

## MEMORANDUM OF UNDERSTANDING

The San Diego Unified Port District ("District") and San Diego Refrigerated Services, Inc., a California Corporation ("SDRS") collectively, ("Parties") enter into the following Memorandum of Understanding ("MOU") this 21<sup>st</sup> day of March 2019, for the purpose of memorializing certain agreements and the Parties' mutual understanding regarding the potential placement of solar panels on the roof of Warehouse B at the Tenth Avenue Marine Terminal ("TAMT").

WHEREAS, there exists a certain lease between the District and SDRS bearing District Clerk Document Number 64269 ("Lease");

WHEREAS, pursuant to the Lease, SDRS leases approximately 433,965 square feet of land area and the improvements thereon, including 317,802 square feet of refrigerated chill rooms, freezer rooms and dry storage areas within Warehouse B located at TAMT as more thoroughly described in and defined by the Lease as the "Leased Premises";

WHEREAS, Warehouse B has roof space that is available for the installation of solar photovoltaic panels ("Solar Panels"), provided that the current roof is first replaced with a new roof that is structurally suitable for Solar Panels;

WHEREAS, the Parties are interested in memorializing their agreements and mutual understanding regarding the potential placement of Solar Panels on the roof of Warehouse B on TAMT.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

1. The District may but is not required to install, operate, maintain, own and ultimately remove Solar Panels on the roof of two (2) Bays in Warehouse B, identified as Sections B-5 and B-6 (see Exhibit A) at the District's sole expense (the "District Solar Panels"). For the purposes of clarity, these panels would not be owned by SDRS and the District Solar Panels would not result in a taxable possessory interest for which SDRS would be responsible.

2. To the extent that the District moves forward with the District Solar Panels, at no cost to SDRS the District will provide SDRS with the work plans for installation of the Solar Panels on the roof of Sections B-5 and B-6 when those work plans are complete and will coordinate with SDRS personnel prior to Solar Panel installation to minimize impacts to SDRS operations. SDRS will allow reasonable access to the Leased Premises to District staff, consultants, and contractors to install, operate, and maintain the District Solar Panels. All District staff entering the facility will comply with written safety policies and evacuation procedures provided to District staff by SDRS. The District will provide notice to SDRS prior to entering the Leased Premises in conformance with the Lease. The District retains the right to exclusively use and/or distribute some or all the energy produced by the District Solar Panels and any District-Solar-Panel-associated carbon credits or other environmental attributes as the District determines in the

District's sole and absolute discretion, with potential distribution pursuant to potential future agreements with tenants or other parties.

3. To the extent that the District moves forward with the District Solar Panels, the District will include insurance requirements in its public solicitation for installation of the District Solar Panels and will require that SDRS be named as an additional insured by the contractor(s) selected to complete the installation of the District Solar Panels on Warehouse B. The District will conform with all applicable laws and regulations and contractually require its selected contractor(s) to conform with all applicable laws and regulations, including any potential Storm Water Pollution Prevention Plan ("SWPPP") if required, in moving forward with the District Solar Panels.

4. SDRS may but is not required to install, operate, maintain and ultimately remove Solar Panels on the roof of Warehouse B Sections B-1 and B-2 (see Exhibit A) (the "SDRS Solar Project") during the Lease Term or until the Lease is terminated, whichever comes first, at SDRS' sole expense, subject to SDRS first receiving all requisite administrative and regulatory approvals for such Solar Panels on the roof of Warehouse B, including but not limited to any and all approvals required pursuant to the Lease, such District approvals not to be unreasonably withheld. This paragraph, and this MOU, may not be interpreted to pre-commit the District to the approval of the SDRS Solar Project or any future discretionary action(s).

5. To the extent that the District does not place Solar Panels on the roof of some or all of Sections B-5 and B-6 by June 30, 2023, those unused sections may be utilized by SDRS for any use authorized by the Lease subject to SDRS first receiving all necessary administrative and regulatory approvals, as required by the Lease.

6. This MOU is effective as of March 21, 2019, and shall end at the Lease Termination Date as defined in the Lease or any extensions thereof, unless the Lease or this MOU is terminated prior to the Lease Termination Date. Subject to Paragraph 5 of this MOU, for the purposes of clarity, it is currently the intent of the District that any District Solar Panels will remain on the roof of Warehouse B following the termination of the Lease. Any rights or obligations of SDRS under this MOU shall end at the Lease Termination Date, unless the Lease or this MOU is terminated prior to the Lease Termination Date.

7. This MOU has been mutually drafted by the Parties. The language of this MOU shall be construed according to its plain and ordinary meaning and in accordance with the Lease.

8. The undersigned representatives of the Parties each certify that he/she is fully authorized to enter into this MOU on behalf of the District or SDRS, as applicable.

9. This MOU and the Lease between the Parties shall constitute the entire Agreement between the Parties, and no promises or representations, other than those contained herein and those implied by law, have been made by the Parties. This MOU may be amended only by unanimous written consent of the Parties. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Parties.

10. In the event any provision of this MOU is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this MOU so as not to cause the invalidity or unenforceability of the remainder of this MOU. All remaining provisions of this MOU shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

11. Any ambiguity contained in this MOU, or dispute with respect to this MOU, shall be remedied pursuant to the terms of the Lease.

12. All notices and correspondence under this MOU shall conform to the notice requirements set forth in the Lease.

13. This MOU will be governed and construed in accordance with the laws of the state of California.

14. This MOU may be executed in counterparts and the signed counterparts shall constitute a single instrument. Signatures transmitted electronically shall have the same effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

Dated: \_\_\_\_\_

SAN DIEGO UNIFIED PORT DISTRICT

By: \_\_\_\_\_  
Randa J. Coniglio  
President and CEO

Dated: March 21, 2019

SAN DIEGO REFRIGERATED  
SERVICES


By:   
Frank Plant  
Executive Director

APPROVED AS TO FORM AND LEGALITY:

Dated: \_\_\_\_\_

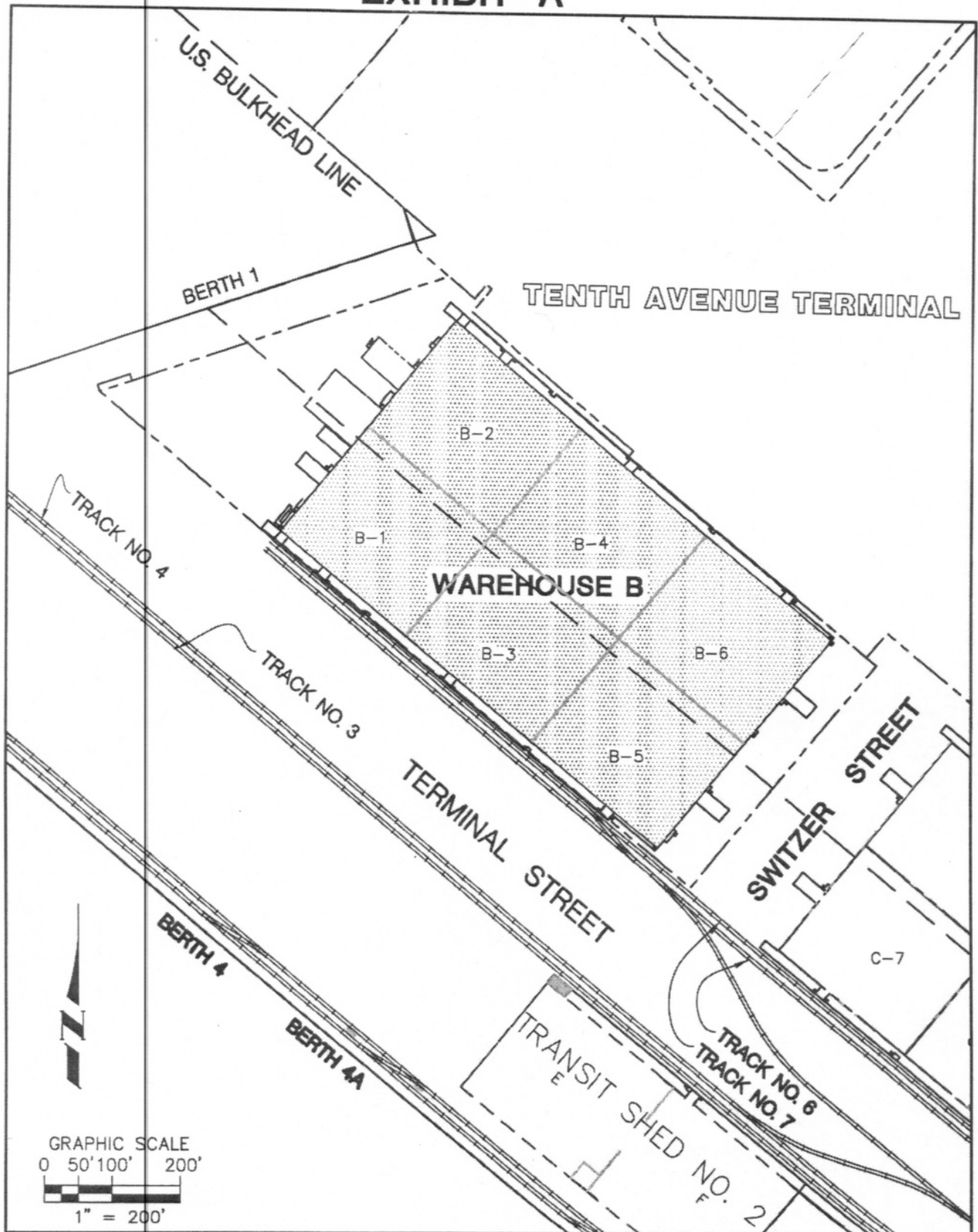
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John N. Carter, Deputy General Counsel  
Attorney for San Diego Unified Port District

Dated: 3/22/19

  
Stephen Gentes  
Attorney for San Diego Refrigerated  
Services

# EXHIBIT "A"

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DRAWN JFD CHECKED REVIEWED	<b>SAN DIEGO UNIFIED PORT DISTRICT</b> EXHIBIT WITHIN CORPORATE LIMITS OF SAN DIEGO <b>WAREHOUSE B</b>	DATE JANUARY 29, 2020 SCALE AS SHOWN REF. DRAWING NO. SHEET 1 OF 1
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FILE LOCATION