates constitutional protections and is federally preempted. *Levin Richmond Terminal Corporation, et al., v. City of Richmond, et al.*, Case. No. 3:20-cv-01609-YGR.

WHEREAS, on March 4, 2020, Wolverine filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Northern District of California alleging that the Ordinance violates constitutional protections and is federally preempted. *Wolverine Fuels Sales, LLC, v. City of Richmond, et al.*, Case. No. 3:20-cv-01614-YGR.

WHEREAS, on March 6, 2020, Phillips 66 filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Northern District of California alleging that the Ordinance violates constitutional protections. *Phillips 66 Company v. City of Richmond, et al.*, Case. No. 3:20-cv-01643-YGR.

WHEREAS, on March 4, 2020, Levin filed a Verified Petition for a Writ of Mandate in the California Superior Court for the County of Contra Costa alleging that the Ordinance violates the California Environmental Quality Act (“CEQA”), is an arbitrary and capricious exercise of

police power, and constitutes impermissible spot zoning. *Levin Richmond Terminal Corporation, et al., v. City of Richmond, et al.*, Superior Court Case No. N20-0464.

WHEREAS, on March 6, 2020, Phillips 66 filed a Verified Petition for a Writ of Mandate in the California Superior Court for the County of Contra Costa alleging that the Ordinance violates CEQA and is an arbitrary and capricious exercise of police power. *Phillips 66 Company, v. City of Richmond, et al.*, Superior Court Case No. N20-0460.

WHEREAS, on August 27, 2020, the United States District Court for the Northern District of California (1) granted in part and denied in part the City's motions to dismiss the complaints filed by Levin, Wolverine and Phillips 66, and (2) granted Sierra Club and Baykeeper limited intervention in the litigation brought by Levin, Wolverine, and Phillips 66 relating to the Ordinance.

WHEREAS, on November 25, 2020, the United States District Court for the Northern District of California provisionally granted Utah's motion to file a complaint in intervention in the litigation brought by Levin, Wolverine, and Phillips 66, which complaint was deemed filed, alleging that the Ordinance violates constitutional protections.

WHEREAS, on December 24, 2020, the Superior Court for the County of Contra Costa entered Orders in Case Nos. N20-0464 and N20-0460 denying the petitions for writ of mandate.

WHEREAS, on January 22, 2021, Levin filed a Notice of Appeal of Case No. N20-0464. *Levin Richmond Terminal Corporation, et al. v. City of Richmond, et al.*, Court of Appeal Case No. A162086.

WHEREAS, the federal and state court lawsuits described above are collectively referred to herein as "the Litigation."

WHEREAS, the City disputes each of the claims brought by Levin, Wolverine, Phillips 66, and Utah in the Litigation.

WHEREAS, on February 22, 2021, the City, Levin and Wolverine participated in a mediation before the Honorable Elizabeth D. Laporte (retired) and engaged in subsequent settlement discussions.

WHEREAS, in connection with the settlement discussions, City's representatives, including certain City Councilmembers, have observed operations at the Terminal, and the City Council has discussed the proposed settlement in closed session.

WHEREAS, the Parties enter into this Agreement to resolve all pending claims discussed in these Recitals, to provide additional time to facilitate a transition to storage and handling of other commodities at the Terminal, and to require implementation of additional, interim dust control measures at the Terminal and for shipment of coal to the Terminal, without the time, expense and uncertainty of further litigation.

WHEREAS, implementation of the dust control measures contemplated under this Agreement would address the City's concerns by providing significant additional environmental

protections than are required under the Ordinance, and would eliminate the uncertainty of the results of the Litigation—including the potential that the Ordinance could be enjoined or invalidated—by establishing a date certain for discontinuation of coal and petcoke storage and handling at the Terminal.

WHEREAS, the Parties understand that the amendment to the Ordinance contemplated by this Agreement is subject to discretionary approval by the City Council of the City of Richmond (“City Council”) following a public hearing, and that this Agreement will be subject to a request for continuing jurisdiction of the United States District Court for the Northern District of California to ensure implementation and enforcement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and promises set forth in this Agreement, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree to each of the following conditions and terms:

A. Proposed Amendment to Ordinance

Within sixty (60) days of the Effective Date of this Agreement, unless the Parties agree in a signed writing to extend this time, City staff shall present to the Richmond Planning Commission for its consideration an amendment to the Ordinance, as set forth in sub-section A.1 below (“Proposed Amendment”). Within forty-five (45) days after the Planning Commission’s consideration of the Proposed Amendment, unless the Parties agree in a signed writing to extend this time, City staff shall present the Proposed Amendment to the City Council for its consideration.

1. Amortization Period for Existing Facilities

The Proposed Amendment shall consist of the following revisions to the Ordinance:

(a) RMC Section 15.04.615.050.C:

Except as otherwise provided in this Section, all nonconforming land uses shall be discontinued by December 31, 2026 ~~within three years after the effective date.~~
The ~~three-year~~ period from the March 5, 2020 after the effective date of Ordinance No. 05-20 N.S. through December 31, 2026, shall be referred to as the “amortization period.”

(b) RMC Section 15.04.615.010.B:

This article bans the establishment and/or expansion of storage and handling of coal and/or petroleum coke throughout the City of Richmond, with certain exceptions. The Article also phases out existing allowed uses of land involving the storage and handling of coal and petroleum coke, by providing an ~~three-year~~ amortization period for such existing allowed uses to transition to other lawful uses and materials. This amortization period is intended to strike a proper balance

between protecting the public from the health hazards of coal and petroleum coke storage and handling, while also protecting existing jobs and providing sufficient time for businesses to transition.

2. Procedure for Adoption of Proposed Amendment

(a) City staff shall recommend that (a) the City Planning Commission consider and recommend adoption of, and (b) the City Council consider and adopt an amendment to the Ordinance that enacts, and is limited to, the Proposed Amendment exactly as set forth in subsection A.1 above. The Parties acknowledge the City Council's discretion to approve, disapprove, or modify the Proposed Amendment, and that nothing in this Agreement shall be construed to limit that discretion.

(b) If the City Council does not approve the Proposed Amendment by February 28, 2022, or disapproves or modifies the Proposed Amendment, then this Agreement shall terminate and be null and void.

(c) If the City Council approves the Proposed Amendment at a first and second reading by February 28, 2022, thereby adopting the Proposed Amendment exactly as set forth in section A.1 above, then the Parties shall proceed with performance of this Agreement.

(d) If the City approves the Proposed Amendment as set forth in Section A.2(c) above, the City shall within five (5) working days thereafter file any notice required or permitted under Public Resources Code section 21152.

B. Facilitation of Transition to Other Commodities

During the amortization period set forth in the Proposed Amendment, and for a period of three (3) years thereafter, the City shall process, promptly and in good faith, any application for review of a permit or other approval necessary to transition to storage and handling of commodities other than coal and petcoke at the Terminal, unless the City determines, based on applicable zoning and/or substantial evidence, that storage and handling of the proposed alternative commodities would be unlawful, non-conforming, or harmful to public health in the City of Richmond.

C. Implementation of Additional Dust Control Measures

During the amortization period set forth in the Proposed Amendment, and subject to the terms and conditions of this Agreement, Levin, Wolverine and Phillips 66 agree to their respective dust control measures set forth below and in Exhibits A, B and C hereto, for coal and petcoke shipments to the Terminal and storage and handling of coal and petcoke at the Terminal.

1. Subject to the terms and conditions of this Agreement, Levin shall implement the additional dust control measures for coal and petcoke operations at the Terminal set forth in Exhibit A hereto, and shall maintain all such additional dust control measures for coal and petcoke operations at the Terminal through December 31, 2026.

(a) Promptly following the City's adoption of the Proposed Amendment, Levin shall apply to the City for the necessary building permit and design review approvals ("Applications") to construct (i) the canopy over the rail unloading facility conveyors, and (ii) the wind fences for stockpiles, as provided in Sections A.2 and A.3 of Exhibit A hereto. Levin shall thereafter promptly and in good faith respond to any requests by the City for additional information necessary to process the Applications.

(b) The City shall process Levin's Applications promptly and in good faith.

(c) Levin shall complete construction of the canopy within six (6) months of when the City approves the Application(s) for the canopy; and Levin shall complete construction of the wind fences within six (6) months of when the City approves the Application(s) for the wind fences.

(d) In the event that either Levin or the City contends that the other Party has failed to act promptly or in good faith with respect to the Applications, that Party may invoke the dispute resolution provisions of Section H, below. In the event that Levin contends that the City's approval of the canopy or wind fences substantially differs from what Levin has proposed, Levin may invoke the dispute resolution provisions of Section H, below.

(e) The six (6) month periods specified in Section C.1(c) above shall be tolled during the pendency of any dispute resolution proceedings and any resulting litigation under Section H, below.

2. Subject to the terms and conditions of this Agreement, Levin shall continue to maintain the existing dust control measures for coal and petcoke handling and storage at the Terminal set forth in Exhibit A hereto through December 31, 2026. Levin shall have no responsibility under this Agreement for any dust control measures except those identified in Exhibit A.

3. As further described in Exhibit B, Wolverine has represented that it currently applies Crown PDC 8020 binding agent, as a process dust control measure, to coal as it is being loaded into rail cars in Utah ("Existing Dust Control Measure"). Subject to the terms and conditions of this Agreement: (a) Wolverine shall continue its Existing Dust Control Measure, or an equally effective process dust control binding agent, for all coal shipments to the Terminal through December 31, 2026; and (b) within one (1) month of the City's Adoption of the Proposed Amendment and continuing through December 31, 2026, Wolverine shall also apply Crown PDC 8020, or an equally effective process dust control binding agent, to blanket the top of each rail car transporting coal to the Terminal, as further described in Exhibit B. Wolverine shall have no responsibility under this Agreement for any dust control measures except those identified in Exhibit B.

4. As further described in Exhibit C, Phillips 66 has represented that it currently applies a dust suppressant/binding agent to petcoke while it is being loaded in each truck, and tarps each truck, prior to shipment of petcoke from Rodeo for delivery to the Terminal ("Existing PetCoke Dust Control Measures"). Subject to the terms and conditions of this Agreement, Phillips 66 shall continue to apply its Existing PetCoke Dust Control Measures, as set forth in

Exhibit C, through December 31, 2026. Phillips 66 shall have no responsibility under this Agreement for any dust control measures except those identified in Exhibit C.

5. In the event that the City adopts the Proposed Amendment but later modifies the Proposed Amendment or the Ordinance prior to December 31, 2026 in a manner that either (1) shortens the duration of the amortization period or (2) imposes additional restrictions on the storage and handling of coal and petcoke at the Terminal, then Levin, Wolverine and/or Phillips 66 may, in their sole discretion, elect to terminate this Agreement by providing Notice of such election to the City pursuant to Section I. Upon such election, this Agreement shall be null and void, and Levin, Wolverine and/or Phillips 66 may proceed with the Litigation (in the event that it has not yet been dismissed with prejudice) and/or initiate new litigation challenging such actions by the City. If either Levin, Wolverine or Phillips 66 elects to terminate the Agreement, then the Agreement shall terminate as to all Parties, and the Parties shall have no further obligations under the Agreement.

6. During the amortization period and for a period of twelve (12) months thereafter, the City shall have the right, but not the obligation, to inspect the Terminal, pursuant to the Inspection Protocol attached hereto as Exhibit D, in order to assess compliance with this Agreement. The City may conduct such inspections up to three (3) times per calendar year during the amortization period and one (1) time during the twelve (12) month period thereafter.

D. Dismissal of Litigation

1. Subject to the City's adoption of the Proposed Amendment, Levin, Wolverine, Phillips 66 and Utah shall file requests for dismissal with prejudice of their respective complaints in the United States District Court for the Northern District of California within thirty (30) days after the expiration of the ninety (90) day limitations period for challenges to the City Council's adoption of the Proposed Amendment under Government Code section 65009(c); provided, however, that there is no litigation filed challenging the City Council's adoption of the Proposed Amendment ("Third Party Challenge") within that ninety (90) day limitations period. In the event of any Third Party Challenge, then the Parties shall proceed as set forth in Section E, below.

2. Subject to the City's adoption of the Proposed Amendment, Levin shall file a request for dismissal of the appeal in its State Court CEQA action within thirty (30) days after the expiration of the ninety (90) day limitations period for challenges to the City Council's adoption of the Proposed Amendment under Government Code section 65009(c); provided, however, that there is no Third Party Challenge within that ninety (90) day limitations period. In the event of any Third Party Challenge, then the Parties shall proceed as set forth in Section E, below.

3. In the event the City Council finds the Proposed Amendment to be exempt from CEQA but the City fails to file a notice of exemption ("NOE") as provided herein, the dismissals under Sections D.1 and D.2 above shall occur within thirty (30) days after the expiration of the one-hundred eighty (180) day limitations period for challenges to the City Council's adoption of the Proposed Amendment under Public Resources Code Section 21167(a); provided, however, that there is no Third Party Challenge filed within that one-hundred eighty (180) day limitations

period. In the event of any Third Party Challenge, then the Parties shall proceed as set forth in Section E, below.

4. In the event the City Council does not find the Proposed Amendment to be exempt from CEQA, this Agreement shall terminate and be null and void.

E. Third Party Challenge

1. “Third Party Challenge,” as used in this Agreement, shall mean a timely filed action, by any person or entity that is not a Party to this Agreement, seeking judicial review of the City Council’s adoption of the Proposed Amendment.

2. In the event of a Third Party Challenge to the City Council’s adoption of the Proposed Amendment, the Litigation shall not be dismissed during the pendency of the Third Party Challenge, and the Parties agree to file a joint request that the Litigation be stayed pending the outcome of any such Third Party Challenge, and to cooperate in good faith in defending the Proposed Amendment against any such Third Party Challenge.

3. In the event that the federal and state courts grant the stays requested in the Litigation pursuant to Section E.2 above, and a final judgment is entered in the City’s favor upholding the Proposed Amendment in any Third Party Challenge(s), then Levin, Wolverine, Phillips 66 and Utah shall file requests for dismissal of the Litigation within thirty (30) days after the latter of the following: (a) the expiration of the time period to appeal such judgment in the Third Party Challenge(s); or (b) the issuance of a remittitur following any appeal in which the Proposed Amendment is upheld in the Third Party Challenge.

4. In the event the federal or state court declines to issue any stay requested pursuant to paragraph E.2 above, then Levin, Wolverine and/or Phillips 66 may, in their sole discretion, elect to terminate this Agreement and proceed with the Litigation by providing Notice to the City of such election pursuant to Section I below. Prior to making any such election, the parties shall meet and confer pursuant to Section H below to discuss in good faith whether the purposes of this Agreement can still be achieved in the absence of a stay. If either Levin, Wolverine or Phillips 66 elects to terminate the Agreement, then the Agreement shall terminate as to all Parties and the City shall have no further obligations under the Agreement.

5. The City shall defend the Proposed Amendment against any Third Party Challenge, at the direction of the City Attorney’s Office and the City Council, consistent with the City Charter and the purposes of this Agreement. Levin and/or Wolverine may join the City, as real parties in interest and/or by motion to intervene, in defending the City’s adoption of the Proposed Amendment against any Third Party Challenge. Levin shall indemnify and hold harmless the City from and against any Third Party Challenge, including, but not limited to, any claims brought against the City or any of its agents, officers, officials, or employees to attack, set aside, void, or annul the City’s actions or omissions related to the Proposed Amendments and/or their adoption. This indemnification shall include, but not be limited to, damages, attorneys’ fees, and/or costs awarded against the City, if any, and the City’s costs of suit, reasonable attorneys’ fees, and other costs, liabilities, and expenses incurred in connection with such proceeding. Upon commencement of any such Third Party Challenge to the Proposed

Amendment, the City and Levin shall meet in good faith to establish a mutually acceptable method of defending such action.

6. The Parties agree that the Proposed Amendment, extending the amortization through December 31, 2026, shall not be affected by the pendency of any Third Party Challenge, unless a court of competent jurisdiction expressly orders otherwise.

7. In the event that a court of competent jurisdiction enjoins, sets aside, or invalidates the City's adoption of the Proposed Amendment in response to a Third Party Challenge, then (1) Levin, Wolverine and Phillips 66 shall be relieved of any further obligations to comply with their respective dust control measures set forth in Section C above, pending final judgment and issuance of the remittitur on any appeal; and (2) Levin, Wolverine and/or Phillips 66 may, in their sole discretion, elect to terminate this Agreement and proceed with the Litigation or initiate new litigation by providing Notice to the City of such election pursuant to Section I below.

F. Compliance with Ordinance and Waiver of Extension of Amortization Period

Subject to the terms and conditions of this Agreement, Levin agrees to comply with all provisions of the Ordinance as modified by the Proposed Amendment. In amplification of the foregoing, and subject to the terms and conditions of this Agreement, Levin expressly agrees that, no later than December 31, 2026, Levin shall cease all storage and handling of coal and petcoke at the Terminal and shall not thereafter store or handle any coal or petcoke at the Terminal. Subject to the terms and conditions of this Agreement, Levin further agrees not to request or seek, and waives any right to request or seek, an extension of the amortization period under RMC Section 15.04.615.050 or any other provision of law.

G. Non-opposition to Ordinance as Modified by Proposed Amendment

Subject to the terms and conditions of this Agreement, Levin, Wolverine, Phillips 66 and Utah ("Plaintiffs") agree not to file any litigation challenging the City's adoption of the Proposed Amendment or implementation or enforcement of the Ordinance as modified by the Proposed Amendment. Except as provided for continuation of the Litigation or initiation of litigation in Sections C.5, D, E and H of this Agreement, Plaintiffs each waive any and all claims that were or could have been brought as part of the Litigation.

Subject to the terms and conditions of this Agreement, the Parties agree not to support, encourage, or assist, either directly or indirectly, any Third Party Challenge to the City's adoption of the Proposed Amendment, or implementation or enforcement of the Ordinance as modified by the Proposed Amendment.

Notwithstanding anything in the foregoing paragraph, in the event that a Third Party Challenge is filed, Plaintiffs may continue the Litigation or initiate new litigation, subject to Sections C.5, D, E and H of this Agreement.

H. Continuing Jurisdiction of the Court and Dispute Resolution

Within thirty (30) days of the Effective Date of this Agreement, the Parties shall jointly request that the Honorable Yvonne Gonzalez Rogers, United States District Court Judge for the Northern District of California, maintain continuing jurisdiction of the Court over the pending federal litigation relating to the Ordinance and the matters relating to this Agreement and the Proposed Amendment, to and including resolution of any motion filed prior to March 31, 2027 to enforce the Ordinance as modified by the Proposed Amendment and the rights and obligations of the Parties to this Agreement.

If a dispute arises between the Parties under this Agreement, or any Party alleges a breach of this Agreement, the Parties shall meet and confer within ten (10) business days after one Party provides written notification to another Party of the grounds for the dispute or the nature of the alleged breach. At the meet and confer, the Parties shall attempt in good faith to resolve the dispute or the alleged breach without the need for court intervention. If such dispute(s) cannot be resolved through the meet and confer process, any party may file a motion to enforce the Agreement in the federal litigation or, if the alleged breach occurs after the federal litigation has terminated, by filing a new action. Venue for any such action that is filed prior to March 31, 2027, shall be in the United States District Court of the Northern District of California, as provided above. Venue for any such action that is filed after March 31, 2027 shall be in the Superior Court for the County of Contra Costa.

I. Notices

Any notice relating to this Agreement shall be sent by the noticing Party, both by email and by First Class mail, to the applicable address(es) of the noticed Party or Parties and their attorney(s) below. Each Party shall give notice in writing to the other Parties of a change in Party representative to whom, or change of address to which, notices should be sent.

For the City:

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City Attorney
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Equipment and Environment
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For Phillips 66:

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Telephone: (510) 245-4415

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For Utah:

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Utah Assistant Attorney General
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Salt Lake City, UT 84114-2477
E-mail: arampton@agutah.gov
Telephone: (801) 537-9819

J. General Provisions

1. Attorneys' Fees. Each Party shall bear its own attorneys' fees and costs incurred in connection with the Litigation, mediation and settlement proceedings relating to the Ordinance. In any future dispute arising out of or related to the enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

2. Retention of Rights. Other than as expressly set forth in this Agreement, the Parties retain all rights under existing law.

3. Parties' Acknowledgment of Terms. Each Party hereby represents that it has carefully and fully read and reviewed this Agreement and that it has had an opportunity to consult with its respective counsel, and hereby represents that the contents of this Agreement are understood and accepted.

4. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law.

5. Assignment. All the rights, duties and obligations set forth in this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns.

6. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one original agreement. Telecopy, electronic, and/or facsimile copies of original signatures shall be deemed to be originally executed counterparts of this Agreement.

7. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

8. Entire Agreement In Writing. This is an integrated agreement. This Agreement, including Exhibits A through D to this Agreement, constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

9. Modification or Amendment. This Agreement and each of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

10. No Representations or Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. Except as otherwise expressly set forth in this Agreement, no Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

11. Negotiated Agreement. The Parties acknowledge they have negotiated this Agreement and agree that the terms shall not be construed against the Party preparing it, but instead shall be construed as if the Parties jointly prepared this Agreement. Any uncertainty or ambiguity shall not be interpreted against any one Party.

12. Authority. Each of the persons signing this Agreement on behalf of a Party represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the Party and to bind it to all the terms of this Agreement.

13. Agreement Admissible. The Parties agree this Agreement is admissible in any action to enforce the Agreement.

14. No Admission. This Agreement and its terms and conditions, and any proceedings under this Agreement, are for settlement of disputed claims and are not intended to be, and shall not in any event be construed or deemed to be, an admission or concession on the part of the Parties, or any of them, of any liability or wrongdoing whatsoever. By agreeing to the language of the Proposed Amendment and the terms and conditions of this Agreement, neither Levin, Wolverine nor Phillips 66 agrees, admits or concedes that coal or petcoke transport, storage and/or handling pose any health hazards. Neither this Agreement nor any negotiations or proceedings in pursuance of this Agreement shall be offered or received in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of the Parties, or any of them, or anyone acting on their respective behalves.

15. Effective Date. Subject to and following City Council approval, the Effective Date of this Agreement shall be the last date of signature of the persons authorized to sign on behalf of each respective Party below, pursuant to Section J.12 herein.

IN WITNESS, WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

CITY OF RICHMOND and CITY COUNCIL OF THE
CITY OF RICHMOND

Date: 11/12/21

By: 

Laura Snideman
City Manager

LEVIN RICHMOND TERMINAL CORPORATION,
RICHMOND PACIFIC RAILROAD CORPORATION,
and LEVIN ENTERPRISES, INC.

Date:

By: _____
Chris Schaeffer
Chief Financial Officer
WOLVERINE FUELS SALES, LLC

Date:

By: _____
Name: _____
Title: _____
PHILLIPS 66 COMPANY

Date:

By: _____
Rich Harbison
Vice President, San Francisco Refinery
STATE OF UTAH

Date:

By: _____
Brian Steed, Executive Director
Department of Natural Resources

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CITY OF RICHMOND and CITY COUNCIL OF THE
CITY OF RICHMOND

Date:

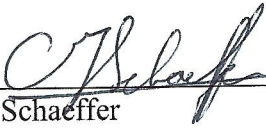
By:

Laura Snideman
City Manager

LEVIN RICHMOND TERMINAL CORPORATION,
RICHMOND PACIFIC RAILROAD CORPORATION,
and LEVIN ENTERPRISES, INC.

Date: 11/10/2021

By:


Chris Schaeffer
Chief Financial Officer

WOLVERINE FUELS SALES, LLC

Date:

By:

Name: _____

Title: _____

PHILLIPS 66 COMPANY

Date:

By:

Rich Harbison
Vice President, San Francisco Refinery
STATE OF UTAH

Date:

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Brian Steed, Executive Director
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RICHMOND PACIFIC RAILROAD CORPORATION,
and LEVIN ENTERPRISES, INC.

Date:

By:

Chris Schaeffer
Chief Financial Officer

WOLVERINE FUELS SALES, LLC

Date: 11/5/21

By:



Name: Brian S. Settles

Title: Chief Administrative officer

PHILLIPS 66 COMPANY

Date:

By:

Rich Harbison
Vice President, San Francisco Refinery
STATE OF UTAH

Date:

By:

Brian Steed, Executive Director
Department of Natural Resources

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LEVIN RICHMOND TERMINAL CORPORATION,
RICHMOND PACIFIC RAILROAD CORPORATION,
and LEVIN ENTERPRISES, INC.

Date:

By:

Chris Schaeffer
Chief Financial Officer

WOLVERINE FUELS SALES, LLC

Date:

By:

Name: _____

Title: _____

PHILLIPS 66 COMPANY

Date:

11/10/2021

By:

Rich Harbison

Vice President, San Francisco Refinery

STATE OF UTAH

Date:

By:

Brian Steed, Executive Director
Department of Natural Resources

IN WITNESS, WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

CITY OF RICHMOND and CITY COUNCIL OF THE
CITY OF RICHMOND

Date:

By: _____

Laura Snideman
City Manager

LEVIN RICHMOND TERMINAL CORPORATION,
RICHMOND PACIFIC RAILROAD CORPORATION,
and LEVIN ENTERPRISES, INC.

Date:

By: _____

Chris Schaeffer
Chief Financial Officer

WOLVERINE FUELS SALES, LLC

Date:

By: _____

Name: _____

Title: _____

PHILLIPS 66 COMPANY

Date:

By: _____

Rich Harbison
Vice President, San Francisco Refinery

STATE OF UTAH

Date: 11/9/21

By:  _____

Brian Steed, Executive Director
Department of Natural Resources

APPROVED AS TO FORM:

SHUTE MIHALY & WEINBERGER LLP

Date: November 9, 2021

By:

Robert S. Perlmutter
Counsel for the City of Richmond and
the City Council of the City of Richmond
CITY ATTORNEY, CITY OF RICHMOND

Date: November 19, 2021

By:

Teresa L. Stricker, City Attorney
Counsel for the City of Richmond and
the City Council of the City of Richmond
FARELLA BRAUN + MARTEL LLP

Date:

By:

R. Christopher Locke
Counsel for Levin Richmond Terminal Corporation,
Richmond Pacific Railroad Corporation, and Levin
Enterprises, Inc.
BARG COFFIN LEWIS & TRAPP, LLP

Date:

By:

John F. Barg
Counsel for Wolverine Fuels Sales, LLC
PILLSBURY WINTHROP SHAW PITTMAN LLP

Date:

By:

Ronald Van Buskirk
Counsel for Phillips 66 Company
ATTORNEY GENERAL, STATE OF UTAH

Date:

By:

Anthony Rampton
Assistant Attorney General
Counsel for State of Utah

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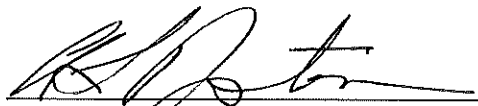
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Counsel for Phillips 66 Company
ATTORNEY GENERAL, STATE OF UTAH

Date:

11/10/2021

By:


Anthony Rampton
Assistant Attorney General
Counsel for State of Utah

**EXHIBIT A – SETTLEMENT AGREEMENT
LEVIN RICHMOND TERMINAL DUST CONTROL MEASURES**

During the amortization period set forth in the Proposed Amendment, and subject to the terms and conditions of the Settlement Agreement, Levin agrees to continue existing dust control measures, and implement the additional dust control measures set forth herein, for storage and handling of coal and petcoke at the Terminal.

A. Subject to the City's adoption of the Proposed Amendment, and subject further to the terms and conditions of the Settlement Agreement, Levin shall implement the following additional dust control measures for coal and petcoke operations at the Terminal, and shall maintain such additional dust control measures for coal and petcoke operations at the Terminal through December 31, 2026:

1. Direct transloading of coal: Commencing upon the City's adoption of the Proposed Amendment, when coal train deliveries and vessel arrivals reasonably permit, Levin shall transfer coal directly from the rail unloading facility via conveyor and shiploader into the holds of receiving vessels. At all other times, Levin shall temporarily store coal in a stockpile in accordance with the terms and conditions set forth below.

2. Canopy over rail unloading facility conveyors: Within thirty (30) days of the City's adoption of the Proposed Amendment, Levin shall apply for the necessary building permit and design review approvals to cover and enclose the four conveyors on the east side of the rail unloading facility on the north, east and south sides by gray fabric designed for wind speed and dust reduction fitted over a tubular steel/z-bar truss structure. For illustrative purposes, a conceptual drawing of this canopy is attached to this Exhibit A as Attachment 1.

3. Wind fences for stockpiles: Within thirty (30) days of the City's adoption of the Proposed Amendment, Levin shall apply for the necessary building permit and design review approvals to install and maintain wind fences, consisting of a six (6) foot high chain link fence covered with gray wind reduction fabric along the northern portions of existing stockpile wind buffer containers. For illustrative purposes, a photograph of an installed section of wind fence is attached to this Exhibit A as Attachment 2.

4. Conveyor scraper maintenance: Commencing upon the City's adoption of the Proposed Amendment, Levin shall (1) implement and/or maintain scrapers at the point of return of each conveyor segment used to handle coal; and (2) remove material that has accumulated below the scrapers after completion of each ship loading event.

5. Supplemental conveyor area sweeping: Commencing within four (4) months of the City's adoption of the Proposed Amendment, Levin shall supplement existing mechanical and manual sweeping with additional sweeping, as needed, for any accumulated coal beneath each conveyor segment no later than 24 hours after completion of each ship loading event. Levin shall continue to comply with all BAAQMD regulations applicable to the Terminal and shall make its BAAQMD Bulk Material Site

Monitoring reports (Regulations 6-1 and 6-6) available to the City for inspection as set forth in the Inspection Protocol attached to the Settlement Agreement as Exhibit D.

6. Petcoke cell wind buffers: Commencing within six (6) months of the City's adoption of the Proposed Amendment, Levin shall increase the height of the top of the two sides of the petcoke conveyor cells that are positioned perpendicular to the vessel to be twelve (12) feet above ground surface.

7. Additional water misters for stockpiles:

(a) Commencing within six (6) months of the City's adoption of the Proposed Amendment, a minimum of 50 high pressure MicroCool (or equivalent) water misters shall be fitted and maintained along of the top of, and/or spanning across, the existing coal stockpile wind buffer containers.

(b) Commencing within six (6) months of the City's adoption of the Proposed Amendment, a minimum of 50 high pressure MicroCool (or equivalent) water misters shall be fitted and maintained along the top of, and/or spanning across, the existing petcoke stockpile wind buffer containers.

8. Additional water misters in rail car unloading facility: Commencing within six (6) months of the City's adoption of the Proposed Amendment, a minimum of 45 additional high pressure MicroCool (or equivalent) water misters shall be fitted and maintained within the existing rail car unloading facility.

9. Procedures for mister operation during business operations: Levin shall implement and maintain the following procedures for operation of water misters:

(a) Water misters in the rail car unloading facility shall be operated continuously during unloading of coal from rail cars;

(b) Except during rain events, water misters at conveyor transfer points shall be operated continuously during movement of coal or petcoke on conveyors;

(c) Except during rain events, water misters at stockpiles shall be operated continuously during movement of coal or petcoke from stockpiles to conveyors or vessels;

(d) Except during rain events, water misters at stockpiles shall be operated during business operations when the 30-minute average wind speed exceeds 18 miles per hour, as measured at the Terminal's meteorological station;

(e) Terminal personnel shall observe water misters during operation and shall promptly repair or replace any misters that appear to be clogged or otherwise not functioning properly; and

(f) “Rain events,” as used herein, shall mean detectable precipitation as measured at the Terminal’s meteorological station.

10. Suspension of ship loading during high wind events: Ship loading operations shall be suspended if the 30-minute average wind speed exceeds 18 miles per hour, until the 30-minute average wind speed falls below 18 miles per hour, as measured at the Terminal’s meteorological station. Levin shall document and keep records of any instances when ship loading operations are suspended pursuant to this provision (“Suspension Events”). No later than January 31st of each calendar year, commencing January 31, 2023 and continuing through January 31, 2027, Levin shall provide the City with the date, time, and 15-minute (or lower) average wind speed data in a Microsoft Excel digital file for the preceding calendar year and with a list of any Suspension Events during the preceding calendar year.

B. Levin shall continue to maintain existing dust control measures for coal and petcoke handling and storage at the Terminal through December 31, 2026:

1. Enclosed rail car unloading facility: Unloading of coal from rail cars at the Terminal shall be conducted within the existing rail car unloading facility.

2. Covered conveyors with water misters: Existing covers on conveyors at the Terminal, and existing water misters at conveyor transfer points, shall be maintained, repaired and replaced as necessary.

3. Wind buffers around stockpile areas: Shipping containers shall be maintained to serve as wind buffers and to contain the coal stockpile and petcoke stockpile at the Terminal.

4. Sweeping of Terminal and adjacent areas: Sweeping of paved areas within the Terminal and on immediately adjacent streets shall be performed daily during business operations, utilizing a regenerative air sweeper and/or a PM10 brush model sweeper. Levin shall also comply with all other sweeping provisions in its adopted Stormwater Pollution Prevention Plan (“SWPPP”).

5. Clamshell bucket maintenance: Levin shall continue to use welding to add metal as a sacrificial material along the edges of the clamshell buckets used to transfer petcoke from the conveyor cell to vessels, in accordance with the Clamshell Bucket Maintenance Procedure attached hereto as Attachment 3.

ATTACHMENT 1 – CONCEPTUAL DRAWING OF CANOPY
EXHIBIT A – SETTLEMENT AGREEMENT
LEVIN RICHMOND TERMINAL DUST CONTROL MEASURES

- Canopy enclosing conveyors at rail car unloading facility would be approximately 57 feet wide, 37 feet long, and 26 feet high, consistent with adjacent structures
- Structure would be tubular steel and z-bar truss covered with a gray wind reduction fabric
- End of canopy to be partially enclosed with fabric for additional wind and dust control
- Canopy would be removable to facilitate maintenance when conveyors are not operating



ATTACHMENT 2 – ILLUSTRATIVE PHOTO OF WIND FENCES
EXHIBIT A – SETTLEMENT AGREEMENT
LEVIN RICHMOND TERMINAL DUST CONTROL MEASURES

Wind fences to be installed along northern portions of existing stockpile wind buffer containers.

- Six foot high chain link fence on existing containers
- Fabric covering designed for wind and dust reduction



ATTACHMENT 3 – CLAMSHELL BUCKET MAINTENANCE PROCEDURE
EXHIBIT A – SETTLEMENT AGREEMENT
LEVIN RICHMOND TERMINAL DUST CONTROL MEASURES

After installing the Clamshell bucket the Crane Operator shall operate the bucket, opening and closing it while the Oiler inspects it for smooth mechanical operation and full closure of the bucket. Particular attention shall be paid to the sealing edges or “lips” on the bucket to determine that no gap greater than 1/32 of an inch exists on the closure face. The width of the lip of each bucket is a 1/4 of an inch or greater flat surface that matches with the lip on the other half of the bucket. The typical edge closure does not allow light to be seen through the closed lips.

At the start of each shift and during the lunch break, the bucket shall be lubricated and inspected by the Oiler for leaks and complete closure at the lips.

During operation, the clamshell bucket shall not be overfilled such that material spills out the top. If necessary, the Crane Operator shall adjust the load by partially opening and closing the bucket before leaving the contained material pile being transferred. If the Crane Operator observes material dropping from the bucket, the bucket must be replaced with a fully serviced bucket or repaired in place before continuing operations.

When the clamshell bucket is removed from the crane, it shall be serviced before being stored for future use. Servicing includes placing the bucket on the service rack and inspection of the mechanical and hydraulic components by the crane crew. The fabrication shop crew shall then inspect and repair the bucket lips as needed at the closure surfaces.

The fabrication shop crew shall pay particular attention to the corners of the bucket since these surfaces experience the most wear. In operation loading calcined coke, the bottom of the bucket lips and the corners are ground down by repeated bucket closure on the concrete pad. The fabrication shop crew typically spends one or more shifts, after each ship loading, welding and grinding clamshell bucket lips to ensure a tight seal when the bucket is closed.

**EXHIBIT B – SETTLEMENT AGREEMENT
WOLVERINE’S DUST CONTROL MEASURES**

During the amortization period set forth in the Proposed Amendment, and subject to the terms and conditions of the Settlement Agreement, Wolverine agrees to continue existing dust control measures and implement the additional dust control measures set forth herein for rail shipments of coal to the Terminal:

A. Crown Products & Services (“Crown”) currently applies Crown PDC 8020 to coal as it is being loaded into rail cars in Utah to reduce coal dust emissions. The Crown PDC 8020 acts as a binding agent to mitigate airborne dust and keep coal particles from escaping during the loading process. Wolverine will continue this practice during the amortization period, utilizing Crown PDC 8020 or an equivalent dust suppression product, subject to the terms and conditions of the Settlement Agreement.

B. As a further dust suppression measure to be undertaken during the amortization period and subject to the terms and conditions of the Settlement Agreement, Wolverine will ensure that Crown PDC 8020 or an equivalent dust suppression product will be applied to the top of each loaded rail car to “blanket” the coal, further minimizing coal dust emissions during transport of the coal to Levin Richmond Terminal in Richmond, California. The rail car topping product will be applied in a manner and amount to be industry standard and effective.

**EXHIBIT C – SETTLEMENT AGREEMENT
PHILLIPS 66’S DUST CONTROL MEASURES**

During the amortization period set forth in the Proposed Amendment, and subject to the terms and conditions of the Settlement Agreement, Phillips 66 agrees to continue existing dust control measures for shipments of petroleum coke to the Terminal:

A. Phillips 66 currently applies an industrial oil to petroleum coke destined for delivery to the Terminal. The purpose of the industrial oil is to act as a binding agent to mitigate airborne dust and keep petroleum coke particles from becoming airborne. The industrial oil is applied to the petroleum coke as it leaves the cooler at the Phillips 66 Carbon Plant.

B. Additionally, Phillips 66 monitors the moisture content of lump shipments of petroleum coke and adjusts the industrial oil treatment accordingly, sometimes applying an additional dust treatment as the petroleum coke is loaded into the trucks at the Phillips 66 Carbon Plant.

C. Trucks carrying petroleum coke to the Terminal include tarping during transportation.

Phillips 66 will continue these practices during the amortization period, subject to the terms and conditions of the Settlement Agreement.

EXHIBIT D – SETTLEMENT AGREEMENT
INSPECTION PROTOCOL FOR LEVIN RICHMOND TERMINAL

Inspections of the Terminal pursuant to Section C.6 of the Settlement Agreement (“Inspections” or “Inspection”) shall be conducted as follows:

A. Notice and Scheduling of Inspections

1. Up to three (3) times per year during the amortization period, the City may request that Levin provide the City with all dates during the next thirty (30) days when Levin anticipates the Terminal will be actively conducting coal or petroleum coke (“petcoke”) ship loading operations (“Ship Loading Operations”). Within three (3) business days of receiving such request, Levin shall respond with the most accurate information regarding Ship Loading Operations available for the next thirty (30) day period. Within three (3) business days of receiving Levin’s response, the City shall provide Levin with notice of the date(s) proposed for the Inspection(s).

2. The City shall notice each Inspection to occur during business hours of 8:00 a.m. to 3:00 p.m., Monday through Friday, excluding holidays.

3. The City shall provide further notice twenty-four (24) hours prior to the start of each Inspection, except that if City notices an Inspection for the business day following a weekend or holiday, City shall provide notice 24 hours before the end of the business day preceding such weekend or holiday.

4. For Inspections during the amortization period, if Levin learns that Ship Loading Operations will not be occurring during the date and time noticed by the City for an Inspection, Levin shall notify the City as soon as possible. In that event, Levin shall provide the City with all dates within the next thirty (30) days that Levin anticipates Ship Loading Operations will be occurring at the Terminal. The City may, in its discretion, elect to proceed with the Inspection as previously noticed or may reschedule the Inspection for one of the dates provided by Levin. In the event the City elects to reschedule, the City shall promptly notify Levin that it will not be proceeding with the originally noticed Inspection and shall provide Levin with the notices required under Sections A.1-A.3 above for the newly selected date and time.

5. Levin and the City shall make good faith, reasonable efforts to schedule dates and times for the Inspections on the dates noticed by the City.

6. For the Inspection after the amortization period, the City shall provide Levin with notice of a proposed Inspection at least ten (10) days prior to the proposed Inspection. Within three (3) business days of receiving such notice, Levin shall respond with any comments on the proposed date and time for the Inspection and, if necessary, shall propose alternative dates and times. Within three (3) days of receiving such response, the City shall provide notice of an Inspection from among the alternative dates and times identified by Levin. The City shall provide further notice as set forth in Section A.3 above.

7. Formal notices, requests, and responses pursuant to this Section A shall be provided between Levin and the City as described in Section I of the Settlement Agreement. The City and

Levin representatives identified in Section I of the Settlement Agreement may also communicate in good faith via telephone and email in order to schedule Inspections.

B. Attendees and Safety Measures

1. When it notices an Inspection, the City shall provide the names of the City officials, employees, counsel and/or consultant (“City Representatives”) who will attend the Inspection. No more than three (3) City Representatives may attend any given Inspection on behalf of the City.

2. City Representatives attending the inspection shall:

- a. Provide valid, government-issued photo identification (*e.g.*, valid California driver’s license) at the Terminal security office and sign in prior to the beginning of the Inspection;
- b. Wear fully enclosed shoes during the Inspection, as well as safety gear provided by Levin, including safety vests, hard hats, safety glasses, and ear plugs;
- c. Follow necessary safety and security protocols as directed by Levin, remain with the Levin representative during the Inspection, and comply with the instructions of the Levin representative during the Inspection;
- d. Observe all applicable COVID safety protocols while at the Terminal and during the Inspection, including any applicable requirements for face masks and/or social distancing, which shall be the sole responsibility of the City Representatives; and
- e. Refrain from smoking at the Terminal and during the Inspection.

3. City Representatives may have brief, private conversations during the Inspection, at sufficient distance to be out of earshot but within view of the Levin representative and at a location deemed safe by the Levin representative. The time used for these conversations shall be included within the total duration allotted for the Inspection.

C. Scope and Conduct of Inspection

1. The City shall make reasonable efforts to minimize the time it takes to complete its Inspection. In no event shall an inspection last longer than two (2) hours.

2. The City’s Inspection may include viewing of the following areas and facilities at the Terminal, subject to safety requirements determined by Levin:

- a. Rail unloading facility;
- b. Water misters in rail car unloading facility;
- c. Rail unloading facility conveyors;
- d. Canopy over rail unloading facility conveyors;

- e. Conveyor scrapers at point of return of each conveyor segment used to handle coal;
- f. Covered conveyors used to handle coal and/or petroleum coke, including water misters at conveyor transfer points;
- g. Outdoor areas beneath conveyor segments and along conveyor paths;
- h. Clamshell buckets;
- i. Petcoke conveyor cells;
- j. Wind buffer containers around stockpile areas, including any wind fences along northern portions of stockpile wind buffer containers;
- k. Water misters for stockpiles;
- l. Meteorological station, including the station itself and the location where meteorological data from the station is viewed and/or interpreted;
- m. Any areas and facilities used for the maintenance and cleaning of the facilities and equipment listed above, including paved areas subject to sweeping operations at the Terminal;
- n. All other outdoor areas of the Terminal reasonably related to coal and/or petcoke storage and handling operations and
- o. The Terminal's BAAQMD Bulk Material Site Monitoring Reports (Regulations 6-1 and 6-6), pursuant to Section A.5 of Exhibit A to the Settlement Agreement.

3. Levin shall have no obligation to cease operations during any Inspection, or to allow City Representatives to observe operations from locations deemed by Levin to pose safety issues.

4. The City's Inspection may include the taking of photographs and/or video of discrete facilities within the Terminal. Photographs and/or video taken by City Representatives during the Inspection may be used solely for the purposes of verifying compliance or non-compliance with, and enforcing the terms of, the Settlement Agreement and shall not be published or disclosed to third parties except as provided under Section C.5 below. The City shall provide Levin with any photographs and/or videos taken by City Representatives during the Inspection within five (5) days of such Inspection.

5. The City and Levin agree that photographs and/or video taken during Inspections may be admissible in any action to enforce the terms of the Settlement Agreement.